

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 7B
Date of Meeting July 7, 2021

DATE: June 14, 2021

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial & Strategy Officer

Project Manager: Jennifer Maietta, Interim Director - Alliance Real Estate

SUBJECT: Interlocal Agreement between NWSA and Port of Seattle for use of Crane 80 at Terminal 46 and Reauthorization of Terminal 46 PMA Lease with Crane Use Agreement

A. ACTIONS REQUESTED

The following requests for authorization are related to the use of Crane 80 on Terminal 46 by the Pacific Maritime Association for training purposes.

1. Interlocal Agreement:

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the NWSA Chief Executive Officer or their delegate to enter into an Interlocal Agreement ("ILA") with the Port of Seattle to transfer use and management of Port-owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

Jointly, request Commissioners of the Port of Seattle (POS) authorization for the POS Executive Director or their delegate to enter into the ILA with the NWSA to transfer use and management of POS-owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

2. Reauthorization of PMA Lease:

Request Managing Members of The Northwest Seaport Alliance (NWSA) re-authorization for the Chief Executive Officer or their delegate enter into the Lease between the PMA and the NWSA in substantially the same form as submitting including those revisions to incorporate the Crane Use Agreement and to revise the Lease commencement date from June 1, 2021 to July 1, 2021 be co-terminus with the inclusion of the Crane Use Agreement.

B. SYNOPSIS

The Pacific Maritime Association (PMA) seeks to consolidate its regional training facilities at Terminal 46 for the purposes of developing a consolidated state of the art training facility related to the PMA's goals and objectives for longshore workers, clerks, foremen and casuals.

The PMA training facility requires the use of a crane. The POS and NWSA agreed to work jointly together to provide use of one of the POS-owned cranes for PMA training purposes.

C. BACKGROUND

1. Interlocal Agreement:

In 2019, the Port of Seattle purchased three ZPMC Cranes from Total Terminals International for the purposes of supporting the Pacific Maritime Association Training program and for use for marine cargo operations.

The NWSA recently negotiated a 10-year term lease with the PMA, which was approved by the Managing Members on May 4, 2021 for yard and office space for PMA's training facility which referenced the parties' intent that NWSA would work with POS to allow for PMA's use of a crane subject to a Crane Use Agreement with PMA.

POS and NWSA staff propose to transfer use and management of one crane (Crane 80) from POS to the NWSA through an Interlocal Agreement to allow the NWSA to enter into an agreement with PMA for the crane's use. All three cranes are currently located within the POS Cruise area and cannot move southward without Crane 80 being repaired. Crane 80 is the most southerly-located crane and is currently non-functional, cannot be moved, and the boom is stuck in the downward position which has a risk of being run into by a marine cargo vessel. Due to the location of the other cranes being north of Crane 80 and limited rail located north of the cranes, if Crane 80 is left unrepaired, it would inhibit use of the cranes for spot cargo opportunities.

Through the ILA, POS will transfer use and management of Crane 80 to the NWSA to conduct marine cargo related activities, including crane training and marine cargo business opportunities with PMA, while POS maintains ownership of the crane. As manager of the Crane, the NWSA would then transfer use, repair and maintenance responsibilities for the crane to the PMA.

2. Reauthorization of PMA Lease:

Terminal 46 was vacated by Total Terminals International LLC (TTI) as of December 31, 2019 and a Request for Proposals (RFP) for long-term uses was issued August 2019 which was discontinued March 2020. While the terminal has been marketed for lease for marine cargo related uses, short-term interim uses such as layberth have been active on the terminal primarily through the Foss Master License, including the Pacific Maritime Association (PMA). The ten year term lease agreement with PMA will be the first term lease agreement for Terminal 46 since TTI vacated.

As an organization, the PMA's mission is to provide industry leadership to its member companies through innovative integrated labor relations, human resources and administrative services. The PMA membership consists of 70 ocean carriers and terminal operators operating at the 29 West Coast Ports. The PMA is an integral part of the marine cargo industry, providing on-going labor training and services supporting the NWSA Gateway's customers and terminal operators.

The PMA has had a training facility at Terminal 5 since February 2018 under a sub-license through the Terminal 5 Foss Master License which expired January 2021. As of February 1, 2021, PMA entered into a month-to-month lease agreement directly with the NWSA for this location. As the Terminal 5 re-development program progresses, PMA's location at Terminal 5 will become unavailable due to construction. Additionally, the PMA has a sub-license under the Terminal 46 Foss Master License for training purposes. The T46 Foss Master License is due to terminate June 30, 2021 including its sublicenses. In order to maintain a training facility in the Seattle Harbor, the PMA desires to enter into a long-term lease agreement for a single consolidated training facility located at Terminal 46. This consolidated training facility would primarily provide labor training to service the NWSA marine cargo operations within the Seattle Harbor.

The shipping industry is seeing an unprecedented surge in cargo, which has the PMA interested in using the cranes located on Terminal 46 to conduct training. The cranes currently require repair, certification and maintenance to become and remain operable.

This Lease has been presented to the Managing Members in March and May of 2021, with commissioner feedback incorporated into the various versions of the Lease and in negotiations with PMA. Since this Lease was authorized, the parties have been able to reach tentative agreement on the terms of a proposed crane use agreement, and PMA has expressed a preference for the term of this Lease to be co-terminus with the crane use agreement.

As such, this is a request for the reauthorization of the Lease in order to incorporate the Crane Use Agreement. Initially it was conveyed to the NWSA that

use of Terminal 46 for the PMA training facility did not require having a functioning crane in order to commence training with the understanding that negotiations for use of one crane would be forthcoming, but now with the advancement of the training program, and related facility requirements, having an operable crane is pivotal for commencing the full training program. Thus, PMA wants assurances regarding the availability of the crane and that the “crane use agreement” and lease terms are co-terminus.

