

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF SEATTLE & THE NORTHWEST SEAPORT
ALLIANCE REGARDING THE PORT OF SEATTLE'S USE OF A PORTION OF
TERMINAL 46**

This Interlocal Agreement (the "**ILA**") is made this ____ day of March, 2019, 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, the POS is organized under the laws of Washington State, as codified at Title 53 RCW. 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, pursuant to NWSA agreements, the POS licensed the operation, use and management of an international marine cargo terminal business located on the property known as Terminal 46 to NWSA as POS's licensee/agent, effective August 4, 2015.

WHEREAS, POS now seeks to use a portion of Terminal 46 for the development of a new cruise berth and facility and other maritime uses not associated with NWSA operations (the "Permitted Use").

WHEREAS, the Parties wish to memorialize the compensation to be paid by POS to the NWSA for POS's use of a portion of Terminal 46.

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

AGREEMENT

- 1. Premises.** No later than January 1, 2020, POS will have the use of approximately 1500 linear feet on the north portion of the west-facing berth and the use of approximately twenty-nine (29) acres located on the north portion of Terminal 46 (the "Premises"). POS's right to use the Premises includes the right to reasonable access and the right to lease, sublease, license, permit occupancy 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. The Premises will be further refined and shown via Exhibit by future Addendum to this ILA as referenced below prior to September 1, 2019, in accordance with Section 4 below.

- 2. Compensation to the NWSA.** Effective January 1, 2020, POS shall pay to the NWSA an annual sum of \$131,948.22 per acre for POS's use of the Premises, which shall be paid in equal monthly installments, provided further, that in no case will the annual compensation paid to the NWSA for the initial year 2020 be less than \$ 3,826,498.38. Utilities will be paid directly by or charged to the POS. Beginning in 2021, compensation shall annually increase by two percent effective the first (1st) day of each January during the term of this ILA.
- 3. Capital Improvements and Maintenance.** The NWSA and the POS will each be responsible for any future capital improvements on their respective terminal premises. Mutually agreed capital investments to common use facilities such as Terminal 46 access points will be shared on a pro rata basis.
- 4. Further Refinement.** Prior to September 1, 2019, the Parties shall execute an Addendum to this ILA to more specifically address issues relating to POS's use of the Premises, which may include but is not limited to the areas below ("Addendum"), some of which include general descriptions of the approach the Parties are intending to take. The Addendum may be executed by the undersigned without further action by the POS Commission or the NWSA Managing Members. If the Parties fail to execute an Addendum prior to September 1, 2019, the Parties shall resolve such dispute in accordance with Section VII of the NWSA Charter. The Parties agree that Terminal 46 shall be managed for the benefit of both Parties and that this Addendum will be based on a reasonable allocation of costs and responsibilities that allow each Party to use its portion of the facility to achieve its business objectives. In general, ongoing investment, maintenance and joint operation of the entire facility shall be approached in a coordinated, holistic manner with a goal to maximize efficient use of individual and shared resources while promoting comprehensive long-term, strategic preservation of this entire maritime-industrial terminal.
 - Detailed description and exhibit describing and identifying the Premises. The Parties agree that the POS Premises shall be

configured so as to best support the success of the cruise facility and operation while not unreasonably interfering with the use of the remainder of the site for cargo operations. The Parties will consider whether it is beneficial to align their respective Premises to correspond with stormwater drainage basins.

- Condition of the Premises: The Premises will be provided in good order and condition on January 1, 2020, and cleared of containers, cranes, etc.
- Rent specifics, including mechanics of payments and standard provisions for abatements or adjustment for special assessments, if any.
- Capital Improvements and maintenance responsibilities for specific circumstances as applicable: POS and NWSA shall form a joint operations team that meets on a regular basis to review maintenance and operations issues.
- Environmental responsibilities and stormwater: The Parties shall be responsible for stormwater on their respective terminal premises and resulting from their operations. The Parties agree that each will comply with applicable stormwater requirements.
- Utilities
- Common areas and shared facilities including access roads: Costs shall be shared on a pro rata basis.
- Damage and Destruction
- Terminal Security
- Signage
- Design approval: Design of improvements on common use areas will be approved by both POS and NWSA.
- Ownership and removal of improvements
- Details related to options to extend, e.g. notice provisions

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 site as authorized by RCW.39.34.040 shall have a term of twenty-three (23) years commencing from January 1, 2020. This ILA may be extended at the Port's sole discretion for up to four, five-year terms.

U. Indemnification and Hold Harmless.

- a. 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.
- b. 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.
- c. 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.

- d. 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.
- 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 ILA 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 ILA except as expressly provided herein.
- h. The provisions of this Section U.(a)-(h) shall survive any termination or expiration of this ILA.

THE NORTHWEST
SEAPORT ALLIANCE:

By: _____
John Wolfe, CEO

Date: _____

THE PORT OF SEATTLE:

By _____
Stephen Metruck,
Executive Director

Date: _____