

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

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

<b>Item No.</b>	<u>6E</u>
<b>Date of Meeting</b>	<u>May 4, 2021</u>

**DATE:** April 26, 2021

**TO:** Managing Members

**FROM:** John Wolfe, CEO

**Sponsor:** Tong Zhu, Chief Commercial & Strategy Officer  
Jennifer Maietta, Interim Director, Real Estate

**Project Managers:** Erin DeBroux, Real Estate Manager

**SUBJECT:** T-106W Inter-Local Agreement Consent Authorization

**A. ACTION REQUESTED**

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Port of Seattle to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project. In support of the POS redevelopment effort on T106, NWSA is putting forth this request.

Jointly, request Commissioners of the Port of Seattle (POS) authorization for the Executive Director or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Northwest Seaport Alliance to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.

**B. SYNOPSIS**

Terminal 106 is a multi-tenant premises, respectively managed by the NWSA and Port of Seattle (POS) based on the allocated acreage between entities. POS issued and awarded a Request for Proposal to redevelop a portion of Terminal 106, which will include a need to widen the ingress/egress options on the premises. Such widening will impact the current NWSA licensed property known as T-106W and its current tenant, ConGlobal Industries, LLC (CGI) by removing 10,797 square feet

from CGI's premises. Though the Premises are being amended to result in less rental income to NWSA from CGI, through this ILA, the POS will compensate the NWSA for the lost rental income to have a neutral financial impact to the NWSA.

The Managing Members during the April 6, 2021 Managing Member meeting approved the First Amendment to the Lease Agreement with CGI for its lease premises modification conditioned upon the NWSA and POS entering into an ILA to formalize use of the area to be removed from CGI's premises for use by Port of Seattle and its tenant(s) while addressing compensation with the intent that the project remains cost neutral to the NWSA. Compensation provided by Port of Seattle to the NWSA will be in an amount not less than the total loss in revenue under the CGI lease and any future lease and remitted on an annual basis.

Upon the approval and execution of the proposed ILA, the First Amendment to the CGI Lease will be executed.

### **C. BACKGROUND**

Terminal 106 is an approximate 31.23-acre site with approximately 10 of the total acres licensed to NWSA, of which CGI leases 8.7 acres out of the NWSA licensed acreage.

POS and CGI entered into a 12-year lease commencing January 1, 2015 (dated June 8, 2015) and terminating December 31, 2026 for certain premises located at Terminals 106 and 108 (the Lease). Such certain premises were subsequently licensed to the NWSA who assumed management of the Lease. Adjacent to CGI's premises is a 15.07-acre parcel for which POS issued and awarded a Request for Proposal (RFP) for a long-term ground lease and demolition of an existing warehouse building.

The development contemplated by the RFP awardee (Trammell Crow Company) requires modification of the South Idaho Street ingress to CGI's premises, modification of the South Nevada Street egress lane at the north end of CGI's premises, and widening of the roadway connecting South Nevada Street to South Idaho Street running adjacent to the eastern boundary of the Lease. The proposed plan for these modifications reduces the premises by approximately 10,797 square feet which were agreed to by POS, NWSA and CGI.

Area taken out of the leased premises will remain NWSA-licensed property and will be utilized as common area, rather than leasable property.

NWSA and CGI will not bear any costs or expenses for this project. All work, including restoration of CGI's premises, shall be completed at the sole cost and expense of POS.

It is anticipated that construction work will commence in 2023. However, as part of the negotiations between POS and the RFP awardee, POS must provide assurances that modification to the roadway may occur. This assurance requires both 1) modification to the CGI Lease premises as approved during the April 6, 2021 Managing Member meeting, and 2) approval by the Managing Members to enter into an ILA between the POS and NWSA for use of the property for this purpose.

**The base terms of the ILA are as follows:**

- Upon commencement of the redevelopment project, POS will have use of approximately 10,797 square feet licensed to NWSA for the purposes of widening the roadway connecting South Nevada Street to South Idaho Street (the “Project”), of which 2,678 square feet of the Premises is utilized under a Street Use Permit between the POS and the City of Seattle Department of Transportation.
- POS’s use of the Premises includes the right to access, construct, modify, and maintain the roadway. Other uses are subject to agreement by the NWSA, which shall not unreasonably be withheld or delayed.
- Effective upon the construction mobilization date for the Project, POS shall pay to the NWSA an annual sum equal to the base rental rate per square foot of any current leasehold agreement directly abutting the Premises located on T-106W (“Use Fee”). This Use Fee is intended to compensate the NWSA for lost rental income that would otherwise be paid by a tenant at the Premises and for POS’s use of the Premises.
  - a. Use Fee shall be paid in arrears annually on or before each January 1st and shall be pro-rated for any partial year thereof.
  - b. Should T-106W become vacant, POS shall not pay the Use Fee during any such vacancy period until a new leasehold agreement(s) directly abutting the Premises is in place, at which time, POS will again be charged a Use Fee as described herein.
  - c. All future payments shall be subject to the then-current base rental rate of any leasehold agreement in effect directly abutting T-106W as specified above.