Since presentation and approval of the Lease at the May 2021 Managing Members’ meeting, base terms and conditions of the Lease have changed and need to be reauthorized. The affected sections include: 1) “Section 2.1 Lease Term” changing the Commencement Date to July 1, 2021 and terminating June 30, 2031; 2) “Section 3.1 Base Rent and Additional Rent” changing the Rent Commencement Date to July 1, 2021; 3) “Section 11.2.1.1 General Liability Insurance” including language specifically covering the Crane; 4) “Section 20.11 Cranes” deleting the language and replacing it with a reference to the Crane Use Agreement added as Exhibit G; and 5) the addition of “Exhibit G Crane Use Agreement” incorporating the terms and conditions for the use, repair and maintenance of the Crane. These base term revisions are summarized and highlighted in bold font in Section D.2 Lease Key Terms Reauthorization of the PMA Lease below.

D. KEY TERMS

1. Interlocal Agreement:

<p><u>Permitted use of crane:</u></p>	<p>NWSA may use and operate the crane within the greater crane rail system and have access to the POS Cruise ILA Premises for this purpose until the POS would require use of the crane rail system located within its potential development site.</p> <p>The NWSA shall have the right to lease, sublease, license, and/or permit occupancy and/or otherwise assign NWSA’s rights under this ILA in furtherance of the Permitted Use described herein.</p>
<p><u>Compensation to the POS:</u></p>	<p>The NWSA will be responsible for the repair, certification and all on-going maintenance of the Crane in relation to its use.</p>

<p><u>Repairs & Maintenance:</u></p>	<p>The NWSA will be responsible for the repair, certification, and all on-going maintenance of the Crane at its sole cost and expense, but such expenses may be transferred to a third-party under a separate agreement subject to agreement by the POS.</p>
<p><u>Utilities:</u></p>	<p>NWSA has the sole responsibility for electrical usage charges attributed to the Crane.</p>
<p><u>Stormwater:</u></p>	<p>Each Party will continue to be responsible for payment of its respective POS Stormwater Utility charges and for obtaining permits necessary for, or triggered by, their operations at Parties' sole cost under this Agreement.</p>
<p><u>Insurance:</u></p>	<p>The Crane is owned by the POS and is a POS asset and will continue to carry property coverage (cash value).</p> <p>The NWSA shall maintain at a minimum general liability insurance of Five million dollars (\$5,000,000) per occurrence and Ten million (\$10,000,000) in the aggregate and list the POS as an additional insured.</p> <p>The NWSA will require any third-party user of the Crane to obtain at a minimum, the same insurance policies, specified herein.</p>
<p><u>Indemnification & Hold Harmless:</u></p>	<p>Mutual indemnification and Hold Harmless between the NWSA and POS. The NWSA will require any third-party user of the Crane to indemnify and hold harmless the POS and NWSA while using or maintaining the Crane.</p>
<p><u>Effective Date & Termination:</u></p>	<p>This ILA shall be effective upon signature by both Parties and shall have a perpetual term, until terminated by either party providing a minimum 120 days prior written notification. Any penalties or costs incurred by the NWSA pursuant to its agreement with PMA for use of the Crane resulting from termination of this ILA by POS prior to June 30, 2031, shall be borne by POS.</p>

2. Reauthorization of Lease:

<p><u>Premises:</u></p>	<ul style="list-style-type: none"> • Approximately 304,920 square feet (7 Acres) of yard space • Approximately 500 square feet parking are for lashing training • Approximately 6,000 square feet of office space located on the Second Floor of the Administration Building • Approximately 430 square feet of space located on the First Floor of the Administration Building • Approximately 3,000 square feet of space located on the first floor of the on dock Marine Operations Building
<p><u>Term:</u></p>	<p>Ten (10) year term</p>
<p><u>Commencement & Termination Dates:</u></p>	<p><i>Commencing July 1, 2021 terminating June 30, 2031</i> <i>(Note: Had been approved to commence June 1, 2021)</i></p>
<p><u>Rent Commencement Date:</u></p>	<p><i>Commencing July 1, 2021</i> <i>(Note: Had been approved to commence June 1, 2021)</i></p>
<p><u>Base Rent:</u></p> <p>Subject to Leasehold Excise Tax currently 12.84%</p> <p>To be escalated annually by CPI</p>	<p>Yard Rate:</p> <ul style="list-style-type: none"> • <u>On Terminal:</u> \$.30 psf/Mo. = \$91,476/Mo = \$1,097,712/Yr • <u>Lashing Training Area/Parking lot:</u> \$.30 psf/Mo. = \$150/Mo = \$1,800/Yr <p>Building Rates:</p> <ul style="list-style-type: none"> • <u>Administration Office:</u> Second Floor: \$18.00 psf/Yr = \$9,000/Mo = \$108,000/Yr First Floor: \$15.00 psf/Yr = \$537.50/Mo = \$6,450/Yr • <u>Marine Operations (on dock):</u> \$.75 psf/Mo Gross = \$2,250/Mo = \$27,000/Yr

<p><u>Market Rate Adjustment:</u></p>	<p>Market rate adjustment to occur every 5 years at Lessor’s discretion, otherwise shall increase by CPI annually, <i>but any market rate adjustment increase shall not exceed 5%.</i></p>
<p><u>Security Deposit:</u></p>	<p>Amount equal to Nine (9) months Base Rent, as adjusted, plus Leasehold Excise Tax.</p>
<p><u>Operating Expense:</u></p>	<p>Lessee responsible for pro-rata share, sub-metered or directly billed operating expenses to include, insurance, utilities, surface water management, repairs and maintenance and any expenses incurred by Lessor. Lessee responsible for its pro-rata share of Annual Operating Expenses for the Administration Building office space estimated at \$5.00 psf/yr to be reconciled annually.</p>
<p><u>Maintenance & Repair:</u></p>	<p>Lessee shall be responsible for all maintenance and repair to the Premises, except that Lessor would be responsible for maintenance and repair to building infrastructure and core building operating systems of the Administration Building offices and parking area to be passed through to Lessee through Annual Operating Expenses.</p> <p><i>Crane Repair & Maintenance: See “Exhibit G Crane Use Agreement”</i></p>
<p><u>Insurance:</u></p>	<p>General liability policy protecting Lessee, NWSA and POS for Premises and the use or maintenance of the Crane as more specifically described in the Exhibit G Crane Use Agreement in the amount of \$5,000,000 per occurrence and \$10,000,000 in the aggregate plus \$1M in automobile liability coverage, and Property coverage on a replacement cost basis.</p>
<p><u>Environmental:</u></p>	<p>Lessee to comply with all local, state, and federal environmental regulations as well as all NWSA and Port policies; and use Best Management Practices (“BMPs”) for stormwater pollution prevention.</p> <p><i>Note: Additional revisions in base lease protecting Lessee from</i></p>

