

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF TACOMA AND THE NORTHWEST SEAPORT ALLIANCE
REGARDING USE OF PROPERTY UNDER THE FORMER ELEVENTH STREET
BRIDGE AND VIADUCT**

This Interlocal Agreement (“Agreement”) is entered into this 5th day of September 2024, 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 Public Port 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, in 2022, the City of Tacoma (“City”) removed the East Eleventh Street Bridge and Viaduct, east of Milwaukee Avenue (collectively referred to as the “Viaduct”), as it was unused and in disrepair, posing a threat to safety; and

WHEREAS, the approximately 3.67 acres area beneath the Viaduct (the “Viaduct Property”) is City-owned right-of-way, which the Port has historically used for vehicle parking for as well as access to the “West Sitcum Terminal” located at 1002 Milwaukee Way in Tacoma, Washington; and

WHEREAS, the Port has licensed the West Sitcum Terminal property to the NWSA, which in turn leases it to SSA Terminals (Tacoma), LLC (“SSAT”); and

WHEREAS, based upon the Port of Tacoma’s historic occupation of the area, approximately 2.01 acres of the Viaduct Property were mistakenly included in the license granted by the Port to the NWSA for the West Sitcum Terminal and were therefore included in the valuation of the West Sitcum Terminal during the formation of the NWSA in 2015; and

WHEREAS, NWSA, in turn, included those 2.01 acres of Viaduct Property in the West Sitcum Terminal premises leased to SSAT; and

WHEREAS, on May 23, 2022, the Port and the City entered into an Interlocal Agreement (the “Viaduct ILA”) pursuant to RCW 39.34 by which the Port contributed \$2,623,492.11 to the costs of the Viaduct removal and the City authorized the Port’s continued use of the Viaduct Property for international marine terminal purposes through the issuance of a Right of Way Occupancy Permit (“ROCC”) pursuant to Tacoma Municipal Code Ch. 9.08; and

WHEREAS, since the Port did not in fact own the 2.01 acres of the Viaduct Property licensed to the NWSA, this Agreement and the ROCC are intended to address and remedy such oversight; and

WHEREAS, the Port timely applied for the ROCC permit as required by the Viaduct ILA, which the City has issued, subject to conditions, as City of Tacoma ROCC22-0042; and

WHEREAS, the Port intends to petition the City to vacate a portion of 11th Street, including the Viaduct Property (“Vacation”) , but the street vacation process is not within the Port’s control and does not have a defined timeline; and

WHEREAS, the NWSA seeks to utilize the Viaduct Property in support of NWSA business, including by adding the Viaduct Property to the premises leased to SSAT as part of the West Sitcum Terminal operations; and

WHEREAS, the Parties wish to memorialize the terms and conditions for NWSA’s use of the Viaduct Property subject to the Port’s ROCC permit, including payment for applicable use fees and permit costs, as set forth in this Agreement.

AGREEMENT

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

1. Premises. Effective upon issuance of ROCC22-0042, the Port assigns to NWSA its right to occupy and use the Viaduct Property, located in Tacoma, Pierce County, Washington, as generally depicted on **Exhibit A** (the “Premises”) for international marine terminal purposes (the “Permitted Use”). NWSA’s right to occupy and use the Premises for the Permitted Use shall be limited by and subject to the terms and conditions of ROCC22-0042, a copy of which is attached as **Exhibit B**.

2. Term of Agreement. This Agreement shall take effect on September 4, 2024, and shall last until December 31, 2033, or until the City’s interest in the right-of-way comprising the Viaduct Property is vacated, whichever occurs first.

3. Petition for Street Vacation. The Port agrees to prepare and file a petition to vacate a portion of 11th Street including the Viaduct Property within 120 days of the effective date of this Agreement and will pursue completion of the Vacation process with reasonable diligence. When the street vacation occurs, the parties intend that NWSA will pay the same amounts as the NWSA receives in payments from SSAT to the Port of Tacoma as lease payments for the 2 additional acres, subject to future Managing Members and Port of Tacoma Commission approval.

