

**INTERLOCAL AGREEMENT  
BETWEEN THE PORT OF TACOMA AND THE NORTHWEST SEAPORT ALLIANCE  
REGARDING USE OF PROPERTY AT 1202 PORT OF TACOMA ROAD**

This Interlocal Agreement ("Agreement") is entered into this 4<sup>th</sup> day of April, 2023, by and between the Port of Tacoma ("Port"), a public port district organized under the laws of the State of Washington, and The Northwest Seaport Alliance ("NWSA"), a Washington Port Public Development Authority (individually, a "Party" and collectively, the "Parties"), as authorized by RCW 39.34 (the Interlocal Cooperation Act) and the Port Joint Powers authority RCW 53.08.240.

**RECITALS**

**WHEREAS**, the Port owns the property that is the subject of this Agreement; and

**WHEREAS**, the respective Commissions of the Port and the Port of Seattle 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; and

**WHEREAS**, the Port owns and manages the property located at 1202 Port of Tacoma Road in the City of Tacoma (referred to herein as the "Port of Tacoma Road Property" or "the Premises"), and NWSA seeks to utilize the Port of Tacoma Road Property in support of NWSA business, which could include leasing the Premises to NWSA customers (the "Permitted Use"); and

**WHEREAS**, the Port supports the NWSA's use of the Port of Tacoma Road Property for NWSA business, although the Port seeks replacement rental income from NWSA for the month-to-month Port tenant that will be displaced by the NWSA's use of the Port of Tacoma Road Property for NWSA business; and

**WHEREAS**, the current Port tenant at the Port of Tacoma Road Property requested to terminate its lease effective April 1, 2023, which the Port of Tacoma Commission has approved and;

**WHEREAS**, the Parties wish to memorialize the compensation to be paid by NWSA to the Port for NWSA's use of the Port of Tacoma Road Property for the Permitted Use and further wish to memorialize the Parties' intention that the NWSA's use of the Premises shall be revenue neutral to the Port.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises, benefits, and obligations hereinafter set forth, the Parties agree as follows:

**1. Premises.** Effective April 5, 2023, NWSA will have the use of approximately 5.8 acres of land located at 1202 Port of Tacoma Road, Tacoma, Pierce County, Washington as depicted on **Exhibit A** (the "Premises"). NWSA's right to use the Premises includes the right to access, construct, modify, and maintain the Premises or otherwise assign its rights under this Agreement in furtherance of the Permitted Use described above. NWSA's right to use the Premises for any other purpose besides the Permitted Use is subject to agreement by the Port, which agreement shall not unreasonably be withheld or delayed.

**2. Term of Agreement.** This Agreement shall take effect on the Effective Date and terminates on the last day of any month following receipt of thirty (30) days' prior written notice of termination by either Party.

**3. Compensation to Port.** Effective April 1, 2023, and on the first of each month for the remaining term thereafter, NWSA shall pay to the Port a monthly sum equal to \$81,200.00 ("Use Fee"). The Use Fee is intended to compensate the Port for lost rental income that would otherwise be paid by a tenant at the Premises and for NWSA's use of the Premises.

**4. Capital Improvements and Maintenance.** The NWSA will be responsible for any future capital improvements, repairs and/or maintenance on the Premises. Any and all modifications, upgrades, maintenance and repair of the Premises shall be the responsibility of the NWSA. This includes any modifications, upgrades, or repairs that may be required prior to the Effective Date of the Agreement. The NWSA shall obtain prior written approval from the Port, not unreasonably withheld, for any modifications and/or capital improvements to the Premises. For tenant improvements by an NWSA customer that has entered into an agreement with the NWSA for use of the Premise, the NWSA customer shall be required to follow the Port's Tenant Improvement Process.