	<i>liability of potential prior hazardous substances for the past 5-years and additional indemnification language related to PMA.</i>
<u>Tenant Improvements:</u>	Tenant improvements to be completed at Lessee’s sole cost and expense subject to prior review and approval by Lessor.
<u>Parking:</u>	Lessor agrees to dedicate up to 30 parking stalls within a designated parking area to be determined on a site plan.
<u>Other Cargo Equipment:</u>	Lessee agrees to allow Lessor and/or its selected service providers access to Lessee’s equipment for the purposes of supporting cargo and other marine related business on the Terminal. Access and use of equipment to be coordinated with Lessee based upon its availability and would be operated by a selected service provider of the lessor. Commercially reasonable Rates, terms and conditions to be agreed to by both parties.
<u>Cranes:</u>	<i><u>Lease Language Deleted and replaced with:</u></i> <i>“Lessor shall allow Lessee use of one ZPMC crane identified as Crane 80 (the “Crane”) under the terms and conditions specified in “Exhibit G Crane Use Agreement.”</i>
<u>Improvements and/or Reorganization of Terminal:</u>	In the event that Lessor, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of Lessor, or for re-organization or use of the Terminal or any part thereof for another use, then this Lease may be terminated by Lessor on 120 days’ notice. <i>If terminated, Lessor shall relocate Lessee to within T46 or nearby space:</i> <ul style="list-style-type: none"> • <i>That is of comparable size, configuration and utility to the Premises</i> • <i>To be substantially the same terms and conditions as this Lease including the same rent structure</i> • <i>Pay for Lessee’s relocation costs if not within T46</i> • <i>Reasonably provide Lessee with tenant improvements at least equal in quality to those in the Premises to the extent possible</i>

	<p><i>Lessee acknowledges that on-dock building facilities may not be included, but that a reasonable accommodation would be a mobile unit at Lessee's sole cost and expense.</i></p>
<p><u>New:</u></p> <p><u>Exhibit G Crane Use Agreement</u></p>	<ul style="list-style-type: none">• <u>Term:</u> Commencing July 1, 2021 to be co-terminus with Lease. Terminable upon 90-days prior notification by either Party.• <u>Permitted Use:</u> Perform repair, maintenance and certification of Crane 80 ("the Crane") and conduct crane training for Lessee's crane training program; In addition, Lessor retains right to use the Crane occasionally for maritime business purposes.• <u>Consideration:</u> Within 30-days of Lease Commencement Lessee shall commence initial repair, maintenance and certification of the Crane estimated to be \$660K ("Up Front Costs") to be completed in a commercially reasonable time period; and be responsible for all on-going maintenance, repair and certification costs.• <u>Acceptance:</u> In as is condition• <u>Location and Relocation:</u> Parties shall mutually agree ahead of time in writing for any relocation of the Crane at Lessees cost, unless requested by Lessor it shall then be at Lessors cost.• <u>Early Termination:</u> If Lessor terminates Lessee's use of the Crane prior to 10-year term, Lessor shall reimburse Lessee pro-rated portion of the Upfront Costs allocated to the remaining term of the Lease.• <u>Other Crane Uses:</u> Should Lessor require use of the crane for marine cargo purposes, in coordination with Lessee, in consideration for Lessor's use, Lessor shall credit Lessee an amount equal to 25% of the net income from Lessor's use of Crane.• <u>Environmental:</u> "Section 19 Environmental Standards" under the Lease shall remain in full force and effect. Lessor shall be responsible for maintaining any stormwater permits for common areas where the Crane is located.

D. FINANCIAL IMPLICATIONS

1. Interlocal Agreement: *Financial Impact*

There is no financial impact to the NWSA for the proposed ILA because the crane remains the asset of the POS and will continue to provide property coverage on a cash value basis, and the Crane Use Agreement within the PMA lease requires that all repair, maintenance and certification costs are borne by the Lessee.

2. Reauthorization of PMA Lease: *Financial Impact*

This lease will provide approximately \$1.2 million in income per year. Assuming a 2.5% average annual inflation rate, the value of the ten-year agreement in 2021 dollars is \$9.7 million. The proposed lease terms provide a per acre rate slightly greater than current container terminal per acre lease rates, but consistent with improved industrial yard rates. Rental rate is the same as previously authorized, but commencement of rent is delayed by one month.

No material changes to the financial impact due to addition of Crane Use Agreement as all repair, maintenance and certification costs are borne by the Lessee.

E. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

1. Interlocal Agreement:

- **No Action Alternative:** The NWSA would not have the authority to manage use of ZPMC Crane 80 and thus would not be able to transfer use, repair, maintenance and certification of the Crane to the PMA through an agreement between the NWSA and PMA for the purposes of conducting PMA's crane training program or for the NWSA to use the Crane for spot cargo purposes.

- **Recommended Action:**

Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the NWSA Chief Executive Officer or their delegate to enter into an Interlocal Agreement with the Port of Seattle to transfer use and management of Port-owned ZPMC Crane 80 located on terminal 46 to the NWSA.