4. Compensation to Port

A. Payment of Annual Use Fee - 2024. Within thirty (30) days of this Agreement, NWSA shall pay the \$312,960.00 Annual Use Fee required under ROCC22-0042 for 2024.

B. Payment of Annual Use Fee – Remaining Term. The Annual Use Fee is invoiced annually to the Port as Permittee under ROCC22-0042 for as long as the ROCC remains in effect. NWSA shall pay for the Annual Use Fee within thirty (30) days each year during the years 2025, 2026, 2027, and 2028. If, at the time of the NWSA's payment in 2028, the Vacation has not occurred, the Parties will meet and confer regarding NWSA payment of the Annual Use Fee for the remaining term. Any agreement by the Parties regarding additional payments shall be by amendment to this Agreement. Absent an amendment to this Agreement, NWSA has no further obligation to the Port beyond 2028. In entering into this Agreement, NWSA acknowledges that the Annual Use Fee may be increased or adjusted as provided for in paragraph 4 (Fees) of ROCC22-0042 and Tacoma Municipal Code Ch. 9.08.

5. Capital Improvements and Maintenance. NWSA will be responsible for any future capital improvements, modifications, upgrades, repairs and/or maintenance on the Premises. NWSA shall obtain all necessary approvals from the City required by ROCC22-0042 and applicable City codes prior to constructing or installing any improvements within the Premises. NWSA shall provide the Port with a copy of all City approvals for Port records. NWSA shall require any tenant on the Premises to comply with the requirements of ROCC22-0042.

6. Utilities. NWSA shall comply with all utility locate and City utility access requirements specified in ROCC22-0042.

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 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 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 in either location.

O. Assignment. Other than the NWSA's right to sublease and permit occupancy of the Premises 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") and shall continue indefinitely 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.

PORT OF TACOMA

By: _____

Eric Johnson

Its: Executive Director

Date: Sep 5, 2024

Approved as to form:




[Heather L. Burgess \(Sep 5, 2024 08:53 PDT\)](#)

By: Heather L. Burgess

General Counsel, Port of Tacoma

THE NORTHWEST SEAPORT ALLIANCE


By: _____

John Wolfe

Its: Chief Executive Officer

Date: Sep 4, 2024

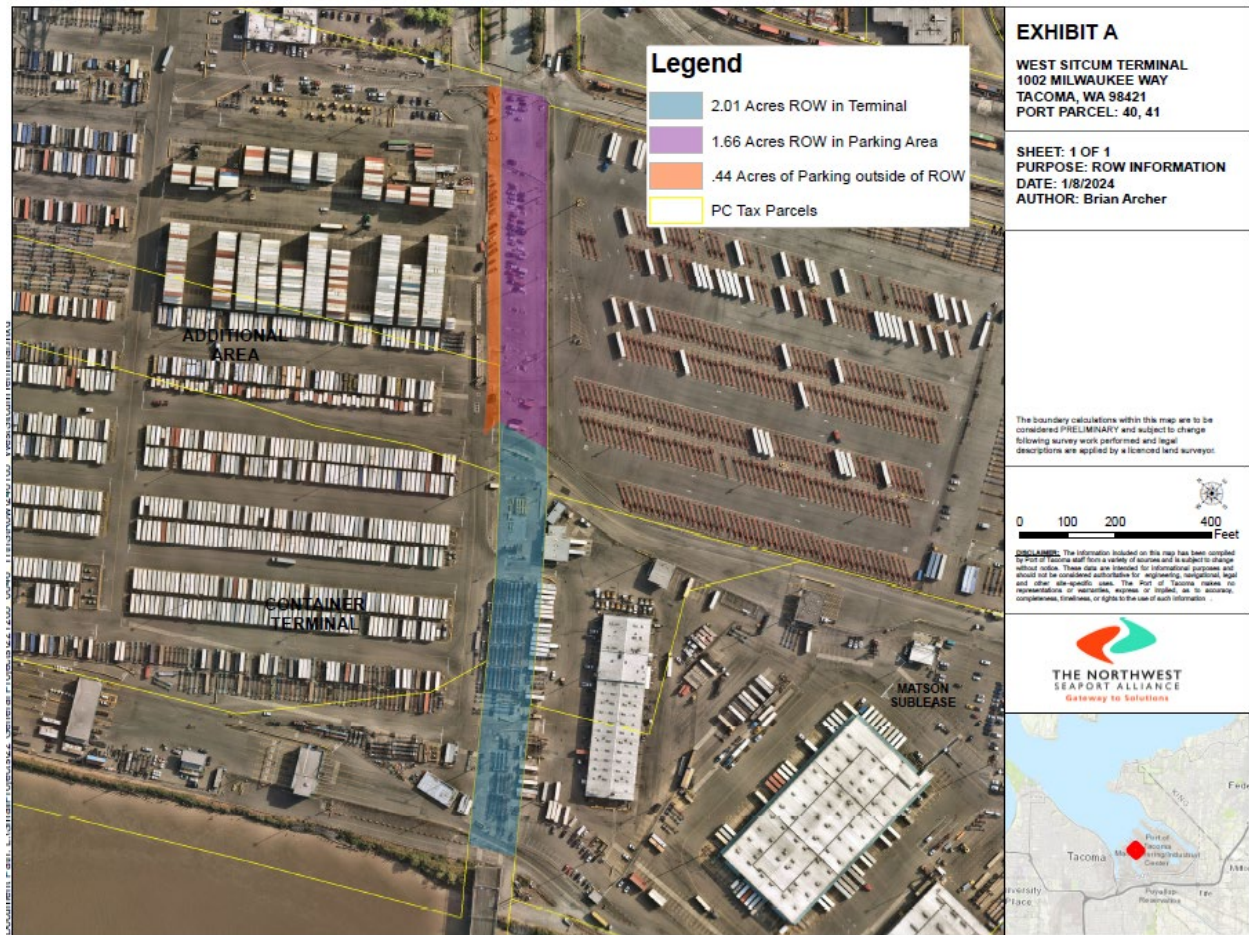
Approved as to form:

_____
[Dana Henderson \(Sep 4, 2024 17:32 PDT\)](#)

By: Dana Henderson

General Counsel, NWSA

“EXHIBIT A” PREMISES



“EXHIBIT B”

CITY OF TACOMA ROCC22-0042

When Recorded Return To:

City of Tacoma
Planning and Development
Services 747 Market Street,
Room 345
Tacoma WA 98402-3701

RIGHT-OF-WAY OCCUPANCY PERMIT

For parking and security uses
to serve a **commercial occupancy** of public Right-of-Way

<i>Document Title:</i>	RIGHT-OF-WAY OCCUPANCY PERMIT
<i>Permit Number:</i>	ROCC22-0042
<i>Grantor:</i>	CITY OF TACOMA
<i>Grantee:</i>	PORT OF TACOMA
<i>Adjacent Property:</i>	1675 LINCOLN AVENUE / 8950000231 1679 LINCOLN AVENUE / 8950000221 1110 MILWAUKEE WAY / 5000350690 1010 MILWAUKEE WAY / 8950000181 1002 MILWAUKEE WAY / 8950000121 1004 MILWAUKEE WAY / 8950000050 1002 MILWAUKEE WAY / 8950000061 SECTION 34 TOWNSHIP 21 RANGE 03 QUARTER 34 TACOMA TIDELANDS: TACOMA TIDELANDS POR L 3 & 11 TACOMA TIDELANDS & VAC COMMERCIAL AVE

THIS PERMIT, is made and entered into this 4th day of September, 2024, by and between the **CITY OF TACOMA**, hereinafter called the "City", and **PORT OF TACOMA**, hereinafter referred to as the "Permittee."

