

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 9E
Meeting Date: December 3, 2024

DATE: November 21, 2024
TO: Managing Members
FROM: John Wolfe, CEO
Sponsor: Don Esterbrook, Deputy CEO
SUBJECT: Memorandum of Understanding (MOU) between the Northwest Seaport Alliance (NWSA) and the Puyallup Tribe of Indians (Tribe)

A. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance authorize the CEO or his delegate to enter into an MOU between the NWSA and the Puyallup Tribe relating to the proposed construction of East Blair Terminal Two (EB2) and the combined operations of East Blair One (EB1) and EB2 by the NWSA and the Tribe in substantially the same form as presented.

B. SYNOPSIS

The parties desire to establish a long-term business relationship between the NWSA and the Tribe to achieve the highest and best use of each party's waterway property in order to meet current and future market demand, drive economic development, and create jobs in the region.

This MOU reflects the parties' intention to cooperate in development of a second berth (EB2) adjacent to EB1 and though the MOU is non-binding and does not constitute a legally enforceable agreement of commitment on either party, the MOU lays the groundwork for the parties' future relationship. The MOU calls out that the parties will work together to reach a binding, Definitive Agreement ideally within a year of the execution of the MOU.

C. BACKGROUND

The NWSA operates roll-on, roll-off (RoRo), breakbulk, and cargo discharge services at various locations, including EB1, along the Blair Waterway. The Tribe owns 128 acres (the Tribal Property) along the East Blair Waterway adjacent to Port

of Tacoma owned property (148 acres) and desires to develop this land into a marine terminal to create economic development and employment opportunities for the Tribe and its members.

Overview of MOU

The proposed memorandum of understanding establishes a vision and framework for a collaborative partnership between the NWSA and the Tribe. The Tribe's development of a second pier and backland support acres along the East Blair waterway, adjacent to the Port's EB1 cargo facility, will significantly enhance and strengthen our collective position in the marketplace. This highly efficient two berth facility with abundant cargo support acres will help support existing customers growth, attract incremental new business and support job creation.

The Tribe plans to construct a new EB2 pier on the Tribal Property adjacent to the existing EB1 pier, with comparable and compatible capabilities, and back land cargo support acreage. The NWSA intends to offer in-kind technical support and consultation to ensure operational consistency and efficiency between EB1 and EB2.

The Tribe intends to apply for Federal and State grants, with the NWSA in a technical and support role, to help offset capital costs associated with the construction of EB2. The NWSA and Tribe plan to co-market the services, capabilities, and attributes of EB1 and EB2 as a unified provider to their current and future customer base.

The NWSA intends to operate EB1 and EB2 with the involvement and participation of the Tribe, as set forth in the forthcoming Definitive Agreement which will govern the operations and management of the parties' respective piers.

The operating income generated by EB1 and EB2 will ultimately be divided among the parties subject to and evaluation set forth in a separate agreement (Revenue Sharing Agreement). The parties shall endeavor to achieve an equal 50/50 share.

The Tribe will establish a Tribal Employment and Development Program for the benefit of the Tribe, to train and employ members of the Tribe.

Definitive Agreement Forthcoming

The MOU specifies that the parties will negotiate and finalize a Definitive Agreement which would be a formal written agreement that would govern the EB2 project. In the

MOU, the parties desire to reach a Definitive Agreement will need to be reached by December 31, 2025. The Definitive Agreement will include the following elements:

