

GATE EFFICIENCY PROGRAM AGREEMENT

T-18 SSAT This Agreement is entered into by and between the Northwest Seaport Alliance ("NWSA") and a Marine Terminal Operator ("MTO") located within the NWSA (collectively hereafter "Parties").

RECITALS:

1. Two key strategic pillars of the NWSA is to be the gateway that is the easiest to do business with by providing best in class service delivery, and to improve the efficiency and cost competitiveness of the supply chain.
2. The international marine terminals across the NWSA gateway are experiencing periodic backups at the truck gates. These backups cause congestion on the surface streets in and around the Port's complexes and pose potential safety concerns.
3. The NWSA proposes a Gate Efficiency Program ("Program") as described herein, to reimburse Marine Terminal Operators ("MTOs") for a portion of the costs actually incurred to extend gate hours to relieve congestion, in consideration of individual MTOs agreeing to and also providing off-gate hours.
4. The goal of the Program is to reduce roadway congestion, improve safety and ultimately enhance service levels to the Beneficial Cargo Owner ("BCOs") by adding additional gate service hours, as well as to validate the business value of off-gate hours, such that MTOs are incentivized to develop a permanent program acceptable to the industry as a whole.

Wherefore, based on the above, the Parties agree as follows:

1. Definitions:

- A. "Peak Season" – The peak shipping season typically occurring July – December of each year.
- B. "Off-hour Gate(s)"- Monday – Friday second shift (1800 – 0300), Monday – Friday third shift (0300 – 0800), any Saturday and Sunday shifts and Holidays as outlined in the Pacific Coast Longshore Contract Document ("PCLCD").
- C. "Marine Terminal Operators (MTO)"- The entity responsible for loading and unloading vessels, rail and trucks at an international marine container cargo facility.
- D. "Total Turn Time" – Time measured starting at the point a truck enters the truck staging queue until it exits via the out-gate terminal pedestal.
- E. "Term" means July 1, 2019 through December 31, 2020.

2. **Program Overview:** The NWSA is funding this Program, which is offered to the international MTOs in the NWSA North and South Harbor. The Program's purpose is to incent measures to improve cargo service at the NWSA terminal truck gates, improve safety, and reduce congestion inside and outside the terminals.
- A. **Goal:** Seek to attain an average of ninety (90) minutes or less Total Turn Time.
 - B. **Funds:** The NWSA will fund up to \$2,000,000.00 in incentive funds over the Program Term to incentivize the International MTOs to operate extended gates to improve truck turn times.
3. **Eligibility Requirements:** The MTO must commit, execute and return this Program Agreement to the NWSA by June 30, 2019. Three (3) reimbursement levels will be available to the MTOs based on the number of off-hour gates offered per week. The MTO for this Agreement is classified as one of the three Tiers described below.
- A. ☒ **Tier 1.** To qualify for the funds, the Tier 1 MTO must commit to operating the extended Off -hour Gates as described herein through-out the Program Term. The Tier 1 MTO must operate an extended gate program consisting of three (3) off-hour gates per week during the peak shipping season in 2019 and 2020 (July – December) and two (2) off-hour gate per week during the non-peak shipping season (January 2020 – June 2020). Under Tier 1 the NWSA will reimburse each MTO up to a maximum of \$600,000 for actual cost incurred to run these additional gates.
 - B. ☐ **Tier 2.** To qualify for the funds, the Tier 2 MTO must commit to operating the extended Off -hour Gates as described herein through-out the Program Term. The Tier 2 MTO will be required to run three (3) off-hour gates per week during the peak shipping season in 2019 and 2020 (July – December). Under Tier 2 the NWSA will reimburse each MTO up to a maximum of \$300,000 for actual cost incurred to run additional gates.
 - C. ☐ **Tier 3.** To qualify for the funds, the Tier 3 MTO must commit to operating the extended Off -hour Gates as described herein through-out the Program Term. The Tier 3 MTO will be required to run two (2) off-hour gates per week during the peak shipping season in 2019 and 2020 (July – December). Under Tier 3 the NWSA will reimburse each MTO up to a maximum of \$200,000 for actual cost incurred to run additional gates.
4. **Non-Compliance Consequences.** If the MTO ceases offering Off-hour Gates during the Program Term, the MTO shall be required to reimburse the NWSA for all funds paid pursuant to this Program, provided however, the reimbursement amount may be adjusted if the MTO contacts the NWSA and explains any compelling, commercially extenuating circumstances why the MTO can no longer offer Off-hour Gates, to the satisfaction of the NWSA, as determined in the NWSA's sole discretion, and approved by the NWSA Managing Members.
5. **Fund Allocation:** The Program incentive funds will be disbursed amongst the MTOs that commit and sign up for the Program as of the deadline date of June 30th 2019, and pursuant to the Tier level to which each MTO commits.

