

PSA # 072079

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF TACOMA AND THE NORTHWEST SEAPORT ALLIANCE
REGARDING USE OF 2340 E ALEXANDER AVE. (EAST BLAIR 1 TERMINAL)**

This Interlocal Agreement (“Agreement”) is entered into this 7th day of November, 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 pursuant to RCW 53.57 (individually, “Party” or 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 real property located at 2340 E. Alexander Ave., Tacoma, known as the East Blair 1 Terminal (the “Property” or the “Premises”) as depicted on **Exhibit A** hereto, which is the subject of this Agreement; and

WHEREAS, in conjunction with the initial formation of the NWSA, the Port licensed the operation, use and management of the breakbulk business located on the Premises to NWSA as the licensee/agent for the Port of Tacoma effective August 4, 2015, but the Premises was not included as a Licensed Property; and

WHEREAS, on June 5, 2018, the Port and the NWSA entered into an Interlocal Agreement (“the 2018 Interlocal”), to memorialize the compensation owed by the NWSA to the Port for the NWSA’s use of the Premises and to specify how the revenue stream from EB-1 business would be allocated; and;

WHEREAS, the 2018 Interlocal is set to expire on December 31, 2023; and

WHEREAS, the NWSA seeks to continue to utilize the Premises to operate NWSA breakbulk business; and

WHEREAS, the Port requires ongoing access to the Premises for use by its auto business customer, WWL Vehicle Services, Inc., and the Parties agree to manage the Port’s access needs with the NWSA’s non-exclusive use of the Premises as more fully described in this Agreement; and

WHEREAS, the Port supports the NWSA’s continued concurrent use of the Premises for NWSA breakbulk business; and

WHEREAS, the NWSA Managing Members have previously approved certain ongoing capital improvement projects to be funded by NWSA at the Premises, including paving,

plumbing, electrical upgrades, and new restrooms, which are expected to be completed during the term of this Agreement; and

WHEREAS, the Parties wish to memorialize the compensation to be paid by NWSA to the Port for NWSA's use of the Premises and the distribution of revenues to the Managing Members from the licensed breakbulk business; and

WHEREAS, this Agreement is intended to replace the 2018 Interlocal Agreement.

AGREEMENT

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

- 1. Premises.** Effective January 1, 2024, NWSA will have the use of 18.6 Acres of Usable Land as depicted on **Exhibit A** for the use, storage, and management of its breakbulk business together with 2.8 +/- acres for the berthing of vessels; and .2 +/- acres dedicated to parking of vehicles and equipment storage for stevedoring services, comprising a total of 21.6 acres. NWSA's right to use the Premises is non-exclusive and shared with the Port's customer, WWL Vehicle Services, Inc., which generally uses the .7 acres depicted as the "Auto Discharge" area on Exhibit A. NWSA's use includes the right to conduct all activities related to the receipt, delivery and use, storage, and management of breakbulk cargo, including the right to access, construct, modify, and maintain the Premises ("Permitted Use"). Prior to October 1, 2028, NWSA may only assign its rights under this Agreement after agreement by the Port, which shall not be unreasonably withheld. Beginning October 1, 2028, NWSA may assign its rights under this Agreement to a NWSA customer in furtherance of the Permitted Use and will give the Port thirty (30) days' prior written notice of any such assignment. NWSA's right to use the Premises for any other purpose besides the Permitted Use is expressly subject to consent by the Port, which consent shall not unreasonably be withheld or delayed. The Parties acknowledge and agree that the only other entity that may use the Premises during the term of this Agreement is the Port or its auto business customer WWL Vehicle Services, Inc., and the Port will coordinate such ongoing access with the NWSA's Director, Port Operations.
- 2. Term of Agreement.** This Agreement shall take effect on January 1, 2024, and terminate on December 31, 2036, but may be earlier terminated or extended by mutual agreement of the Parties.
- 3. Compensation to Port**

 - A. Use Fee.** Beginning January 1, 2024, and on the first of each year during the term of this Agreement, the NWSA shall pay the Port \$1,116,000.00, which may alternatively be paid in monthly installments of \$93,000.00 no later than

the fifth of each month ("Use Fee"). The Use Fee shall be pro-rated for any partial month of occupancy at the Premises.