Additionally, request Port of Seattle Commissioners' authorization for the POS Executive Director or their delegate to enter into an Interlocal Agreement with the

Northwest Seaport Alliance to transfer use and management of Port-owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

2. Reauthorization of PMA Lease:

- **No Action Alternative:** The PMA would lose the ability to utilize the Terminal 5 location as the T5 re-development project progresses, the month-to-month license would be terminated, and the PMA would be required to relocate its office and training operations currently at T5 to an alternative location. The Terminal 46 sub-license under the T46 Foss Master license will terminate June 30, 2021 and the PMA would be required to relocate its yard training operations to an alternative location.
- **Recommended Action:** Request Managing Members of The Northwest Seaport Alliance re-authorization for the Chief Executive Officer or their delegate to execute the Lease between the PMA and the NWSA in substantially the same form as presented, including the Crane Use Agreement for PMA's use of Crane 80 and to revise the lease commencement date from June 1, 2021 to July 1, 2021 be co-terminus with the inclusion of the Crane Use Agreement.

F. ATTACHMENTS TO THIS REQUEST

- Proposed Interlocal Agreement between NWSA and POS for Use of Port-Owned Crane.
- Terminal 46 Term Lease Agreement with PMA - for reauthorization

D. PREVIOUS ACTIONS OR BRIEFINGS

- First Reading of the PMA Lease during the Managing Member Meeting held March 2, 2021.
- Second Reading and approval of the PMA Lease during the Managing Member Meeting held on May 4, 2021.

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF SEATTLE & THE NORTHWEST SEAPORT
ALLIANCE REGARDING THE NORTHWEST SEAPORT ALLIANCE’S USE OF
PORT OWNED CRANE**

This Interlocal Agreement (the "**ILA**") is made this ____ day of July, 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, the POS is organized under the laws of Washington State, as codified at Title 53 RCW. 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, pursuant to NWSA agreements, the POS licensed the operation, use and management of an international marine cargo terminal business located on the property known as Terminal 46 to NWSA as POS’s licensee/agent, effective August 4, 2015.

WHEREAS, POS now seeks to transfer the use and management of one crane owned by the Port of Seattle, more specifically identified as ZPMC Crane 80 (the "**Crane**"), located on Terminal 46 to NWSA for the purposes of NWSA entering into a separate agreement with the Pacific Maritime Association ("**PMA**") for use of the Crane for training and/or for other spot cargo opportunities (the "**Permitted Use**").

WHEREAS, the Parties wish to memorialize the transfer of use and management of the Crane from POS to the NWSA.

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

AGREEMENT

- 1. Permitted Use of Crane.** Effective upon execution of this ILA, the Permitted Use includes that NWSA may access the Premises and use the Crane as it is currently located on the Terminal crane rail system. The Parties agree to allow the Crane to be operational within the greater crane rail system, until such time the POS would require that portion of the crane rail system located within the potential future POS

development site. Upon POS giving not less than 120 days written notice to the NWSA of its intent to commence development at Terminal 46, NWSA shall cause the Crane to be moved south of the POS Premises (“Premises”) as described in the “INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE & THE NORTHWEST SEAPORT ALLIANCE REGARDING THE PORT OF SEATTLE'S USE OF A PORTION OF TERMINAL 46” dated effective April 2, 2019, and as amended (the “T46 ILA”). The NWSA’s right to use the Crane within the Premises includes the right to reasonable access to the Premises and the Crane and the right to lease, sublease, license, and/or permit occupancy and/or otherwise assign NWSA’s rights under this ILA in furtherance of the Permitted Use described herein. NWSA’s right to use the Crane for any other purpose beside the Permitted Use is subject to agreement by POS, which agreement shall not unreasonably be withheld or delayed.

2. **Compensation to the POS.** Effective upon the execution date of this ILA, in lieu of monetary compensation for its use, the NWSA will be responsible for the repair, certification and all on-going maintenance of the Crane in relation to its use.
3. **Repairs and Maintenance.** The NWSA will be responsible for the repair, certification, and all on-going maintenance of the Crane at its sole cost and expense, but such expenses may be transferred to a third-party under a separate agreement subject to agreement by the POS, which agreement shall not unreasonably be withheld or delayed.
4. **Utilities.** NWSA has the sole responsibility for electrical usage charges attributed to the Crane.
5. **Stormwater.** Each Party will continue to be responsible for payment of its respective POS Stormwater Utility charges under this Agreement. Each Party will be responsible for obtaining any permits necessary for, or triggered by, their operations (including but not limited to the Industrial Stormwater General Permit or Construction General Permit), and shall obtain and implement all necessary permit obligations at its sole cost.
6. **Insurance.** The Crane is owned by the POS and is a POS asset. As such the POS will continue to carry property coverage (cash value). Additionally, the NWSA shall maintain at a minimum general liability insurance, such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than Five million dollars (\$5,000,000) per occurrence and Ten million (\$10,000,000) in the annual policy aggregate and list the POS as an additional insured. The NWSA will require any third-party user of the Crane to obtain at a minimum the same insurance policies, specified herein, or as otherwise approved by POS Risk Management, and the NWSA will require any third-party user to indemnify and hold harmless the POS and NWSA while using or maintaining the Crane.

