

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF TACOMA & THE NORTHWEST SEAPORT ALLIANCE
RE: EB-1 BREAKBULK BUSINESS**

This Interlocal Agreement (the “**ILA**”) is made this ___day of May, 2018, by and between the Port of Tacoma a port district organized under the laws of the State of Washington (the “**State**”) and The Northwest Seaport Alliance, a 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 Port of Tacoma (“**PORT**”) is a municipal corporation of the State, organized under provisions of the laws of the State, now codified at Title 53 RCW. POT owns the property which is the subject of this agreement.

WHEREAS, the Port of Tacoma and the Port of Seattle are the two Managing Members of NWSA, formed for the joint operation, management, and use of certain real properties of each such Port by NWSA.

WHEREAS, pursuant to NWSA agreements, the Port of Tacoma licensed the operation, use and management of the break bulk business located on the Premises known as the East Blair One Terminal, 2340 E Alexander Ave, Tacoma Washington, and as graphically depicted in Exhibit A attached (“**EB-1**”) to NWSA as the licensee/agent for the Port of Tacoma effective August 4, 2015, but the Port of Tacoma did not license the EB-1 real property to the NWSA.

WHEREAS, the Parties wish to memorialize the compensation owed to the Port of Tacoma by the NWSA for the NWSA’s use of the EB-1 real property upon which the break bulk business is conducted, and how the revenue stream from the EB-1 business is allocated.

NOW THEREFORE, in consideration of the premises contained in this ILA, the Ports agree as follows:

AGREEMENT

- 1. EB-1 Breakbulk Revenues.** Any revenue received from the licensed break bulk business located on the Premises known as EB-1 is retained by the NWSA, with net proceeds distributed to each of the Managing Members as set forth in the NWSA Charter.

- 2. Compensation to Port of Tacoma.** Effective January 1, 2018, the NWSA shall pay to POT an annual sum of \$500,000 for the NWSA's use of the EB-1 real property upon which the break bulk business is conducted, which shall be paid either annually or in equal monthly installments no later than the fifth of each month, or as mutually agreed to by the Parties.
- 3. Annual Compensation Adjustment.** Compensation shall be automatically adjusted annually effective as of January 1, 2019 and every January 1st thereafter during the Term including all extensions (each such date being hereafter referred to as an "Adjustment Date") by the percent change over the one-year period preceding the applicable Adjustment Date in the Consumer Price Index for the Seattle-Tacoma-Bellevue Area, All Items, Not Seasonally Adjusted, 1982-84 = 100, All Urban Consumers (CPI-U), as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the successor index or closest comparable index if the above index is no longer published; provided, however, that the annual Compensation to be paid by Lessee shall never be decreased. For purposes of this annual calculation the CPI-U data for the month of October and the 1-year period based on such month shall be used. The manner of calculating the adjustment is illustrated by the following example:

Current CPI Index (October 2017)	264.653
Less previous CPI Index (October 2016)	- 256.941
Equals index point change	=7.712
Divided by previous CPI Index	÷ 256.941
Equals	= 0.03001467
Result multiplied by 100	x 100
Percent Change	= 3.00%

The resulting product, or the percent change, rounded to 2 places after the decimal point, shall be multiplied by the existing annual Compensation, and the product thereof shall be added to such annual Compensation to determine the for the annual Compensation one (1) year period immediately following the applicable Adjustment Date. Provided, however, that the annual Compensation to be paid by the POT shall never be decreased. If the percent change for the applicable Adjustment Date is a negative number, then the annual Compensation shall stay the same until the next Adjustment Date. Each adjustment shall be calculated after the figures for the applicable Adjustment Date become available, and shall be effective as of the applicable Adjustment Date. Within thirty (30) days of the date of POT's notice of adjustment after completion of an adjustment calculation, the NWSA shall pay to POT the amount of any deficiency in annual Compensation paid by NWSA for the period following the subject Adjustment Date, and shall thereafter pay the adjusted annual Compensation until receiving the next notice of adjustment from POT.

4. 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, together with the Charter, embodies the entire agreement of the Parties and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof.

- 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) Federal law and regulation, including those of the FMC; (ii) state law and regulation, including the Port Joint Powers statute (RCW 53.08.240), the Port Development Authority (WA Session Laws 2015-6, ESHB 1170), and this ILA; (iii) the Charter; (iv) any policies of the NWSA.
- 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. **Document Execution and Filing.** Upon execution by both Parties, each such signed original shall constitute an ILA binding upon both Parties. The executed

originals of this ILA shall either be recorded with the respective County Auditors or shall be posted on both Parties' web site as authorized by RCW.39.34.040.

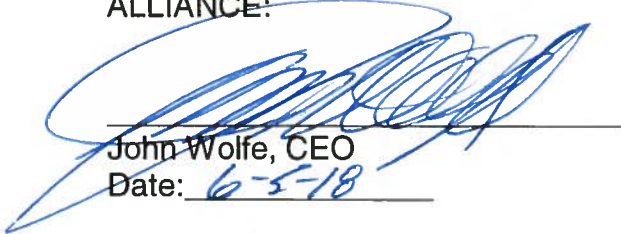
- O. **Assignment.** Neither Party to this ILA shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this ILA, without the prior written approval of the other.
- P. **Independent Municipal Governments.** The Parties 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.
- Q. **Legal Obligations.** This ILA does not relieve either Party of any obligation or responsibility imposed upon it by law.
- R. **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.
- S. **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.
- T. **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.
- U. **Effective Date & Termination.** This ILA shall be effective upon the date signed by both Parties and terminate on December 31, 2023 unless terminated earlier. This ILA may be extended by mutual agreement of the Parties.
- V. **Indemnification and Hold Harmless.**
 - 1. The NWSA releases the POT from, and shall defend, indemnify, and hold the POT 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 POT or its agents, employees, and/or officers.

2. The NWSA shall defend, indemnify, and hold the POT 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 POT or its agents, employees, and/or officers.
3. The POT 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 POT'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 POT 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 POT'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 recognizes 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.
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 Article shall survive any termination or expiration of this ILA.

THE NORTHWEST SEAPORT
ALLIANCE:



John Wolfe, CEO
Date: 6-5-18

PORT OF TACOMA:



Don Meyer, Commission President
Date: 6-5-18