

INTERLOCAL AGREEMENT BETWEEN THE NORTHWEST SEAPORT ALLIANCE
& THE PORT OF TACOMA
REGARDING SHARED LEAVE PARTICIPATION

This Interlocal Agreement (ILA) (this "Agreement") is entered into this ___ day of _____, 2016 by and between the **NORTHWEST SEAPORT ALLIANCE**, a port development authority of the State of Washington (hereinafter the "NWSA"), and the **PORT OF TACOMA**, a Washington public port district (the "Port"), (collectively "Parties") in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

RECITALS

WHEREAS, the NWSA Managing Members and the Port of Tacoma Commissioners have authority pursuant to RCW 53.08.170 and RCW 53.57.030 to create and fill positions, fix wages, salaries and establish other benefits of employment including retirement, insurance and similar benefit; and

WHEREAS, in 1988, Congress passed a law providing a way for federal employees to share leave, both within and across agencies, for qualifying medical reasons.¹ The Washington State Legislature adopted similar legislation in 1989, and municipalities throughout the state began adopting such programs shortly thereafter. Leave sharing policies have since become a popular, and altruistic, employer sponsored benefit.

WHEREAS, RCW 53.08.170 and RCW 53.08.240 give the Port and NWSA authority to adopt leave sharing policies and programs for their respective employees, and

WHEREAS, where two local governmental entities seek to jointly carry out an activity they may otherwise lawfully do, Washington's Interlocal Cooperation Act, Chapter 39.34, provides the authority and prescribes mechanisms for doing so.

WHEREAS, the NWSA and Port desire to authorize certain employee benefits.

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Parties agree as follows:

1. Shared Leave Between Agencies Authorized. On a voluntary basis, qualifying NWSA and Port employees may donate accrued leave to benefit other NWSA and or Port employees who have not exhausted their long term disability elimination period and who are suffering from a serious health condition which will cause the employee to take leave without pay or terminate his or her employment. The maximum number of shared leave hours an eligible employee may receive is 480 hours in any twelve month period.

2. Computation of Share Leave Program. In executing the Shared Leave Program between the Port and NWSA, the Port and NWSA shall be guided by [policy 25.40](#) of Washington State's Office of Financial Management ("Policy"). Section 25.40.10d of the Policy specifically addresses the financial treatment by state agencies are to apply in valuing and accounting for donation and use of shared leave.

¹ Federal law also permits leave sharing in cases of major disaster. 42 USC §5170.

3. Quarterly accounting. The Port and NWSA shall record the shared leave transactions in the appropriate accounting and payroll systems at a minimum, on a quarterly basis.

4. Shared Leave Records. The Port and NWSA shall record donated leave as shared leave in each agency's leave records and maintain it separately from all other leave balances, and shall maintain the following shared leave information at a minimum:

- Number of leave requests received.
- Number of leave requests granted.
- Nature of requests.
- Name and agency of donors.
- Amount of leave transferred in or out.
- Value of leave transferred in or out.
- Date leave was taken for each occurrence.

5. Assignment. 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.

6. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this Agreement.

7. Equal Drafting. This Agreement has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

8. Severability. If any provisions of this Agreement are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect to the extent that the primary purpose of this Agreement can be preserved.

9. Modification. This Agreement may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Party's governing body, provided however, that the NWSA and Port CEOs are authorized to take any necessary action to continue to keep effective all terms, provisions and conditions contained herein. The intent of this Interlocal is to administer pay and benefits in accordance with State and Federal law. Should any part of this Interlocal Agreement require a change to pay or benefit administration practices by reason of any existing or subsequently enacted legislation, such change(s) will be incorporated without the need to amend this Interlocal Agreement, and provided further that, subject to the NWSA Managing Members' and the Port Commission's approval, the NWSA and the Port reserve the right to amend or terminate any Employee welfare plan and/or salary practice.

10. Termination. This Agreement shall terminate on December 31, 2019 unless terminated earlier.

11. Governing Law. This Agreement shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of

Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington

12. Notices. All notices given pursuant to this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by email transmission to the facsimile number(s) set forth below:

NWSA: c/o Human Resources
P.O. Box 2985,
Tacoma, WA 98401-2985

Port: c/o Human Resources
PO Box 1837
Tacoma, Washington 98401

13. Entire Agreement. This Agreement constitutes the entire agreement of the parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The City and the Port participated equally in any negotiations and the process leading to execution of this Agreement. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

14. Legal Relations.

A. 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. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

B. Legal obligations. This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. 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.

D. Recording. A copy of this Agreement shall be recorded in the Office of the Pierce County Auditor as provided by law, or shall be posted to each Parties' web site.

15. 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.

16. 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.

17. Indemnification and Hold Harmless.

A. The NWSA releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the NWSA and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the NWSA's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

B. The NWSA shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the NWSA's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

C. The Port releases the NWSA from, and shall defend, indemnify, and hold the NWSA and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the Port and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the NWSA or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the NWSA and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the NWSA or its agents, employees, and/or officers.

E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

F. The Parties recognizes 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 prevailing Party.

G. No liability shall attach to any of the Parties by reason of entering into this Agreement

except as expressly provided herein.

H. The provisions of this Article shall survive any termination or expiration of this Agreement.

The NORTHWEST SEAPORT ALLIANCE

The PORT OF TACOMA:

John Wolfe, CEO

Constance T. Bacon, Commission President

Date: _____

Date: _____