The current CGI base rent as set forth in their lease at T-106W applied to Premises square footage is as follows:

Year	SF	Rate/Mo	Use Fee/Mo	Rate/Yr	Use Fee/Yr
2022	10,797	\$ 0.1548	\$ 1,671.38	\$ 1.8576	\$ 20,056.51
2023	10,797	\$ 0.1625	\$ 1,754.51	\$ 1.9500	\$ 21,054.15
2024	10,797	\$ 0.1706	\$ 1,841.97	\$ 2.0472	\$ 22,103.62
2025	10,797	\$ 0.1792	\$ 1,934.82	\$ 2.1504	\$ 23,217.87
2026	10,797	\$ 0.1881	\$ 2,030.92	\$ 2.2572	\$ 24,370.99

- NWSA and the POS will each be responsible for any future capital improvements, repairs and/or maintenance on their respective premises, except that the initial improvement and repair costs required to restore the T-106W premises currently under a leasehold agreement to the same or better pre-Project condition shall be the sole cost and responsibility of POS.
- Any and all modifications, upgrades, maintenance and repair of the roadway shall be the responsibility of POS.
- Upon completion and delivery of the Project, the newly installed fence located within T-106W, shall become an asset of the terminal. As such, all maintenance, repair and/or replacement of the fence shall then be the responsibility of the NWSA.
- The ILA shall be effective upon signature by both Parties and a copy being recorded with the respective County Auditors or posted on both Parties' web sites as authorized by RCW.39.34.040 and shall continue indefinitely until terminated by written mutual agreement by the Parties.

## **D. FINANCIAL IMPLICATIONS**

### ***Source of Funds***

The POS will bear all costs and expense related to the Project and use of the Premises, at no cost to the NWSA.

### ***Financial Impact***

The ILA is revenue neutral; The POS will pay the same per square foot rate as provided for in any current leasehold agreement for Terminal 106W with no financial impact to the NWSA.

## E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- **No Action Alternative:** The POS Terminal 106 redevelopment project will be impacted, and access rendered non-functional to the development site. Non-approval of the ILA would halt the finalization of project negotiations.
- **Recommended Action:** Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Port of Seattle to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.

Jointly, request Commissioners of the Port of Seattle (POS) authorization for the Executive Director or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Northwest Seaport Alliance to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.

## F. ENVIRONMENTAL IMPACTS / REVIEW

**Stormwater:** The POS shall be responsible for the stormwater utility fees for the Premises to be paid directly by or charged to the POS. In addition to the stormwater, POS shall be responsible for the cost and repair of any issues pertaining to storm water drainage resulting from the Project and shall survive the Project, which obligations shall survive the Project completion date.

## G. ATTACHMENTS TO THIS REQUEST

- Inter-Local Agreement by and between the POS and the NWSA
- Memorandum for the First Amendment to the Lease Agreement by and between NWSA and CGI approved by the Managing Members on April 6, 2021
- PowerPoint Presentation

## H. PREVIOUS ACTIONS OR BRIEFINGS

On April 6, 2021, the Managing Members approved the First Amendment to the Lease Agreement by and between the NWSA and CGI conditioned upon the Northwest Seaport Alliance and Port of Seattle entering into an Interlocal Agreement (ILA) to formalize use of the area to be removed from CGI’s premises for use by Port of Seattle and its tenant(s). The ILA will also address compensation with the intent that the project remains cost neutral to the NWSA. Compensation provided by Port of Seattle to the NWSA will be in an amount not less than the total loss in revenue under the CGI lease and any future lease and remitted on an annual basis.

**INTERLOCAL AGREEMENT  
BETWEEN THE PORT OF SEATTLE & THE NORTHWEST SEAPORT ALLIANCE  
REGARDING THE PORT OF SEATTLE'S USE OF A PORTION OF  
TERMINAL 106 WEST**

This Interlocal Agreement (the "**ILA**") is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Port of Seattle, a public port district organized under the laws of the State of Washington ("**POS**") and The Northwest Seaport Alliance, a Washington state port development authority ("**NWSA**"), (cumulatively, "Parties"), under the authority of the Washington State Interlocal Cooperation Act, RCW 39.34 and the Port Joint Powers authority (RCW 53.08.240).

**RECITALS**

WHEREAS, POS owns the property which is the subject of this ILA.

WHEREAS, the respective Commissions of the POS and the Port of Tacoma ("**POT**") are the two Managing Members of NWSA, and the NWSA was formed to operate, manage, and use certain real properties owned by each such Port.

WHEREAS, POS licensed the operation, use and management of the property known as Terminal 106 West ("**T-106W**"), as more specifically described in Exhibit A, to NWSA as POS's licensee/agent, effective August 4, 2015 ("**License Agreement**").

WHEREAS, NWSA manages T-106W and has leased T-106W to ConGlobal Industries, LLC until December 31, 2026, and under the terms of the License Agreement, and NWSA has the right to manage T-106W indefinitely.

WHEREAS, POS now seeks to use a portion of T-106W for the purposes of widening the roadway connecting South Nevada Street and South Idaho Street allowing for two-lanes of traffic flow between the streets for drayage and other vehicles in conjunction with the POS redevelopment project occurring on POS-owned and managed property located north of South Nevada Street and more commonly known as Terminal 106 (the "**Permitted Use**").

WHEREAS, in support of the POS redevelopment effort, the Parties wish to memorialize the compensation to be paid by POS to the NWSA for NWSA's lost rental income and POS's use of a portion of T-106W for the Permitted Use and further wish to memorialize the parties' intention that the POS's use of the Premises be revenue neutral to NWSA .

NOW THEREFORE, in consideration of the Premises contained in this ILA, POS and the NWSA agree as follows:

## AGREEMENT

- 1. Premises.** Upon commencement of the redevelopment project, POS will have use of approximately 10,797 square feet as specified on Exhibit B (the “Premises”) for the purposes of widening the roadway connecting South Nevada Street to South Idaho Street (the “Project”), of which 2,678 square feet of the Premises is utilized under a Street Use Permit between the POS and the City of Seattle Department of Transportation SDOT Permit #SUPSM0003013 (prior SDOT permit #34821) with a start date of 03/12/1971.

POS’s right to use the Premises includes the right to access, construct, modify, and maintain the roadway or otherwise assign its rights under this ILA in furtherance of the Permitted Use described above. POS’s right to use the Premises for any other purpose beside the Permitted Use is subject to agreement by the NWSA, which agreement shall not unreasonably be withheld or delayed.