WITNESSETH:

WHEREAS the City, under Chapter 9.08, Tacoma Municipal Code, may grant the use of street right-of-way to owners and occupants of abutting real property; and

WHEREAS the Permittee desires to occupy a portion of the Right-of-Way for the purpose as described herein and as shown on Exhibit "A", attached to and made a part hereof; and

WHEREAS the Permittee owns or occupies the real property adjacent to the portion of Right-of-Way as described herein and as shown on Exhibit "A"; and

WHEREAS the permit area is closed to public use;

ROCC22-0042 – PORT OF TACOMA

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AGREEMENT:

NOW THEREFORE, in consideration of the covenants and agreements of the parties hereto hereinafter set forth, the City does hereby grant unto the Permittee a Right-of-Way Occupancy Permit on that portion of the right-of-way adjacent to the property owned by the Permittee, subject to and upon the following terms, covenants and conditions, to wit:

1. **USE, MAINTENANCE AND OPERATION OF THE PERMIT AREA.** The permit area is requested for parking, container and chassis storage and security uses as depicted in Exhibit "A." The site authorized under this Permit shall be maintained in an orderly, safe, and sanitary condition at all times. The permit area shall not be expanded without written consent from the Planning and Development Services Director and the Public Works Real Property Services Assistant Division Manager.

2. **CONDITIONS OF USE.**

- a. **Plans Approval.** All work performed on or under said right of ways by the Permittee, its successors and assigns, shall be in accordance with detailed plans and specifications prepared by the Permittee and approved by the City of Tacoma as submitted to the City of Tacoma. Permittee must comply with the conditions and requirements of any other subsequent permits for the overall project and use.

The gate and fencing plan as depicted on Exhibit "A" is approved as part of this Permit. Permittee shall submit to the City, for approval, plans and specifications for any and all additional fences, gates, lighting, paving, or other improvements which they intend to place within the permit area.

- i. Traffic has no objections provided public access to the boat launch is maintained and shall be a minimum 20-feet.
 - ii. Unobstructed access to existing fire hydrant to be available at all times.
 - b. **Labor and Materials.** All labor to be performed and material to be furnished in the operations of the Permittee hereunder shall be at the sole cost and expense of Permittee and the City shall not be chargeable with or liable for any part thereof. The Permittee shall protect and defend the City's property against liens of every character arising from Permittee's operations and use thereof.
 - c. **Utilities.** Permittee, its successors and assigns, will be responsible for establishing the location and protection of any and all utilities located on, under, over, along or across the permit area. The City shall reasonably assist the Permittee in establishing the location of any and all utilities located on, under, over, along or across the Permit Area. Permittee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or approved equivalent, and shall comply with all such applicable rules and regulations. Any costs incurred in repairing and/or relocating existing public or private utility facilities shall be at the Permittee's sole expense.
 - i. Permittee shall not prohibit or in any way limit access by the City of Tacoma or any of its departments or divisions, contractors or agents; by any city,

state, or federal regulatory agency, or by any other party to whom the City of Tacoma has granted access to Tacoma Water's Transmission Main (located at 11th Street Right of Way) ("Transmission Main") or prohibit or in any way limit access to any other facilities or appurtenances owned operated or managed by the City of Tacoma.

- ii. Permittee shall not allow construction of any permanent or temporary structures on or over Tacoma Water's Transmission Main. For the purposes of this Permit, a "structure" includes, but is not limited to, any building, any modular or prefabricated building, any trailer. Permittee may allow construction of permanent or temporary structures in the Permit Area so long as these structures are not on or over Tacoma Water's Transmission Main and are approved by the City.
- iii. Permittee shall not allow heavy cargo handling equipment to operate over Tacoma Water's Transmission Main. Containers shall not be stacked on or over Tacoma Water's Transmission Main. For the purposes of this Permit, "heavy cargo handling equipment" includes straddle carriers, straddle trucks, top picks, but does not include standard chassis vehicles. For the purposes of this Permit, a "container" includes, but is not limited to, shipping container, conex, cargo container, sea van, dry box, or freight container.
- iv. The City may, in its sole discretion, require Permittee, at Permittee's sole expense, to change, move, relocate or modify its use, operations, facilities, structures or any other impediments to access of Tacoma Water's Transmission Main any other facilities or appurtenances within 24 hours from notice being provided from the City to the Permittee. If Permittee does not comply within 24 hours of notice, City of Tacoma may at any time take such steps at the Permittee's cost as are needed to achieve access to Tacoma Water's Transmission Main or to any other facilities or appurtenances. City of Tacoma is not responsible for damaging Permittee's operations, equipment, structures, property or other items or activities located on or over Tacoma Water's Transmission Main or which are blocking or limiting access to any other Tacoma Water facilities or appurtenances.
- v. Permittee agrees to waive and release the City and its officials, officers, employees, agents, and representatives from any and all claims, actions, demands for bodily injury, death, or property damage against the City arising from Permittee's activities on or over Tacoma Water's Transmission Main or on or around any other Tacoma Water facilities or appurtenances. Further, Permittee, its agents, employees, or property is subject to the hazards of City's operations on or around Tacoma Water's Transmission Main or any other Tacoma Water facilities or appurtenances, which Permittee hereby expressly assumes.
- vi. TACOMA FACILITIES ARE LOCATED IN RIGHT OF WAY, MUST BE ACCESSIBLE AT ALL TIMES.
REFERENCE WAC 296-24-960
REFERENCE WAC 296-155-428
REFERENCE WAC 296-155-53408

