

**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 13 day of May, 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 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
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

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.(1)-(8) shall survive any termination or expiration of this ILA.

THE NORTHWEST SEAPORT  
ALLIANCE:

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

Date 5/13/2021

THE PORT OF SEATTLE:

By *for SM*   
\_\_\_\_\_  
Stephen Metruck, Executive Director

Date 5-11-21



## 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;

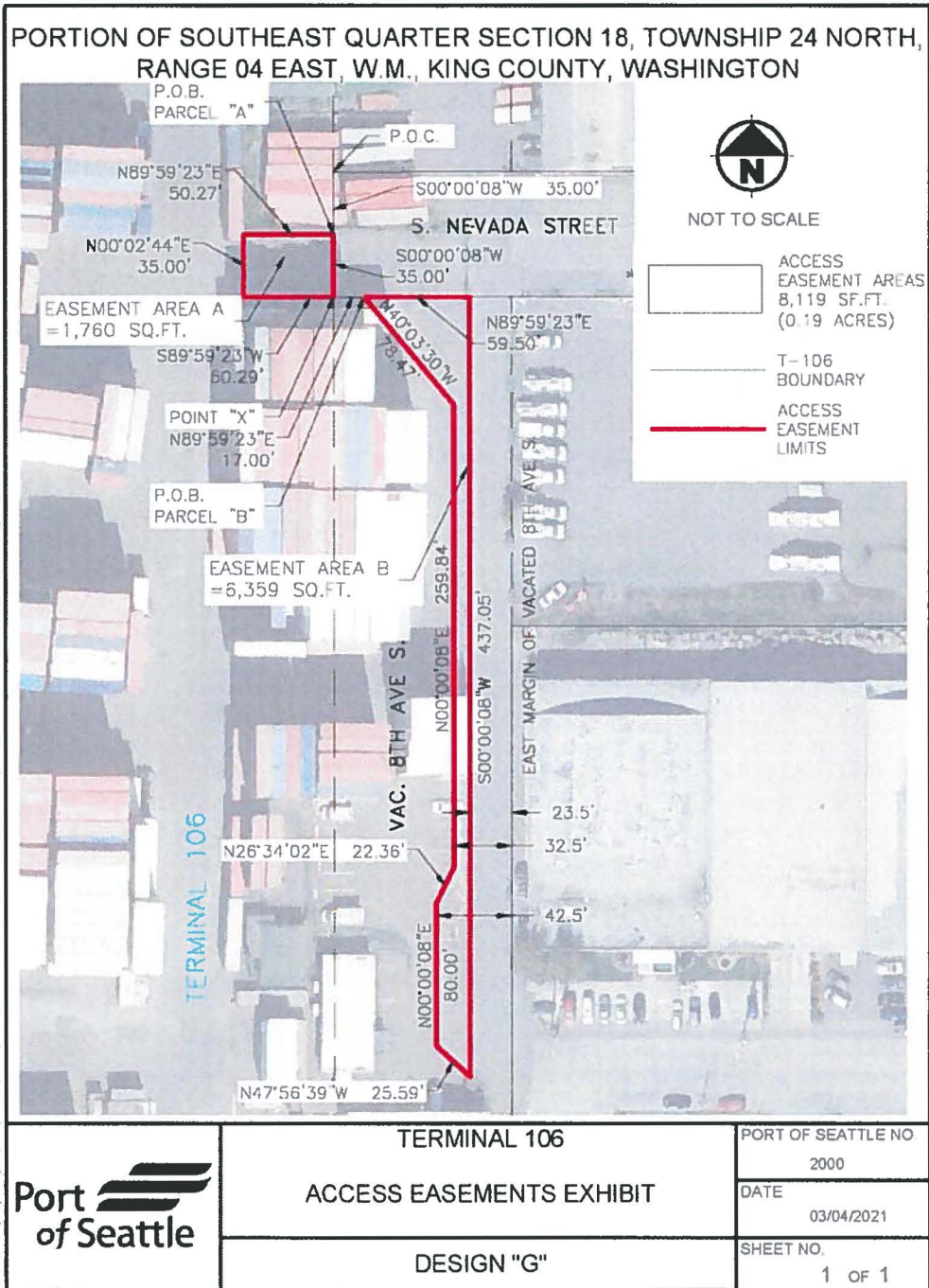
THENCE SOUTH 90°00'00" EAST A DISTANCE OF 23.50 FEET PERPENDICULAR TO THE EASTERLY RIGHT OF WAY MARGIN OF VACATED 8TH AVENUE SOUTH;

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



**FIRST ADDENDUM TO 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 First Addendum is made to the Interlocal Agreement 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").

**RECITALS**

WHEREAS, the Parties entered into the Interlocal Agreement, identified herein above, with the effective date of May 13, 2021 (the "ILA") under the authority of Washington State Interlocal Cooperation Act, RCW 39.34 and the Port Joint Powers authority (RCW 53.08.240); and

WHEREAS, the redevelopment noted in the ILA was commenced by POS to redevelop a portion of Terminal 106 West ("T-106W"), and included widening of the roadway connecting S. Nevada Street to Idaho Street running adjacent to the eastern boundary of the Premises (the "Project"). The Project resulted in removal of 10,797 square feet from ConGlobal Industries, LLC ("ConGlobal") Premises and resetting of the fence. The ILA provides that the initial improvement and repair cost 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.

WHEREAS, the Parties acknowledge that due to the relocation of the new fence, ConGlobal's shop building will become inaccessible for truck deliveries required for its operation without relocation of the adjacent mobile office building, resulting in the Premises not being restored to the same or better condition of the Premises prior to the commencement of the Project.

WHEREAS, the NWSA seeks to reimburse ConGlobal for the relocation costs of the mobile office (the "Move") incurred by ConGlobal to make it whole in accordance with a separate agreement, and the NWSA will subsequently be reimbursed by POS as part of the overall Project costs.

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


The ILA is further defined to include the following agreed upon terms and conditions:

- 1. Reimbursement.** POS agrees to reimburse the NWSA for reasonable and

appropriate cost to reimburse ConGlobal to move its mobile office (inclusive of project design, permitting, materials, labor and other costs associated with the Move) in an amount not to exceed \$159,000.00 plus applicable Washington State sales tax. The NWSA shall submit a copy of ConGlobal's contract, scope of work and any plans for POS review and approval prior to commencing the work. All work shall be performed at Prevailing Wage in accordance with all prevailing wage laws in the State of Washington, as set forth in RCW 39.12 as amended; Chapter 39.12 of the Revised Code of Washington, as amended; and the rules and regulations of the Department of Labor and Industries as a condition of reimbursement.

- A. Upon substantial completion of the Move, the NWSA shall submit an invoice together with back-up documentation of the work completed (inclusive of project design, permitting, materials, labor and other costs associated with the Move) to POS, and POS shall reimburse the NWSA within 30-days of receipt of the invoice.
- 2. Except as stated herein, all other terms and conditions of the ILA are unchanged and continue to be of full force and effect.

THE NORTHWEST SEAPORT ALLIANCE:

By:   
John Wolfe, CEO

Date: 8/4/2023

THE PORT OF SEATTLE:

By:   
Stephen Metruck, Executive Director

Date: 8/4/2023