- 2. Compensation to the NWSA.** POS will provide up to 30 days’ written notice to NWSA before the construction mobilization date for the Project. Thereafter, POS shall pay to the NWSA an annual sum equal to the base rental rate per square foot of any then-current leasehold agreement directly abutting the Premises located on T-106W (“Use Fee”). This Use Fee is intended to compensate the NWSA for lost rental income that would otherwise be paid by a tenant at the Premises and for POS’s use of the Premises. The Use Fee shall be paid in arrears annually on or before each January 1st and shall be pro-rated for any partial year thereof. Should T-106W become vacant, POS shall not pay the Use Fee during any such vacancy period until a new leasehold agreement for T-106W is in place, at which time, POS will again be charged a Use Fee as described herein. All future payments shall be subject to the then-current base rental rate of any leasehold agreement in in effect for T-106W as specified above.

The current ConGlobal Industries LLC base rent as set forth in their lease at T-106W applied to Premises square footage is as follows:

Year	SF	Rate/Mo	Use Fee/Mo	Rate/Yr	Use Fee/Yr
2022	10,797	\$ 0.1548	\$ 1,671.38	\$ 1.8576	\$ 20,056.51
2023	10,797	\$ 0.1625	\$ 1,754.51	\$ 1.9500	\$ 21,054.15
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2026	10,797	\$ 0.1881	\$ 2,030.92	\$ 2.2572	\$ 24,370.99

Should T-106W be leased to multiple tenants the Premises Use Fee shall be determined by the rental rate of the leasehold agreements directly abutting the Premises and the rental rate of each lease multiplied by the square footage immediately abutting each leasehold as reasonably agreed to in writing by the Parties.

- 3. Capital Improvements and Maintenance.** The NWSA and the POS will each be responsible for any future capital improvements, repairs and/or maintenance on their respective premises.

Any and all modifications, upgrades, maintenance and repair of the roadway shall be the responsibility of the POS. Notwithstanding the foregoing, the initial improvement and repair costs required to restore the T-106W premises currently under a leasehold agreement to the same or better pre-Project condition shall be the sole cost and responsibility of POS.

Upon completion and delivery of the Project, the newly installed fence located within T-106W, shall become an asset of the terminal. As such, all maintenance, repair and/or replacement of the fence shall then be the responsibility of the NWSA.

- 4. Stormwater.** The POS shall be responsible for the stormwater utility fees for the Premises to be paid directly by or charged to the POS. In addition to the stormwater, POS shall be responsible for the cost and repair of any issues pertaining to storm water drainage resulting from the Project, which obligations shall survive the Project completion date.

**5. Miscellaneous**

**A. Third Party Beneficiaries.** This ILA does not create any rights, claims, or benefits inuring to any person that is not a party hereto, and it does not create or establish any third-party beneficiary hereto.

**B. Binding Effect.** This ILA shall be binding upon and inure to the benefit of the Parties, and their legal representatives, successors, and permitted assigns.

**C. Severability.** If any provision of this ILA shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties agree to use good faith efforts to replace such invalid or unenforceable provision of this ILA with a valid and enforceable provision that will achieve,

to the extent possible, the purposes of such invalid or unenforceable provision. If the Parties cannot reach a mutually agreeable and enforceable replacement for such invalid, illegal, or unenforceable provision, the balance of the ILA shall be interpreted as if such provision were so excluded so as reasonably to effectuate the intent of the Parties.

**D. Notices.** Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications authorized or required to be given pursuant to this ILA shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, certified first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the addresses on Schedule 3 of the NWSA Charter (as such may be updated by notice from time to time).

**E. Usage Generally; Interpretation.**

1. The captions and headings of this ILA are for convenience of reference only and shall not affect the interpretation of this ILA.
2. Any statute or law defined or referred to herein means such statute or law as from time to time amended, modified, or supplemented, including by succession of comparable successor statutes.

**F. Entire Agreement.** This ILA embodies the entire agreement of the Parties and supersedes all prior agreements and understandings between the Parties with respect to the subject matter herein.

**G. Counterparts.** This ILA may be executed in any number of counterparts, including by electronic transmission or facsimile, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**H. Amendments.** The terms and provisions of this ILA may only be modified or amended at any time and from time to time by mutual agreement of the Parties.

**I. Further Assurances.** Each Party shall execute and deliver any additional documents and instruments and perform any additional acts that the Parties determine to be necessary or appropriate to effectuate and perform the provisions of this ILA.

- J. Governing Law.** This ILA shall be governed and construed in accordance with the laws of the State of Washington, without regard to the conflicts of law principles thereof. Generally, in the event of a conflict, the following sources of authority shall prevail in descending order of supremacy: (i) Washington state law and regulation, including the Port Joint Powers statute (RCW 53.08.240), the Port Development Authority, Chapter 53.57 RCW; and this ILA; (ii) any policies of the NWSA; and (iii) any policies of the POS.
- K. Costs, Fees and Expenses.** Each Party shall bear any legal and other costs, fees and expenses incurred by such party in connection with the negotiation and preparation of this ILA and the transactions contemplated hereby.
- L. Waivers.** No waiver of any breach of any of the terms of this ILA shall be effective unless such waiver is made expressly in writing and executed and delivered by the party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a further or continuing waiver of such breach or a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power, or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power, or remedy by such party preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.
- M. Ratification.** Acts taken in conformity with this ILA prior to its execution are hereby ratified and affirmed.
- N. Assignment.** Other than the Port's right to lease, sublease, license, permit occupancy or otherwise assign its rights in furtherance of the Permitted Use as described in Section 1 above, neither Party to this ILA shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this ILA, without the prior written approval of the other.
- O. Independent Municipal Governments.** The Parties hereto are independent governmental entities, and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party.
- P. Legal Obligations.** This ILA does not relieve either Party of any obligation or responsibility imposed upon it by law.