**5. Utilities.** Other than stormwater, there are no other current utilities serving the Premises. NWSA shall be liable for, and shall pay during the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, gas, water, sewerage, storm sewer, storm water, wastewater, janitorial services, and garbage disposal. If the Premises are part of a building or are part of any larger premises to which any utility services are furnished on a consolidated or joint basis, NWSA shall pay the Port's pro rata share of the cost of any such utility services. The Port's pro rata share of any such services may be computed by the NWSA on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. All charges for utility installation shall be paid by the NWSA. The NWSA shall be responsible for the stormwater utility fees for the Premises to be paid directly

by or charged to the NWSA. In addition to the stormwater, NWSA shall be responsible for the ongoing maintenance, cost and repair of any issues pertaining to stormwater drainage resulting from the use of the Premises.

## **6. Miscellaneous**

**A. Third Party Beneficiaries.** This Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement shall be interpreted as if such provision were so excluded so as to reasonably 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 Agreement 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 Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

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 Agreement 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 Agreement 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 Agreement 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 Agreement.

**J. Governing Law.** This Agreement 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 Agreement; (ii) any policies of the NWSA; and (iii) any policies of the Port.

**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 Agreement and the transactions contemplated hereby.

**L. Waivers.** No waiver of any breach of any of the terms of this Agreement 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 Agreement prior to its execution are hereby ratified and affirmed.

**N. Execution and Filing of Agreement.** Upon execution by both Parties, each such signed original shall constitute a binding Agreement upon both Parties. In accordance with RCW 39.34.040, a copy of this Agreement shall be recorded in the Office of the Pierce and King County Auditors or posted by both Parties on their respective websites. This Agreement will not take effect until it has been successfully recorded or posted by the Parties on their respective website.

**O. Assignment.** Other than the NWSA'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 Agreement shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions, and interests under this Agreement, 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 Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

**R. Timely Performance.** The requirements of this Agreement 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 Agreement, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this Agreement 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 Agreement. No ownership of property will transfer as a result of this Agreement.

**U. Effective Date & Termination.** This Agreement shall be effective upon signature by both Parties and a copy being recorded with the respective County Auditors or posted on both Parties' websites as authorized by RCW 39.34.040 ("Effective Date") and shall continue indefinitely unless terminated in accordance with Section 2 of this Agreement.

**V. Indemnification and Hold Harmless**

a. The NWSA releases the Port from, and shall defend, indemnify, and hold the Port 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 Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

b. The NWSA shall defend, indemnify, and hold the Port 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 Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

c. The Port 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 NWSA and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this Agreement, 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 Port 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 Port's performance of its obligations under this Agreement, 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 Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the substantially prevailing Party.

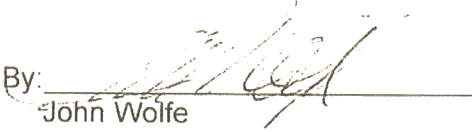
g. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

h. The provisions of this Section V.(a)-(h) shall survive any termination or expiration of this Agreement.

**PORT OF TACOMA**

By:   
Eric Johnson  
Its: Executive Director  
Date: 4-12-2023

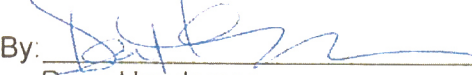
**NORTHWEST SEAPORT ALLIANCE**

By:   
John Wolfe  
Its: Chief Executive Officer  
Date: 4/11/2023

Approved as to form:

Heather L. Burgess  
Heather L. Burgess (Apr 18, 2023) (P)  
By: \_\_\_\_\_  
Heather L. Burgess  
General Counsel, Port of Tacoma

Approved as to form:

  
By: \_\_\_\_\_  
Dana Henderson  
General Counsel, NWSA

**EXHIBIT A**  
**PREMISES**






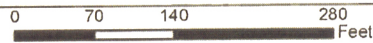
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**EXHIBIT A**

NWSA  
 1202 PORT OF TACOMA RD  
 TACOMA, WA 98421  
 PORT PARCEL: 28

 YARD = 5.8 ACRES

SHEET: 1 OF 1  
 PURPOSE: LEASE EXHIBIT  
 DATE: 2/17/2023  
 AUTHOR: Brian Archer



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