- a. **Timeline:** The NWSA and the Tribe will use their best efforts to execute and deliver the Definitive Agreement targeting a year from the date of execution of this MOU.
- b. **Pier Construction:** The Tribe will construct a new EB2 pier on their property adjacent to the existing EB1 pier. The NWSA will offer technical support and consultation to ensure operating consistency and efficiency between EB1 and EB2.
- c. **Capital Costs:** The Tribe will be solely responsible for all capital costs associated with the construction of EB2. They intend to apply for Federal and State grants to offset capital costs associated with the construction. The NWSA will offer in-kind grant support to the Tribe.
- d. **Co-Marketing:** Both the NWSA and the Tribe will co-market the services, capabilities, and attributes of EB1 and EB2 as a unified provider to their customer base.
- e. **Operations:** The NWSA will operate and staff EB1 and EB2 with the involvement and participation of the Tribe. A separate Operating Agreement will be negotiated that will confer sole signatory authority upon the NWSA with respect to all customer contracts arising out of the operation of EB1 and EB2 during its term.
- f. **Maintenance and Repairs:** The Tribe will be solely responsible for all costs associated with the maintenance, repair, and/or replacement of facilities at EB2. The NWSA will be solely responsible for all costs associated with the maintenance, repair, and/or replacement of facilities at EB1.
- g. **Revenue Sharing:** the net operating income generated by EB1 and EB2 will be divided between the NWSA and the Tribe, subject to an assessment and valuation of the capabilities and acreage of the respective piers, with the goal to achieve 50/50 share.
- h. **Workforce Development:** A Tribal Employment and Development Program for the Tribe will be established and will serve to train and employ members of the Tribe.
- i. **Future Agreements:** (i) Operating Agreement; (ii) Revenue Sharing Agreement; (iii) Tribal Workforce Development Program; (iv) Facility Maintenance and Improvement; and (v) Environmental Agreement. These agreements will be incorporated within the Definitive Agreement.

D. FINANCIAL IMPLICATIONS

This MOU is non-binding and has no financial implications. This is intended to pave the way for future agreements between the NWSA and the Tribe.

E. ENVIRONMENTAL IMPACTS / REVIEW

- This MOU has no environmental impacts.

F. NEXT STEPS

- Complete negotiations between the NWSA and the Tribe and finalize a Definitive Agreement.

G. ATTACHMENTS TO THIS REQUEST

- Memorandum of Understanding between the NWSA and the Tribe.

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (this “**MOU**”), dated as of December ____, 2024, sets forth certain nonbinding understandings and agreements between Northwest Seaport Alliance (“**NWSA**”) and the Puyallup Tribe of Indians (the “**Tribe**”), relating to the proposed construction of East Blair Terminal Two (“**EB2**”) and combined operations of EB2 by NWSA and the Tribe (the “**EB2 Project**”). NWSA and the Tribe are referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, NWSA operates roll-on, roll-off (“**RoRo**”), break bulk, and cargo discharge services at various locations, including East Blair Terminal One (“**EB1**”) along the Blair Waterway; and

WHEREAS, the Tribe owns 128 acres adjacent to EB1 (the “**Tribal Property**”) and desires to develop this land into a marine terminal to create economic development and employment opportunities for the Tribe and its members; and

WHEREAS, the Parties desire to establish a business relationship between NWSA and the Tribe to achieve the highest and best use of each Party’s waterway property in order to meet market demand, drive economic development, and create jobs in the region.

UNDERSTANDINGS AMONG THE PARTIES

Now, to accomplish the foregoing objective, the Parties shall proceed in accordance with the following provisions:

1. MOU Subject to Definitive Agreement. This MOU is for discussion purposes only and is neither intended to, nor shall it constitute a legally binding or enforceable agreement or commitment on either Party. Nothing in this MOU shall impact that certain Lease for the Purpose of Cargo Staging and Storage (the “**Third Berth Lease**”) executed by the Parties on January 4, 2024.

2. Nonbinding Understandings. This Section 2 sets forth the nonbinding understandings of the Parties with respect to the EB2 Project. The Tribe intends to construct a new pier on the Tribal Property which would be jointly marketed and operated on the terms and conditions substantially similar to those set forth in this Section 2. These terms are based upon information currently available. They do not reflect all of the material terms of the EB2 Project, but provide a basis for negotiating the Definitive Agreement (as defined below). It is understood that, unless specifically provided herein, this MOU sets forth an agreement in principle only, is not binding on the parties hereto, and may not be relied upon as the basis for a contract by estoppel.

Unless otherwise agreed upon herein, it is understood that no party shall be bound until the Definitive Agreement has been duly executed and delivered.

a. Definitive Agreement. The Parties intend to negotiate a formal written agreement that would govern the EB2 Project, including all necessary ancillary documents, contracts, approvals, and related agreements as may be entered into by the Parties from time to time (collectively, the “**Definitive Agreement**”). Binding obligations with respect to the EB2 Project shall only arise upon the execution of the Definitive Agreement by both Parties.

b. Timeline. The Parties acknowledge that time is of the essence and mutually agree to continue in good faith, timely, and diligent negotiations with respect to the Definitive Agreement. The Parties shall use their best efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time, with a goal target of 1 (one) year from the date of execution of this MOU.