- Q. Timely Performance.** The requirements of this ILA shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.
- R. Records and Audit.** During the term of this ILA, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this ILA and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.
- S. Limits of Financial Obligations/Property Ownership.** Except as provided above, each Party shall finance its own conduct of responsibilities under this ILA. No ownership of property will transfer as a result of this ILA.
- T. Effective Date & Termination.** This ILA shall be effective upon signature by both Parties and a copy being recorded with the respective County Auditors or posted on both Parties' web sites as authorized by RCW.39.34.040 and shall continue indefinitely until terminated by written mutual agreement by the Parties.
- U. Indemnification and Hold Harmless.**
1. The NWSA releases the POS from, and shall defend, indemnify, and hold the POS and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the NWSA and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the NWSA's performance of its obligations under this ILA, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the POS or its agents, employees, and/or officers.
  2. The NWSA shall defend, indemnify, and hold the POS and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any

third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the NWSA's performance of its obligations under this ILA, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the POS or its agents, employees, and/or officers.

3. The POS releases the NWSA from, and shall defend, indemnify, and hold the NWSA and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the POT and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the POS's performance of its obligations under this ILA, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the NWSA or its agents, employees, and/or officers.
4. The POS shall defend, indemnify, and hold the NWSA and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the POS's performance of its obligations under this ILA, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the NWSA or its agents, employees, and/or officers.
5. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.
6. The Parties recognize that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this ILA against the other Party, all such fees, costs and expenses shall be recoverable by the substantially prevailing Party.
7. No liability shall attach to any of the Parties by reason of entering into this ILA except as expressly provided herein.

8. The provisions of this Section U.(a)-(h) shall survive any termination or expiration of this ILA.

THE NORTHWEST SEAPORT  
ALLIANCE:

By \_\_\_\_\_  
John Wolfe, CEO

Date \_\_\_\_\_

THE PORT OF SEATTLE:

By \_\_\_\_\_  
Stephen Metruck, Executive Director

Date \_\_\_\_\_

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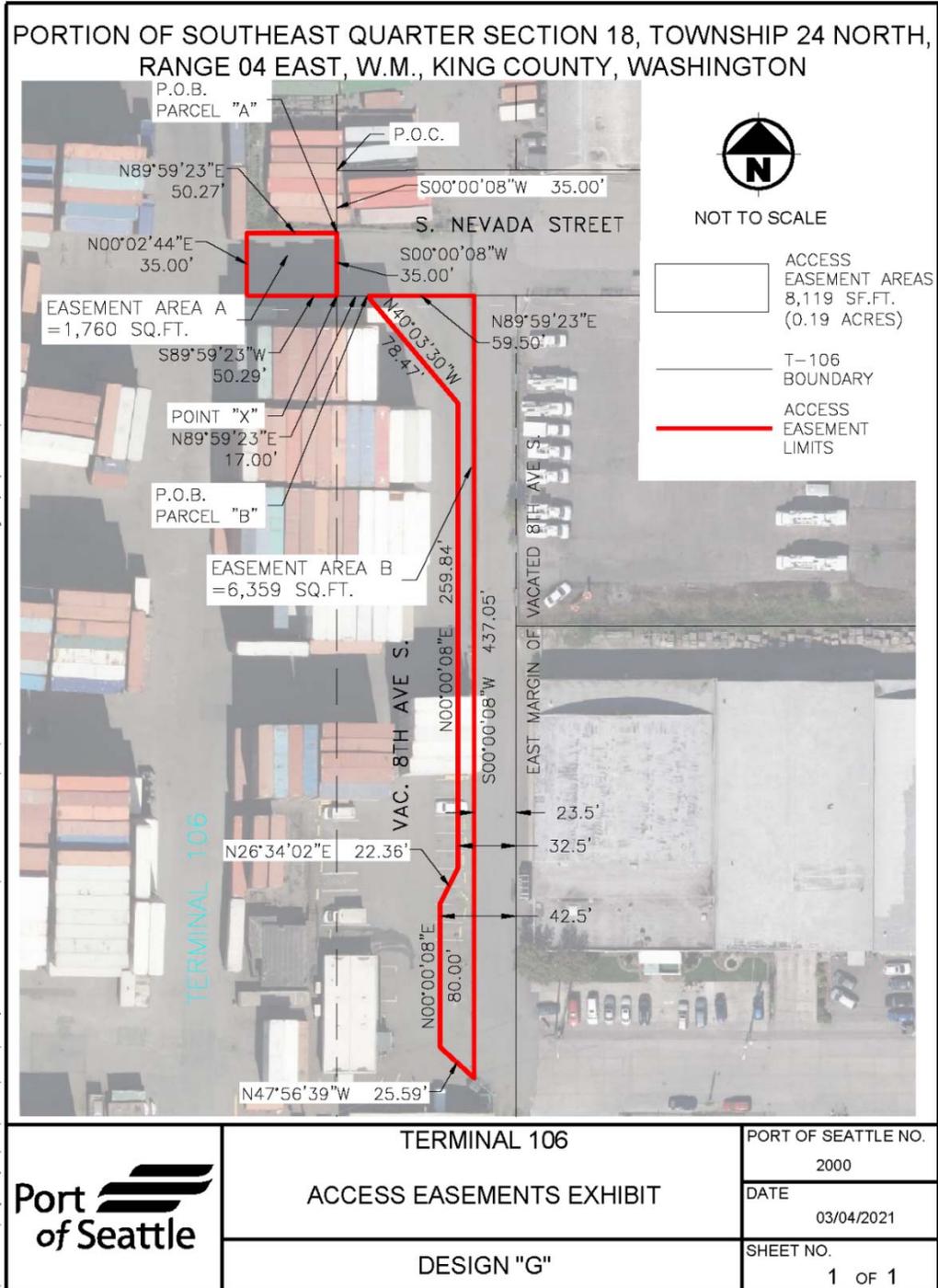
**“EXHIBIT A”**