7. 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 site as authorized by RCW.39.34.040 shall have a perpetual term, until terminated by either party providing a minimum 120 days prior written notification. Any penalties or costs incurred by the NWSA pursuant to its agreement with PMA for use of the Crane resulting from termination of this ILA by POS prior to June 30, 2031 shall be borne by POS.
- U. Indemnification and Hold Harmless.**
- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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 prevailing Party.
- g. No liability shall attach to any of the Parties by reason of entering into this ILA except as expressly provided herein.

h. 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: _____



Item No.: 7B
Date of Meeting: July 7, 2021

Terminal 46 – Inter Local Agreement between POS and NWSA for Crane Use and Pacific Maritime Association Re- authorization of Lease

Presenter: Jennifer Maietta
Interim Director – Real Estate

Actions Requested

1. Interlocal Agreement (**DUAL ACTION**):

- Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the NWSA Chief Executive Officer or delegate to enter into an Interlocal Agreement (“ILA”) with the Port of Seattle to transfer use and management of Port owned ZPMC Crane 80 located on Terminal 46 to the NWSA.
- Request Commissioners of the Port of Seattle (POS) authorization for the POS Executive Director or delegate to enter into an Interlocal Agreement (“ILA”) with the NWSA to transfer use and management of Port-owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

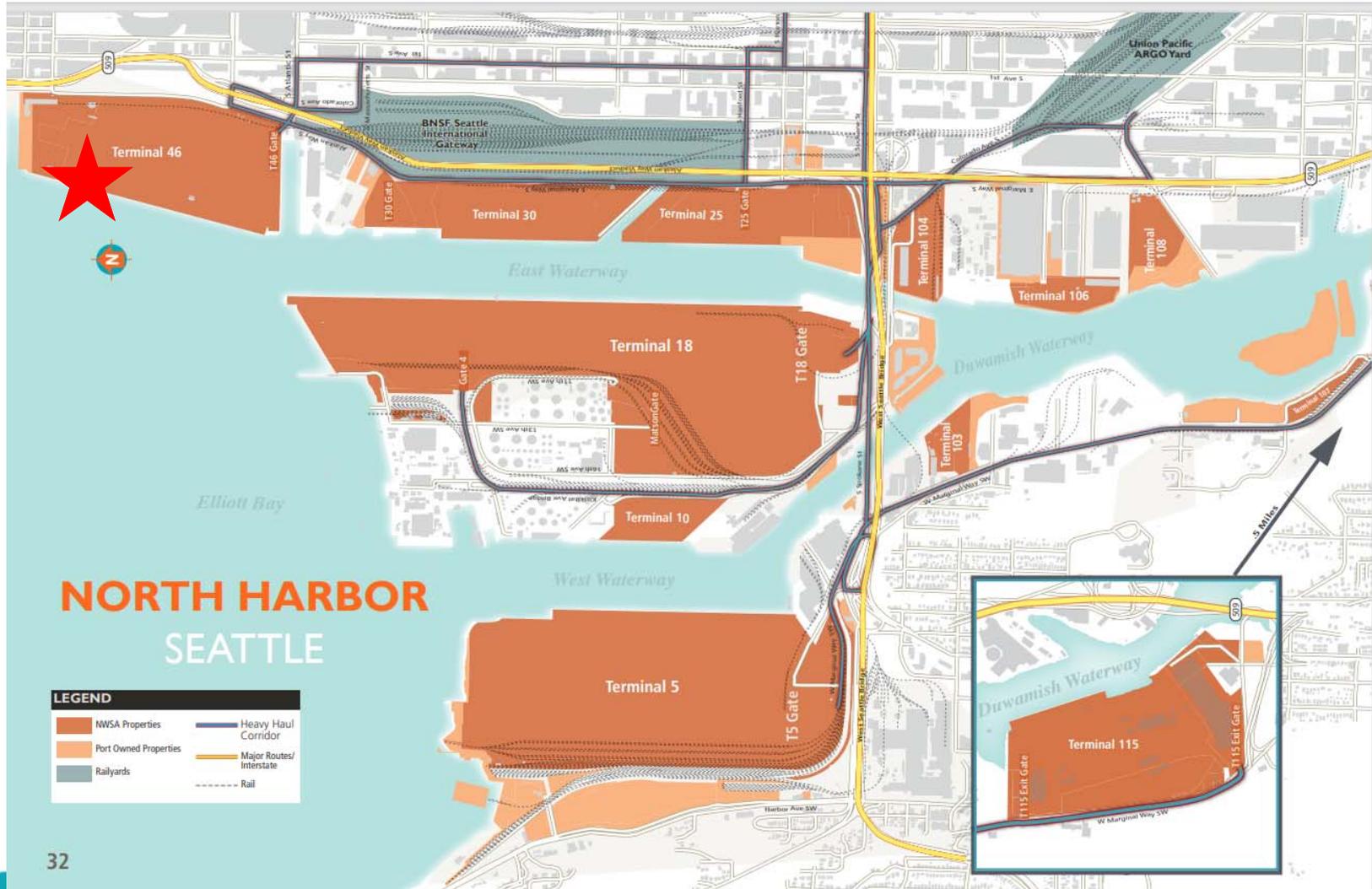
Actions Requested

2. Reauthorization of PMA Lease:

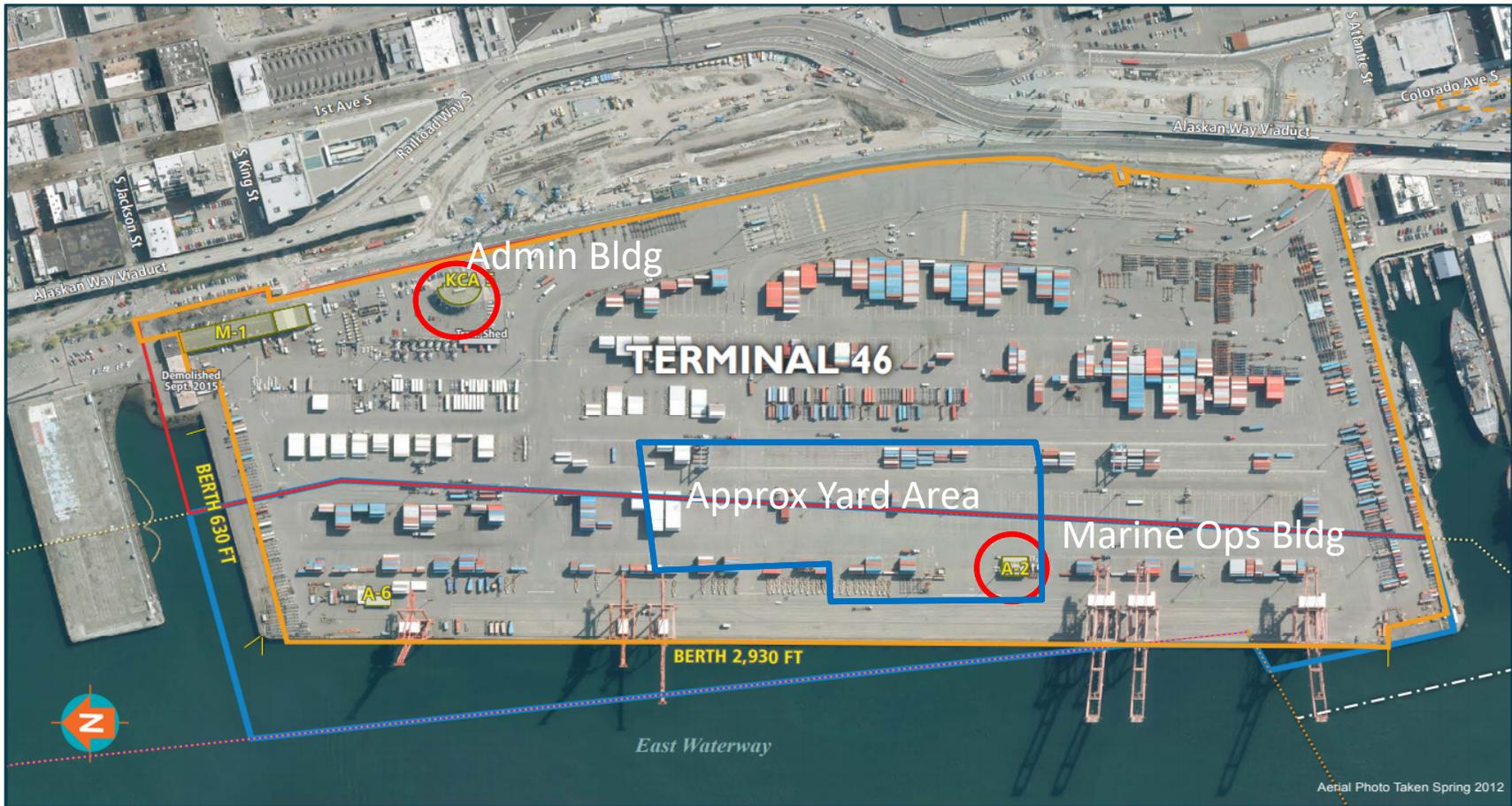
- **Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to re-authorize the Lease between the PMA and the NWSA with revisions to incorporate the Crane Use Agreement for PMA's use of Crane 80 for training purposes as an Exhibit within the Lease and to revise the lease commencement date from June 1, 2021 to July 1, 2021 be co-terminus with the inclusion of the Crane Use Agreement.**