B. Annual Adjustment Per CPI. The Use Fee is subject to annual adjustment effective as of each January 1st ("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. The figure for the month closest to and preceding the applicable Adjustment Date for which CPI-U data is available on the 20th of the month preceding the applicable Rent Adjustment Date, and the one (1)-year period based on such month, shall be used for the calculation. The resulting product, or the percent change, rounded to 2 places after the decimal point, shall be multiplied by the existing Use Fee, and the product thereof shall be added to such Use Fee to determine the Use Fee for the one (1)-year period immediately following the applicable Adjustment Date. Provided, however, that the monthly Use Fee to be paid by NWSA shall never be decreased. If the percentage change for the applicable Adjustment Date is a negative number, then the Use Fee shall stay the same until the next Adjustment Date. Each adjustment shall be calculated after the figures for the applicable Use Fee Adjustment Date become available and shall be effective as of the applicable Adjustment Date. Within thirty (30) days of the date of the Port's notice of adjustment after completion of an adjustment calculation, the NWSA shall pay to the Port the amount of any deficiency Use Fee for the period following the subject Adjustment Date and shall thereafter pay the adjusted Use Fee until receiving the next notice of adjustment from the Port.

C. Future Adjustments to Use Fee. The Use Fee amounts to approximately \$5,000 per acre per month, a rate which is based upon the NWSA's non-exclusive and shared use of the Premises with the Port in support of the Port's auto business through WWL Vehicle Services, Inc. The Parties agree to review and adjust the Use Fee based upon NWSA's exclusive use in the event that the Port terminates its concurrent use of the Premises for its auto business through WWL Vehicle Services, Inc.

4. Capital Improvements and Maintenance. The Port of Tacoma shall be responsible for the maintenance, repair, and infrastructure for the Premises. For purposes of this provision, "infrastructure" includes: (a) the pilings supporting the wharves on which those wharves repose; (b) any improvements to facilities beneath the asphalt wearing course, such as pipes, conduits and cable; and (c) electrical substations and other electrical equipment. The NWSA will be responsible for any future capital improvements, repairs and/or maintenance on the remainder of the Premises, including fenders and bollards. Any and all modifications or upgrades to the Premises shall be the responsibility of NWSA. The NWSA shall obtain prior

written approval from the Port, which shall not be unreasonably withheld, for any modifications, upgrades, and/or capital improvements to the Premises. For any future tenant improvements by a NWSA customer at the Premises, the customer shall be required to follow the Port's Tenant Improvement Process.

5. Utilities. The 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, the NWSA shall pay the Port its pro rata share of the cost of any such utility services. The pro rata share of any such services may be computed 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 and permits associated with the Premises. In addition to the stormwater, the NWSA shall be responsible for the ongoing maintenance, cost, and repair of any issues pertaining to stormwater drainage resulting from such use.

6. EB-1 Terminal Breakbulk Revenues. Any revenue received from the NWSA licensed breakbulk business operated on the Premises shall be retained by the NWSA, with net process distributed to each of the Managing Members as set forth in the NSWA Charter.

7. 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 is 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 in either location.
- 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' web sites as authorized by RCW.39.34.040 ("Effective Date") until or unless terminated in accordance with Section 2 of this Agreement.

V. Indemnification and Hold Harmless

1. 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.
2. 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.

3. 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.
4. 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.
5. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.
6. The provisions of this Section V.(1)-(6) shall survive any termination or expiration of this Agreement.

[SIGNATURE PAGES FOLLOW]

PORT OF TACOMA

By: *Eric D. Johnson*
Eric D. Johnson (Dec 1, 2023 11:17 PST)

Eric Johnson
Its: Executive Director

Date: Dec 1, 2023

Approved as to form:

By: *Heather L. Burgess*
Heather L. Burgess (Dec 4, 2023 12:05 PST)

Heather L. Burgess
General Counsel, Port of Tacoma

THE NORTHWEST SEAPORT ALLIANCE

By: *[Signature]*
John Wolfe (Nov 14, 2023 10:24 PST)

John Wolfe
Its: Chief Executive Officer

Date: Nov 14, 2023

Approved as to form:

By: *[Signature]*
Dana Henderson (Dec 4, 2023 12:04 PST)

Dana Henderson
General Counsel, NWSA

**“EXHIBIT A”
TACOMA PREMISES**

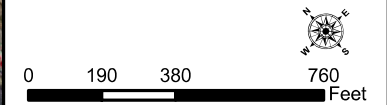


EXHIBIT A

EAST BLAIR ONE ILA
2340 E ALEXANDER AVE
TACOMA, WA 98421
PORT PARCEL: 17

SHEET: 1 OF 1
PURPOSE: Inter-Local Agreement
DATE: 10/6/2023
AUTHOR: Brian Archer

- Yard Area = +/- 18.6 Acres
- Auto Discharge = .7 Acres
- Auxiliary Area = +/- 2 Acres
- Berth Area = +/- 2.8 Acres



DISCLAIMER: The information included on this map has been compiled by Port of Tacoma staff from a variety of sources and is subject to change without notice. These data are intended for informational purposes and should not be considered authoritative for engineering, navigational, legal and other site-specific uses. The Port of Tacoma makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information.