**LEGAL DESCRIPTION OF TERMINAL 106W**

T-106 WEST COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF THE DUWAMISH WATERWAY AS ESTABLISHED BY THE COMMERCIAL WATERWAY DISTRICT NO. 1 AND THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH OREGON STREET; THENCE SOUTH 90°00'00" EAST ALONG SAID NORTHERLY MARGIN A DISTANCE OF 253.38 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°00'00" WEST A DISTANCE OF 29.26 FEET; THENCE NORTH 72°55'10" WEST A DISTANCE OF 157.13 FEET; THENCE NORTH 19°29'35" WEST A DISTANCE OF 424.00 FEET; THENCE NORTH 00°08'51" WEST A DISTANCE OF 163.98 FEET; THENCE NORTH 08°35'51" EAST A DISTANCE OF 441.46 FEET; THENCE SOUTH 90°00'00" EAST A DISTANCE OF 225.81 FEET; THENCE SOUTH 00°00'00" WEST A DISTANCE OF 165.59 FEET TO THE CENTER LINE OF SOUTH NEVADA STREET AS PRODUCED WEST; THENCE SOUTH 90°00'00" EAST ALONG SAID PRODUCED CENTER LINE A DISTANCE OF 50.70 FEET TO THE WESTERLY RIGHT OF WAY MARGIN OF VACATED 8TH AVENUE SOUTH AND THE WESTERLY RIGHT OF WAY MARGIN OF SOUTH NEVADA STREET; THENCE SOUTH 00°00'00" WEST ALONG SAID WESTERLY MARGIN A DISTANCE OF 35.00 FEET TO THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH NEVADA STREET; THENCE SOUTH 90°00'00" EAST ALONG SAID SOUTHERLY MARGIN A DISTANCE OF 76.50 FEET; THENCE SOUTH 00°00'00" WEST AND PARALLEL WITH THE WESTERLY RIGHT OF WAY MARGIN OF VACATED 8TH AVENUE SOUTH A DISTANCE OF 455.43 FEET; THENCE SOUTH 90°00'00" EAST A DISTANCE OF 23.50 FEET PERPENDICULAR TO THE EASTERLY RIGHT OF WAY MARGIN OF VACATED 8TH AVENUE SOUTH; THENCE SOUTH 00°00'00" WEST ALONG SAID EASTERLY MARGIN A DISTANCE OF 419.57 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH OREGON STREET; THENCE NORTH 90°00'00" WEST ALONG SAID NORTHERLY MARGIN A DISTANCE 150.39 FEET TO THE POINT OF BEGINNING. TOGETHER WITH: DEPARTMENT OF TRANSPORTATION STREET USE PERMIT NO. 34821. ALL CONTAINING 378,026 SQUARE FEET OR 8.7 ACRES MORE OR LESS.

# "EXHIBIT B"

## PREMISES SITE PLAN



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

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

<b>Item No.</b>	<u>8E</u>
<b>Date of Meeting</b>	<u>April 6, 2021</u>

**DATE:** March 5, 2021

**TO:** Managing Members

**FROM:** John Wolfe, CEO

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

**Project Manager:** Erin DeBroux, Real Estate Manager

**SUBJECT:** First Amendment to ConGlobal Industries Lease at T106

**A. ACTION REQUESTED**

Request Managing Members of The Northwest Seaport Alliance (NWSA) to advance authorization for the Chief Executive Officer or their delegate to enter into a First Amendment to Lease between the NWSA as Lessor and ConGlobal Industries, LLC as Lessee.

**B. SYNOPSIS**

Terminal 106 is a multi-tenant premises, respectively managed by the NWSA and Port of Seattle (POS) based on the allocated acreage between entities. POS issued and awarded a Request for Proposal to redevelop a portion of Terminal 106, which will include a need to widen the ingress/egress options on the premises. Such widening will impact current NWSA tenant, ConGlobal Industries, LLC (CGI) by removing 10,797 square feet from its current premises.

This is expected to be of neutral financial impact to the NWSA. Though the Premises are being amended to result in less rental income to NWSA from CGI, the Port of Seattle is expected to compensate the NWSA for this lost rental income by means of an interlocal agreement which will be presented to the Managing Members at the May, 2021 meeting.

**C. BACKGROUND**

1. Terminal 106 is an approximate 31.23-acre site with approximately 10 of the total acres licensed to NWSA.

2. POS and CGI entered into a 12-year lease commencing January 1, 2015 (dated June 8, 2015) and terminating December 31, 2026 for certain premises located at Terminals 106 and 108 (the Lease). Such certain premises were subsequently licensed to the NWSA who assumed management of the Lease. Adjacent to CGI's premises is a 15.07-acre parcel for which POS issued and awarded a Request for Proposal (RFP) for a long-term ground lease and demolition of an existing warehouse building.
3. The development contemplated by the RFP awardee (Trammell Crow Company) requires modification of the South Idaho Street ingress to CGI's premises, modification of the South Nevada Street egress lane at the north end of CGI's premises, and widening of the roadway connecting South Nevada Street to South Idaho Street running adjacent to the eastern boundary of the Lease. These modifications will reduce CGI's premises by approximately 10,797 square feet requiring an amendment to the Lease.
4. Area taken out of the leased premises will remain NWSA-licensed property and will be utilized as common area, rather than leasable property.
5. Multiple modification scenarios were presented to and discussed with CGI. Mutual agreement was reached on a design concept in early 2021.
6. Of the total 10,797 square feet to be removed from the premises, 2,678 square feet is not port-owned and is utilized via a permit with the City of Seattle Department of Transportation.
7. NWSA and CGI will not bear any costs or expenses for this project. All work, including restoration of CGI's premises, shall be completed at the sole cost and expense of POS.
8. It is anticipated that construction work will commence in 2023; however, as part of the negotiations between POS and the RFP awardee, POS must provide assurances that modification to the roadway may occur. Thus, an amendment to the Lease is needed imminently.
9. The amendment will contemplate the following items:
  - Reduction of the leased premises from 857,576 square feet to 846,779 square feet;
  - Reduction of rent in accordance with the reduction in premises utilizing the already-negotiated rates stated in the Lease, as shown below for lease years 9 through 12, lease year 9 being the anticipated starting year for construction.