Location



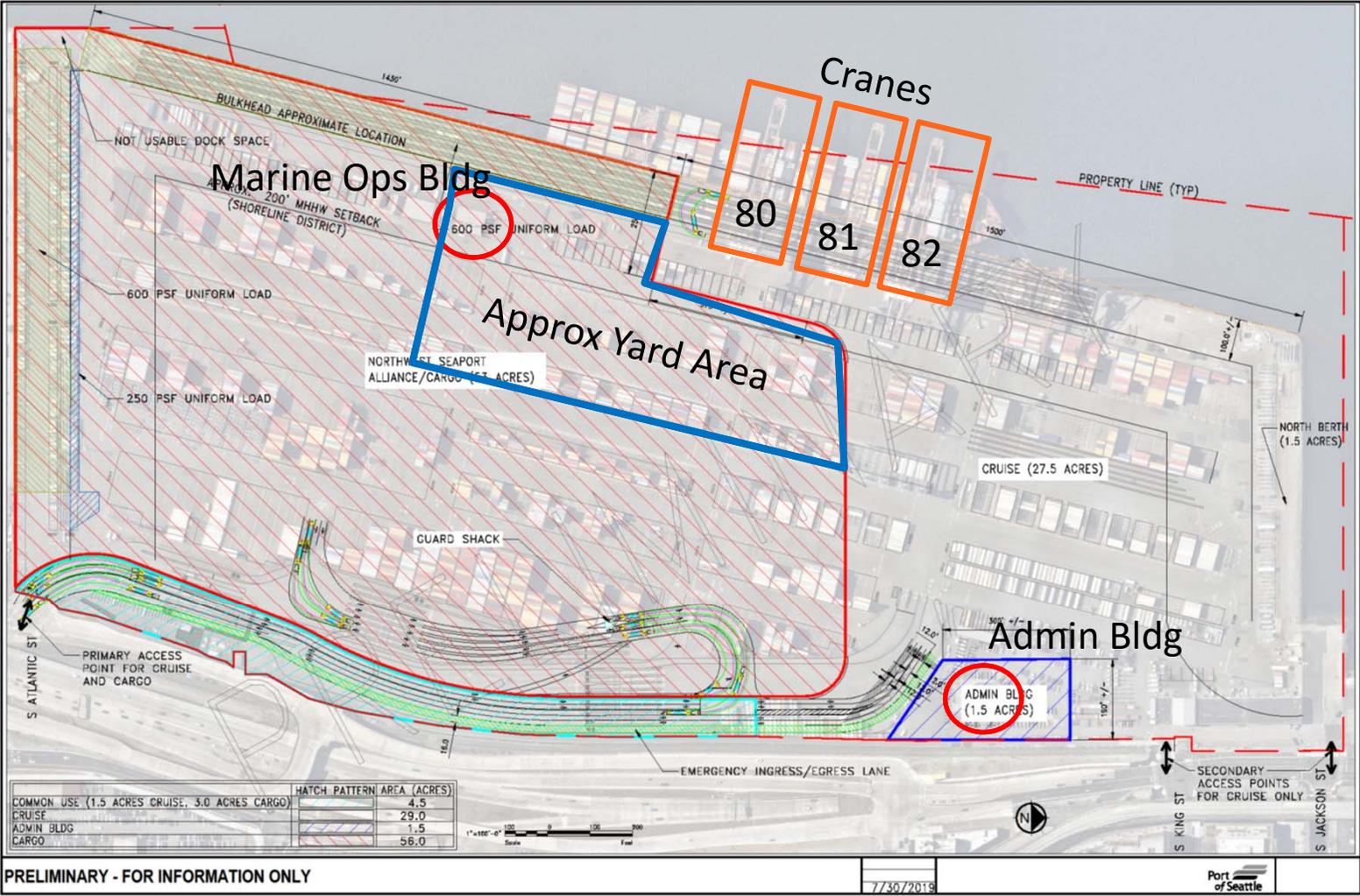
Aerial Plan



TERMINAL 46

To be used for Conceptual purposes

Site Plan – Cranes



To be used for Conceptual purposes

Background

Interlocal Agreement

- POS purchased three ZPMC Cranes from Total Terminals International for the purposes of supporting crane training and potential marine cargo operations.
- The NWSA negotiated a 10-year term lease with the PMA approved by the Managing Members on May 4, 2021, with the intent that the NWSA and POS work jointly together to enter into a Crane Use Agreement with PMA for use of one crane while reserving the right to use it for potential marine cargo business opportunities.
- The Parties have identified Crane 80 for PMA's use. Due to its location, if unrepaired it would inhibit use of the other cranes for spot cargo opportunities.

Background

Interlocal Agreement

- Through the ILA POS will transfer use and management of Crane 80 to the NWSA.
- As manager of the Crane, the NWSA would then transfer use, repair, maintenance and certification of the crane to the PMA for training purposes through a “Crane Use Agreement” to be incorporated within the PMA Lease with the understanding that the crane could be used for potential marine cargo business opportunities.



Interlocal Agreement Key Terms

Term	Description
Permitted Use of Crane:	<p>NWSA may use and operate the crane within the greater crane rail system and have access to the POS Cruise ILA Premises for this purpose until the POS would require use of the crane rail system located within its potential development site.</p> <p>The NWSA shall have the right to lease, sublease, license, and/or permit occupancy and/or otherwise assign NWSA's rights under this ILA in furtherance of the Permitted Use described herein.</p>
Compensation to the POS:	<p>The NWSA will be responsible for the repair, certification and all on-going maintenance of the Crane in relation to its use.</p>
Repairs & Maintenance:	<p>The NWSA will be responsible for the repair, certification, and all on-going maintenance of the Crane at its sole cost and expense, but such expenses may be transferred to a third-party under a separate agreement subject to agreement by the POS.</p>

Interlocal Agreement Key Terms

Term	Description
Utilities:	NWSA has the sole responsibility for electrical usage charges attributed to the Crane.
Stormwater:	Each Party will continue to be responsible for payment of its respective POS Stormwater Utility charges and for obtaining permits necessary for, or triggered by, their operations at Parties' sole cost under this Agreement.
Insurance:	<p>The Crane is owned by the POS and is a POS asset and will continue to carry property coverage (cash value).</p> <p>The NWSA shall maintain at a minimum general liability insurance of Five million dollars (\$5,000,000) per occurrence and Ten million (\$10,000,000) in the aggregate and list the POS as an additional insured.</p> <p>The NWSA will require any third-party user of the Crane to obtain at a minimum, the same insurance policies, specified herein.</p>

Interlocal Agreement Key Terms

Term	Description
Indemnification & Hold Harmless	<p>Mutual indemnification and Hold Harmless between the NWSA and POS.</p> <p>The NWSA will require any third-party user of the Crane to indemnify and hold harmless the POS and NWSA while using or maintaining the Crane.</p>
Effective Date & Termination:	<p>This ILA shall be effective upon signature by both Parties and shall have a perpetual term, until terminated by either party providing a minimum 120 days prior written notification.</p> <p>Any penalties or costs incurred by the NWSA pursuant to its agreement with PMA for use of the Crane resulting from termination of this ILA by POS prior to June 30, 2031, shall be borne by POS.</p>

Background

Reauthorization of PMA Lease

- The Pacific Maritime Association (PMA) has been pursuing consolidation of its regional training facilities to Terminal 46 for the purposes of developing a consolidated state of the art training facility for longshore workers, clerks, foremen and casuals.
- The PMA office and classroom training facility at T5 is currently leased under a month-to-month agreement will eventually terminate due to the T5 redevelopment project and the T46 sub-license through Foss Maritime for yard training terminated June 30, 2021.
- A term lease for a consolidated PMA training facility located at Terminal 46 was brought forth for authorization by the Managing Members with the First Reading occurring on March 2, 2021.

Background

Reauthorization of PMA Lease

- The Second reading and authorization of the PMA lease was approved by the Managing Members on May 4, 2021.
- PMA has not signed the approved lease at this time and seeks to incorporate the crane use terms into the Lease and to ensure the Crane Use Agreement is co-terminus with the Lease.
- Due to the advancement of the training program and related facility requirements, having an operable crane is pivotal for commencing the full training program in order to accommodate the on-going and unprecedented surge in trade.