REFERENCE TACOMA POWERS CONSTRUCTION STANDARDS C-OH-9010 FROM OUR WEB SITE at WWW.MYTPU.ORG
WILL REQUIRE 24 HOUR ACCESS, WITH GATES THAT ARE EITHER MANNED OR UNMANNED, TO BE ACCESSIBLE & LOCKABLE SO TACOMA POWER LINE CREWS CAN ACCESS THE CIRCUITRY FOR EMERGENCY RESTORATION AND REPAIRS. STORAGE OF CONTAINERS/BUILDINGS ETC. UNDER THE POWER LINES ARE NOT PERMITTED DUE WAC CLEARANCE REQUIREMENTS AND NESC CLEARANCES.

- d. **Removal, Relocation, Correction or Adjustment.** If the City of Tacoma directs the reasonable removal, relocation, correction or adjustment of any of the private improvements from the permit area, such restorative action will be taken by Permittee in a timely manner and at no cost to the City, which conforms to the Right of Way Restoration Policy.
 - e. **Rights of City for Access.** City retains all rights to enter the permitted area for purposes of repair and maintenance, including utility maintenance, and construction, including reconstruction of the viaduct.
3. **REQUIREMENT TO RENEW.** The term of this Permit shall be for an initial term of twenty (20) years and be renewable for additional one (1)-year terms unless terminated under the terms of paragraph 11 of this Permit. Said term shall commence upon the above date.
- By issuing or extending this Permit, the City does not forgo its right upon expiration of the initial or any extended permit term to determine in its discretion that it is in the public interest to reopen the permit area to public access and vehicular traffic.
4. **FEES.** A schedule of applicable fees is included in Section 9.08.075 of the Tacoma Municipal Code.
- a. In accordance with the most recent version of the City's Municipal Code, there is currently an **annual renewal fee of \$90.00 and an annual use fee of \$312,960.00**, which includes the cost of a site inspection for compliance, file review, insurance review, and application of fee escalators/adjustments as required. The City of Tacoma reserves the right to adjust the fee rate to reflect an updated fee schedule as set by City Council Ordinance or Resolution. The fee shall also be subject to leasehold excise taxes as applicable.
5. **INDEMNIFICATION.** In granting this Permit, the City and its officers, agents, and employees do not intend to be liable to the Permittee or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in or about the permit area or any part thereof as a result of Permittee's use. Permittee agrees to indemnify, defend, and hold the City and its officers, agents and employees harmless from and against any and all claims, liens and judgments for death of or injury to any person or damages to property whatsoever occurring, on or about the permit area or any part thereof, except to the extent any such claim arises from the City's sole negligence.

Permittee acknowledges that the Tacoma Water Transmission Main (the

"Transmission Main", as defined in Section 2 above) is located underneath a portion of the Permit Area. In granting this Permit, the City makes no representations or warranties to Permittee about the existing condition of the Transmission Main. Permittee specifically assumes all risk and potential liability arising out of and associated with Permittee's operations on or over the Transmission Main within the Permit Area, and agrees to indemnify, defend, and hold the City and its officers, agents and employees harmless from and against any and all claims, liens and judgments for death of or injury to any person or damages to property whatsoever resulting from failure of the Transmission Main proximately caused by Permittee's operations.