Year	Lease Year	\$/SF/Mo	Rent/Mo	Rent/Yr
2023	Year 9	0.1625	\$137,601.59	\$1,651,219.05
2024	Year 10	0.1706	\$144,460.50	\$1,733,525.97
2025	Year 11	0.1792	\$151,742.80	\$1,820,913.56
2026	Year 12	0.1881	\$159,279.13	\$1,911,349.56

- Reduction of premises and rent shall commence on the date construction work commences and CGI is deprived of the 10,797 square feet.
- CGI's new premises will be restored to the same like-kind, pre-construction condition, excepting any agreed upon modifications documented in writing; and
- If, for whatever reason, the project does not move forward, the amendment shall automatically terminate.

10. NWSA will benefit from this work. The currently established ingress/egress route is narrow and permits one-lane traffic only. This widening will permit 2-lane traffic and make the site more usable overall. NWSA anticipates the ability to market the site at a higher rental rate in the future due to the increased overall usability.

11. NWSA and POS will enter into an Interlocal Agreement ("ILA") to formalize use of the area to be removed from CGI's premises for use by POS and its tenant(s). The ILA will also address compensation with the intent that the project remains cost neutral to NWSA. Compensation provided by POS to NWSA will be in an amount not less than the total loss in revenue under the CGI lease and any future lease and remitted on an annual basis.

#### **D. FINANCIAL IMPLICATIONS**

##### ***Source of Funds***

No NWSA funds are contemplated in this request.

##### ***Financial Impact***

There will be no financial impact to NWSA. While NWSA will receive less rent from CGI, the ILA with the Port of Seattle will address this loss to ensure NWSA remains cost neutral. Assuming a 2023 construction mobilization date, NWSA will lose rental revenue in the total amount of \$90,746.63 or 1.259% of the total revenue (\$28,468,032.56) over the last four years of the Lease. The ILA will address this loss, as well as losses under future leases.

## **E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

- **No Action Alternative:** The ingress/egress modifications contemplated in this Memorandum are critical to the redevelopment project. Failure to amend the lease may jeopardize negotiations between POS and the RFP awardee.
- **Recommended Action:** Amending the lease is the recommended action. Widening the road will benefit both CGI and NWSA by increasing the usability of the site, and NWSA's loss in revenue will be addressed via an ILA.

## **F. ENVIRONMENTAL IMPACTS / REVIEW**

No environmental impacts are anticipated from the lease amendment itself. High level potential impacts pertaining to the widening are outlined below. Each category will be further evaluated and analyzed once the project commences. POS will manage and finance all work.

Permitting: Permitting will be evaluated and obtained by POS prior to construction.

Remediation: Remediation will be evaluated by POS prior to construction.

Stormwater: Stormwater treatment/system improvements are likely. The stormwater line that runs east-west in the roadway is owned by the City of Seattle who will need to be involved.

Air Quality: No concerns at this preliminary stage. Increased efficiency of traffic flow may have positive air quality impacts. To the extent practical, NWSA recommends the construction contractor should use the lowest emission equipment available.

## **G. ATTACHMENTS TO THIS REQUEST**

- First Amendment to Lease

## **H. PREVIOUS ACTIONS OR BRIEFINGS**

- Port of Seattle approved the lease at a public meeting on November 25, 2014.