c. Pier Construction. The Tribe shall construct a new EB2 pier on the Tribal Property adjacent to the existing EB1 pier, with comparable and compatible capabilities, and off-dock cargo support acreage. NWSA shall offer technical support and consultation to ensure operational consistency and efficiency between EB1 and EB2.

d. Capital Costs. The Tribe shall be solely responsible for all capital costs associated with the construction of EB2. The Tribe intends to apply for Federal and State grants in order to offset such capital costs. NWSA shall offer assistance to the Tribe with respect to any grant applications pertaining to the construction of EB2, at no cost to the Tribe.

e. Co-Marketing. NWSA and the Tribe will co-market the services, capabilities, and attributes of EB1 and EB2 as a unified provider to their customer base.

f. Operations. NWSA shall be responsible for the operation and staffing of EB1 and EB2 with the involvement and participation of the Tribe, as shall be set forth in a separate agreement governing the operations and management of the Parties’ respective piers (the “**Operating Agreement**”). Such Operating Agreement shall also confer sole signatory authority upon NWSA with respect to all service agreements or other customer contracts arising out of the operation of EB1 and EB2 during the term of the Operating Agreement.

g. Maintenance and Repairs. The Tribe shall be solely responsible for all costs associated with the maintenance, repair, and/or replacement of facilities at EB2. NWSA shall be solely responsible for all costs associated with the maintenance, repair, and/or replacement of facilities at EB1.

h. Revenue Sharing. Upon commencement of operations at EB2, the net operating income generated by EB1 and EB2 shall be divided among the Parties subject to

various commercial factors more thoroughly set forth in a separate agreement (the “**Revenue Sharing Agreement**”) including, but not limited to (i) an asset evaluation based upon the Parties’ respective contributions; (ii) operational expertise; and (iii) the commercial book of business. The Parties mutually recognize that despite best efforts to provide duplicate pier berths, capability differences may nevertheless arise which would necessarily be reflected in the division of revenue amongst the Parties. The Parties agree that any revenue generated by either Party beyond the defined berth areas shall not be included in the computation of operating income for EB1 and EB2. The parties further agree that prior to completion of EB2, NWSA shall continue its sole management of EB1 and retain any and all revenue generated in connection therewith.

i. Workforce Development. The Parties shall establish a Tribal Employment and Development Program for the benefit of the Tribe, which shall serve to train and employ members of the Tribe.

j. Future Agreements. The Parties shall cooperatively develop and execute supplementary agreements as may be required from time to time in furtherance of this MOU or the EB2 Project including, but not limited to: (i) Operating Agreement; (ii) Revenue Sharing Agreement; (iii) Tribal Workforce Development Program; (iv) Facility Maintenance and Improvement; and (v) Environmental Agreement. Such agreements shall be incorporated within the Definitive Agreement.

k. Term. This MOU is effective upon mutual execution by the Parties and shall remain valid for five (5) years, or until terminated by mutual written consent of the Parties.

l. Termination. The Parties shall negotiate in good faith and use reasonable efforts to bring about the execution and delivery of the Definitive Agreement at the earliest practicable time.

3. Entire Agreement. This MOU represents the entire agreement between the Parties and supersedes all prior communications or agreements, whether oral or written. This MOU does not create a legally enforceable agreement but reflects the Parties’ good faith intent to negotiate and execute a Definitive Agreement based upon its terms.

4. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date first set forth above.

NORTHWEST SEAPORT ALLIANCE

PUYALLUP TRIBE OF INDIANS

By: _____

Name: [XXX]

Title: [XXX]

By: _____

Name: [XXX]

Title: [XXX]

Item No.: 9E
Meeting Date: Dec. 3, 2024

Memorandum of Understanding Between the NWSA and the Puyallup Tribe of Indians



THE NORTHWEST
SEAPORT ALLIANCE

SEATTLE + TACOMA

Presenter Name: Don Esterbrook
Presenter Title: Deputy CEO

1

ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the Chief Executive Officer or their delegate to enter into a Memorandum of Understanding (MOU) between the NWSA and the Puyallup Tribe of Indians (Tribe) relating to the proposed construction of East Blair Terminal Two (EB2) and the combined operations of EB1 and EB2 by the NWSA and the Puyallup Tribe in substantially the same form as presented.