Changes to Lease Terms & Conditions:

In summary, all terms and conditions of the PMA Lease as approved by the Managing Members on May 4, 2021, remain the same, except the following:

- “Section 2.1 Lease Term” changing the Commencement Date to July 1, 2021, and terminating June 30, 2031
- “Section 3.1 Base Rent and Additional Rent” changing the Rent Commencement Date to July 1, 2021
- “Section 11.2.1.1 General Liability Insurance” including language specifically covering the Crane
- “Section 20.11 Cranes” deleting the language and replacing it with a reference to the Crane Use Agreement added as Exhibit G
- “Exhibit G Crane Use Agreement” incorporating the terms and conditions for the use, repair and maintenance of the Crane

Reauthorization of PMA Lease - Key Changes

Term	Description
Section 2.1 Lease Term:	Commencing July 1, 2021 terminating June 30, 2031 (Note: Had been approved to commence June 1, 2021)
Section 3.1 Base Rent and Additional Rent:	Commencing July 1, 2021 (Note: Had been approved to commence June 1, 2021)
Section 11.2.1.1 General Liability Insurance:	General liability policy protecting Lessee, NWSA and POS for Premises <u>and the use or maintenance of the Crane as more specifically described in the Exhibit G Crane Use Agreement</u> in the amount of \$5,000,000 per occurrence and \$10,000,000 in the aggregate plus \$1M in automobile liability coverage, and Property coverage on a replacement cost basis.
Section 20.11 Cranes:	<i>Language Deleted and replaced with:</i> <i>“Lessor shall allow Lessee use of one ZPMC crane identified as Crane 80 (the “Crane”) under the terms and conditions specified in “Exhibit G Crane Use Agreement.”</i>

Reauthorization of PMA Lease - Key Changes

Term	Description
Exhibit G Crane Use Agreement	<ul style="list-style-type: none"> • <u>Term</u>: Commencing July 1, 2021, to be co-terminus with Lease. Terminable upon 90-days prior notification by either party. • <u>Permitted Use</u>: Perform repair, maintenance and certification of Crane 80 (“the Crane”) and conduct crane training for Lessee’s crane training program; In addition, Lessor retains right to use the Crane occasionally for maritime business purposes. • <u>Consideration</u>: Within 30-days of Lease Commencement Lessee shall commence initial repair, maintenance and certification of the Crane estimated to be \$660K (“Up Front Costs”) to be completed in a commercially reasonable time period; and be responsible for all on-going maintenance, repair and certification costs. • <u>Acceptance</u>: In as is condition • <u>Location and Relocation</u>: Parties shall mutually agree ahead of time in writing for any relocation of the Crane at Lessees cost, unless requested by Lessor it shall then be at Lessors cost.



Reauthorization of PMA Lease - Key Changes

Term	Description
Exhibit G Crane Use Agreement (cont.)	<ul style="list-style-type: none">• <u>Early Termination</u>: If Lessor terminates Lessee's use of the Crane prior to 10-year term, Lessor shall reimburse Lessee pro-rated portion of the Upfront Costs allocated to the remaining term of the Lease.• <u>Other Crane Uses</u>: Should Lessor require use of the crane for marine cargo purposes, in coordination with Lessee, in consideration for Lessor's use, Lessor shall credit Lessee an amount equal to 25% of the net income from Lessor's use of Crane.• <u>Environmental</u>: "Section 19 Environmental Standards" under the Lease shall remain in full force and effect. Lessor shall be responsible for maintaining any stormwater permits for common areas where the Crane is located.



Financial Implications

Interlocal Agreement

Financial Impact

- There is no material financial impact to the NWSA because the crane remains the asset of the POS and will continue to provide property coverage on a cash value basis, and the Crane Use Agreement within the PMA lease requires that all repair, maintenance and certification costs are borne by the Lessee.



Financial Implications

Reauthorization of PMA Lease

Financial Impact

- This lease will continue to provide approximately \$1.2 million in income per year. Assuming a 2.5% average annual inflation rate, the value of the ten-year agreement in 2021 dollars is \$9.7 million. The proposed lease terms provide a per acre rate slightly greater than current container terminal per acre lease rates, but consistent with improved industrial yard rates.
- No material changes to the financial impact due to addition of Crane Use Agreement as all repair, maintenance and certification costs are borne by the Lessee.
- Rent commencement is delayed by one month, but at the same rental rate and for the same term of the lease.

Alternatives Considered and Their Implications

Interlocal Agreement

- **No Action Alternative:** The NWSA would not have the authority to manage use of ZPMC Crane 80 and thus would not be able to transfer use, repair, maintenance and certification of the Crane to the PMA through an agreement between the NWSA and PMA for the purposes of conducting PMA's crane training program or for the NWSA to use the Crane for spot cargo purposes.
- **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 transfer use and management of Port owned ZPMC Crane 80 located on terminal 46 to the NWSA.

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 transfer use and management of Port owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

Alternatives Considered and Their Implications

Reauthorization of PMA Lease

- **No Action Alternative:** The PMA would lose the ability to utilize the Terminal 5 location as the T5 re-development project progresses, the month-to-month license would be terminated, and the PMA would be required to relocate its office and training operations at T5 to an alternative location. The Terminal 46 sub-license under the T46 Foss Master license will terminate June 30, 2021 and the PMA would be required to relocate its yard training operations to an alternative location.
- **Recommended Action:** Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the Chief Executive Officer or their delegate to re-authorize the Lease between the PMA and the NWSA with revisions to incorporate the Crane Use Agreement for PMA's use of Crane 80 for training purposes as an Exhibit within the Lease and to revise the lease commencement date from June 1, 2021 to July 1, 2021 be co-terminus with the inclusion of the Crane Use Agreement.

Action Requested

1. Interlocal Agreement

- Request Managing Members of The Northwest Seaport Alliance (NWSA) authorization for the NWSA Chief Executive Officer or delegate to enter into an Interlocal Agreement (“ILA”) with the Port of Seattle to transfer use and management of Port owned ZPMC Crane 80 located on terminal 46 to the NWSA.
- Request Commissioners of the Port of Seattle (POS) authorization for the POS Executive Director or delegate to enter into an Interlocal Agreement (“ILA”) with the Northwest Seaport Alliance to transfer use and management of Port-owned ZPMC Crane 80 located on Terminal 46 to the NWSA.

Action Requested

2. Reauthorization of PMA Lease

- Request Managing Members of The Northwest Seaport Alliance (NWSA) re-authorization for the Chief Executive Officer or delegate to execute the Lease between the PMA and the NWSA with in substantially the same form as presented including revisions to incorporate the Crane Use Agreement and to revise the lease commencement date from June 1, 2021 to July 1, 2021 be co-terminus with the inclusion of the Crane Use Agreement.