Item No.: 6E  
Date of Meeting: May 4, 2021

# T-106W ILA Consent Authorization

Presenter: Erin DeBroux  
Title: Real Estate Manager

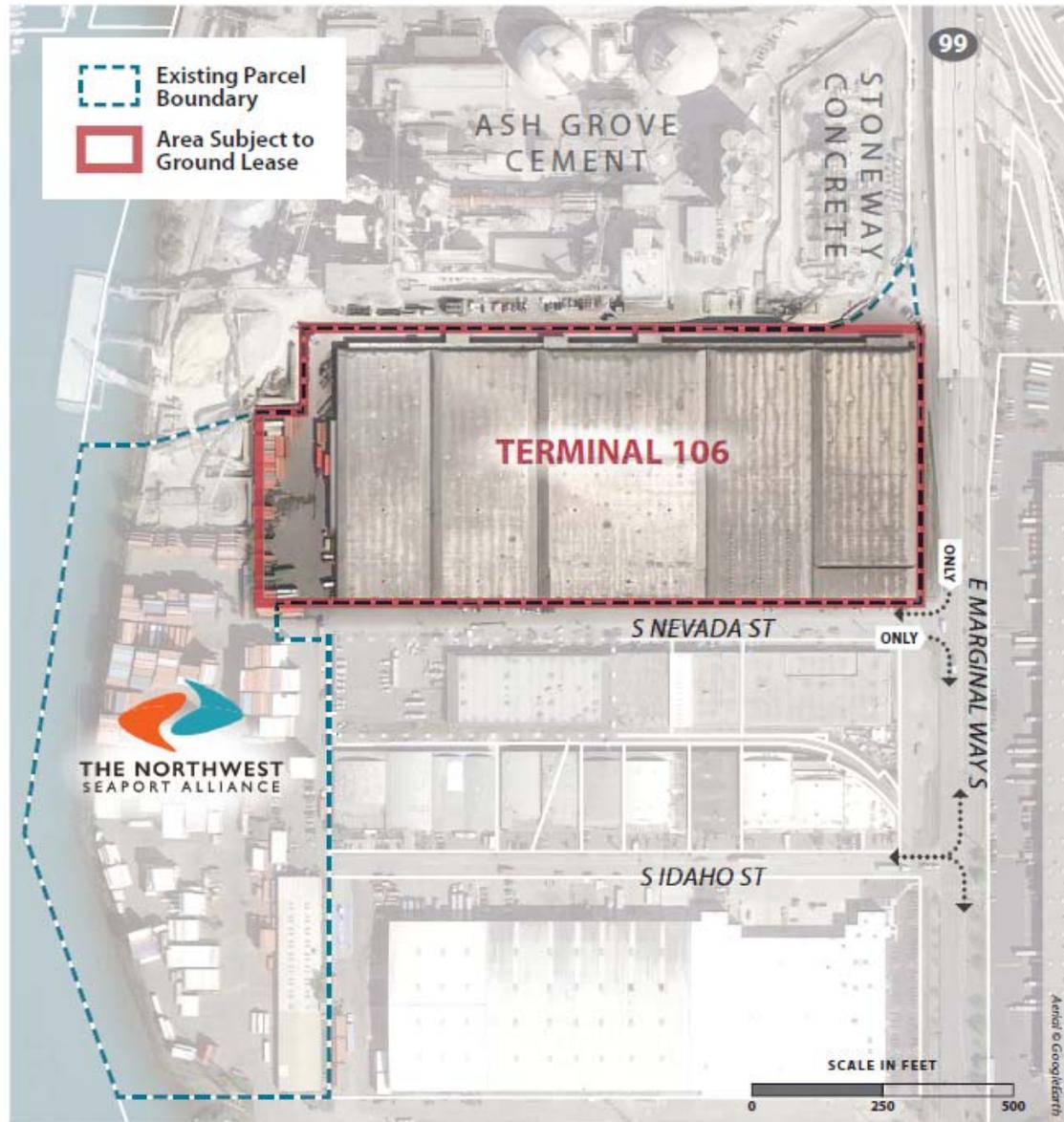
## Action Requested

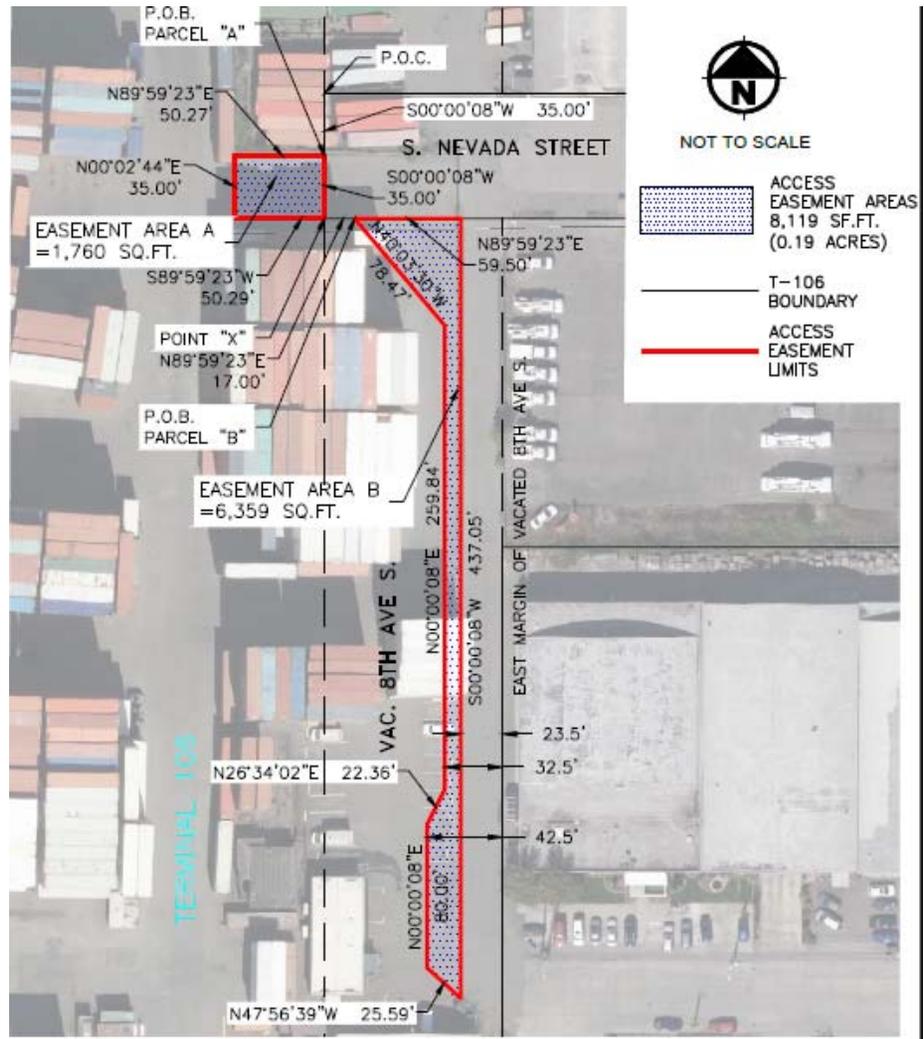
- **Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Port of Seattle to use a portion of NWSA licensed property located on Terminal 106 West for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.**
- **Jointly, request Commissioners of the Port of Seattle (POS) authorization for the Executive Director or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Northwest Seaport Alliance to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.**

# Background

- Terminals 106 is an approximate 31.23-acre site
  - 10 acres licensed to NWSA of which, 8.7 acres are currently leased to ConGlobal Industries (CGI) known as Terminal 106 West (“T-106W”).
- POS issued and awarded a Request for Proposal for long-term ground lease and demo of warehouse on the adjacent 15.07-acre area for a redevelopment project.
- POS now seeks to use a portion of T-106W for the purposes of widening the roadway connecting South Nevada Street and South Idaho Street allowing for two-lanes of traffic flow between the streets for drayage and other vehicles in conjunction with the POS redevelopment project.
- Modifications will remove a total of 10,797 square feet the NWSA licensed property.