2

Background

- The NWSA and the Tribe desire to establish a long-term business relationship to achieve the highest and best use of their East Blair Waterway property to meet current and future market demand, drive economic development, and create jobs in the region.
- This MOU lays the groundwork for the future relationship between the NWSA and the Tribe and calls out the parties will work to reach a binding, Definitive Agreement, within the next year.

Background

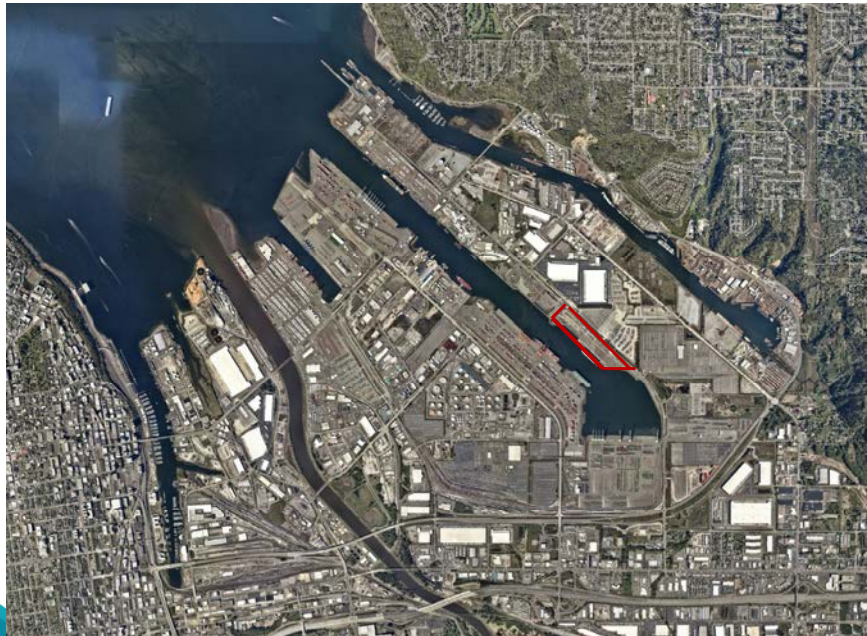
- The NWSA operates Roll-on, Roll-off break bulk and cargo discharge services at various locations, including East Blair Terminal One (EB1).
- The Tribe owns 128 acres along the East Blair Waterway adjacent to Port of Tacoma owned property (148 acres) and desires to develop this land into a marine terminal to create economic development and employment opportunities for the Tribe and its members.
- The Tribe will construct a new EB2 pier on the Tribal Property adjacent to the existing EB1 pier, with back land cargo support acreage.
- The NWSA will offer technical support and consultation to ensure operational consistency and efficiency between EB1 and EB2.

Overview of MOU

- Establishes a vision and framework for a collaborative partnership between the NWSA and the Tribe.
- The Tribe's development of a second pier and backland support acres along the East Blair waterway, adjacent to the Port's EB1 cargo facility will enhance and strengthen our collective position in the marketplace.
- This highly efficient two berth facility with backland support acres will help support existing customers' growth, attract incremental new business and support job creation.
- This MOU is effective upon mutual execution by the NWSA and the Tribe and will remain valid for five (5) years.
- The MOU specifies the NWSA and the Tribe will negotiate a Definitive Agreement which would be a formal contractual agreement that would lay the foundation for the EB2 Project. This Definitive Agreement would replace this MOU.

5

South Harbor Aerial



6

EB1



7



8

Definitive Agreement Highlights:

- **Pier Construction / Capital Costs**
- **Co-Marketing**
- **Operating Agreement**
- **Revenue Sharing Agreement**
- **Workforce Development**

Financial Implications

- This MOU is non-binding and has no financial implications. This is intended to pave the way for future agreements between the NWSA and the Tribe.

Environmental Impacts / Review

- This MOU has no environmental impacts.

Next Steps

- Complete negotiations between the NWSA and the Tribe and finalize a Definitive Agreement and any sub-agreements thereto.

ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the Chief Executive Officer or their delegate to enter into a Memorandum of Understanding (MOU) between the NWSA and the Puyallup Tribe of Indians (Tribe) relating to the proposed construction of East Blair Terminal Two (EB2) and the combined operations of EB1 and EB2 by the NWSA and the Puyallup Tribe in substantially the same form as presented.