Permittee specifically assumes potential liability for actions brought by Permittee's own employees against the City and, for the purpose of this indemnification and defense, Permittee specifically waives any immunity under the state industrial insurance law, Title 51 RCW. PERMITTEE ACKNOWLEDGES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

- 6. LIABILITY INSURANCE.** The Permittee shall maintain liability insurance policies that shall name the City as an additional insured and, at a minimum, provide Commercial General Liability insurance as provided herein. The insurance policy shall: (1) name the City of Tacoma as a named Additional Insured; (2) apply as primary insurance, regardless of any insurance the City may carry; (3) include a "cross-liability" (severability of interest) clause; and (4) include limits of protection of not less than \$1,000,000 combined single limit, bodily injury and property damage. If Permittee's insurance includes a deductible or any form of self-retention, Permittee shall be solely responsible for satisfying such deductible or self-retention requirement.

It is to be understood and agreed that the obligation of Permittee to indemnify, defend and hold harmless the City from claims for damages arising out of the use or operations related to this Permit shall not be limited to the amount of insurance provided by the Permittee. The insurance policy shall further contain a clause obligating the issuing company to give notice to the Risk Manager of the City of Tacoma 30 days before the cancellation of the policy.

This Permit is conditioned upon Permittee's maintaining the City's minimal insurance requirements and said Permit shall not become effective until the City has approved Permittee's insurance. If the insurance lapses or terminates, this Permit is automatically cancelled, and Permittee's rights hereunder are terminated. *Evidence of self-insurance in sufficient amounts may be substituted by the Permittee for said certificates of insurance.*

- 7. ASSIGNMENT.** The City expressly consents to the assignment of this Permit by the Permittee to the NWSA. The City further expressly consents to the NWSA's sublet of the Permit Area to the West Sitcum Terminal operator. The permit may not be further assigned by the Permittee/NWSA or any part thereof sublet by the Permittee/NWSA without the prior written consent of the City, which shall not be unreasonably withheld.
- 8. TAXES.** Permittee shall pay City as an additional permit fee, (a) all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes), if applicable, (b) any surface water and other governmental charges and assessments (special and general) of every

kind and nature levied or assessed against the Permit Area, and (c) any taxes levied or assessed in lieu of the foregoing, in whole or in part.

9. NONWAIVER OF DEFAULTS. The Waiver by the City of any breach by Permittee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same nor may any condition of this agreement be waived, except by the written consent of the City, and forbearance or indulgence by the City in covenant or condition to be performed by the Permittee to which the same may apply, and until complete performance by the Permittee of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this permit or by law, despite said forbearance or indulgence.

10. COVENANT RUNNING WITH THE LAND. The Permittee agrees that this permit and indemnity agreement is and shall be deemed to be a covenant attaching to and running with the above described real estate.

11. RIGHT TO TERMINATE.

At such time that Permittee wishes to voluntarily terminate the agreement and associated covenant, as described in Paragraph 10 above, a release shall be recorded. The release must be requested to the City by Permittee and an inspection will be required to ensure that no permanent damage to the right-of-way has been incurred as a result of the permitted use. A separate recording fee will be required for the release.

12. COUNTERPARTS PROVISION. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

(Signatures appear on next page)

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first written above.

CITY OF TACOMA

By:

Signed by: Hyun Kim 08/13/2024
Hyun Kim
Deputy City Manager

Signed by: Peter Huffman
Peter Huffman
Planning & Development Services Director

Signed by: Luis Fragoso
Luis Fragoso
Risk Manager

Approved as to form:

Signed by: Steve Victor
Steve Victor
Chief Deputy City Attorney

PORT OF TACOMA

By:

Eric D. Johnson
Eric D. Johnson
Executive Director

Approved as to form:

Heather L. Burgess
Heather L. Burgess (Sep 4, 2024 15:44 PDT)
Heather Burgess
Port General Counsel

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that **Eric D. Johnson** is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the **Executive Director of Port of Tacoma** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/4/2024



Bernadita Rodriguez
Signature
Notary Public, State of Washington
Printed Name: Bernadita Rodriguez
My Commission expires: 7/5/2026