Multiple modification scenarios were presented to CGI with mutual agreement to current design

# Site Ingress and Egress





# Background

- As part of the negotiations between POS and the RFP awardee, POS must provide assurances that modification to the roadway may occur. This assurance requires both:
  - Amendment to the CGI Lease modifying the lease premises
  - Entering into an ILA between the POS and NWSA for use of the property for this purpose.
- The amendment to the CGI lease was approved by the Managing Members on the April 6, 2021, conditioned upon:
  - The NWSA and POS entering into an ILA formalizing the proposed use of the 10,767 square feet; and
  - The project remaining cost neutral to the NWSA.
- Upon the approval and execution of the proposed ILA, the First Amendment to the CGI Lease will be executed.



# ILA Base Terms

- **Permitted Use**

- POS now seeks to use a portion of T-106W for the purposes of widening the roadway connecting South Nevada Street and South Idaho Street allowing for two-lanes of traffic flow between the streets for drayage and other vehicles in conjunction with the POS redevelopment project occurring on POS-owned and managed property located north of South Nevada Street and more commonly known as Terminal 106.

- **Premises**

- 10,797 square feet of NWSA licensed property currently leased to CGI



# ILA Base Terms

- **Compensation to NWSA:**

- POS to pay to the NWSA an “Use Fee” equal to the base rental rate of any current leasehold agreement directly abutting the Premises located on Terminal 106W, paid in arrears annually on or before January 1<sup>st</sup>. If vacant, no payment is required.
- This Use Fee is intended to compensate the NWSA for lost rental income that would otherwise be paid by a leasehold agreement directly abutting the Premises and for POS’s use of the Premises.
- The current CGI base rent as set forth in their lease at T-106W applied to Premises square footage is as follows:

Year	SF	Rate/Mo	Use Fee/Mo	Rate/Yr	Use Fee/Yr
2022	10,797	\$ 0.1548	\$ 1,671.38	\$ 1.8576	\$ 20,056.51
2023	10,797	\$ 0.1625	\$ 1,754.51	\$ 1.9500	\$ 21,054.15
2024	10,797	\$ 0.1706	\$ 1,841.97	\$ 2.0472	\$ 22,103.62
2025	10,797	\$ 0.1792	\$ 1,934.82	\$ 2.1504	\$ 23,217.87
2026	10,797	\$ 0.1881	\$ 2,030.92	\$ 2.2572	\$ 24,370.99



# ILA Base Terms

- **Capital Improvements & Maintenance**

- Initial capital improvements will be at the sole cost of the POS with the CGI premises restored to the same or better pre-project condition.
- NWSA & POS will each be responsible for any future capital improvement, repairs and/or maintenance on their respective premises.
- The newly installed fence located within T-106W, shall become an asset of the terminal and all maintenance, repair and/or replacement of the fence shall then be the responsibility of the NWSA.

- **Effective Date & Termination:**

- ILA shall be effective upon signature by both Parties and a copy being recorded with the respective County Auditors or posted on both Parties' web site as authorized by RCW.39.34.040
- Shall continue on a year-to-year basis until terminated by written mutual agreement by the Parties.

# Financial Implications

- **Source of Funds**

- The POS will bear all costs and expense related to the Project and use of the proposed Premises, at no cost to the NWSA.

- **Financial Impact**

- The ILA is revenue neutral; The POS will pay the same per square foot rate as provided for in any current leasehold agreement for Terminal 106W with no financial impact to the NWSA.



# Alternatives Considered and Their Implications

- **No Action Alternative:** The POS Terminal 106 redevelopment project will be impacted, and access rendered non-functional to the development site. Non-approval of the ILA would halt the finalization of project negotiations.
- **Recommended Action:** Request Managing Members of the NWSA authorization for the CEO or their delegate to enter into an ILA with POS to use a portion of NWSA licensed property located at T-106W for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.
- Jointly, request Commissioners of the POS authorization for the Executive Director or their delegate to enter into an ILA with the NWSA to use a portion of NWSA licensed property located at T-106W for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.



# Environmental Impacts / Review

- **Stormwater:**
  - The POS shall be responsible for the stormwater utility fees for the ILA Premises to be paid directly by or charged to the POS. In addition to the stormwater, POS shall be responsible for the cost and repair of any issues pertaining to storm water drainage to T-106W resulting from the Project, which obligations shall survive the Project completion date.
  - CGI will remain responsible for Best Management Practices and management of the stormwater system on their leased premises under their current least terms and conditions.

## Action Requested

**Request Managing Members of the Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Port of Seattle to use a portion of NWSA licensed property located on Terminal 106 West for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project.**

**Jointly, request Commissioners of the Port of Seattle (POS) authorization for the Executive Director or their delegate to enter into an Inter-Local Agreement (“ILA”) with the Northwest Seaport Alliance to use a portion of NWSA licensed property located at Terminal 106 West (“T-106W”) for the purposes of widening the roadway in conjunction with the POS Terminal 106 redevelopment project**