6. **Express Scope of Reimbursement:** The NWSA agrees to reimburse MTO monthly for a portion of the costs actually incurred and calculated from Exhibit A form to provide Off-hour Gates to the drayage community, expressly conditioned upon the MTO compliance with the terms and conditions provided herein. Reimbursement is expressly contingent on MTO submitting documentation to NWSA that the Off-hour Gates actually occurred, by fully completing and submitting the Exhibit A form attached hereto and providing to NWSA information from the MTO's Terminal Operating System showing work was completed for the hours claimed, throughout the full Program Term. In addition, during the Program Term, not later than the preceding Thursday, the MTO shall supply the NWSA with a tentative schedule for the following week's Off-hour Gate times.
7. **Communications.** Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other Party shall be in writing addressed to the other Party at the email addresses below unless otherwise indicated by the Parties to this Agreement. The Parties identify the following Contact Persons:

NWSA: Name: Zach Thomas
 Phone 253-209-3494
 Email: zthomas@nwseaportalliance.com

MTO: Name:
 Phone
 Email:

It is expected that the identified Contact People will communicate frequently to coordinate the execution of the Program.

8. **Term & Termination.** The Program is expected to launch on July 1, 2019 and end December 31, 2020. The NWSA reserves the right to cancel or extend the Program at any time, in its sole discretion. The NWSA shall provide notice of Program termination by email sent to the MTO Contact person identified herein at Paragraph 7.
9. **Independent Parties:** Nothing contained herein shall be construed as creating an employer/employee relationship between the NWSA and any MTO individuals participating in the Program or benefiting from the Program reimbursements. 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.
10. **Legal obligations:** This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.
11. **Timely Performance:** The requirements of this Agreement shall be carried out in a timely manner according to the terms herein.
12. **Audit of Records:** During the term of this Agreement, and for a period not less than six (6) years from the date of termination, records and accounts provided to the NWSA by the MTO

pertaining to the work of this Agreement and accounting therefore shall be kept by the NWSA 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 by the NWSA 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.

13. Dispute Resolution Process. The Parties' designated representatives under Paragraph 7 herein shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then each Party's responsible Project Directors shall review the matter and use their best efforts to resolve it. If the Project Directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to further resolve the dispute in any other forum. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which is not settled by agreement between the Parties, shall be settled by mediation in the State of Washington, in Pierce County.

14. Controlling Law & Venue: This Agreement shall be construed and enforced according to the laws of the State of Washington and the venue shall be Pierce County Washington.

15. Indemnification and Hold Harmless:

A. The Parties release each other from, and shall defend, indemnify, and hold each other and 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 other Party and/or its agents, employees, officers, and/or subcontractors, arising out of or in any way related to this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence of a Party or its agents, employees, and/or officers.

B. This Agreement includes a waiver of subrogation against all losses sustained by either Party and/or its agents, employees, officers, subcontractors, and/or insurers, arising out of or related to this Agreement except to the extent the Parties' losses are caused in whole or in part by the negligence of the other Party or its agents, employees, and/or officers.

C. 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 Party only, any immunity under the Worker's Compensation Act, RCW Title 51.

D. Both 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 prevailing Party.

E. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

F. The provisions of this Article 15 shall survive any termination or expiration of this Agreement.

16. **Severability:** If any term or provision of this Agreement, or its application to any person or circumstance is ruled invalid or unenforceable, the remainder of this Agreement will not be affected and will continue in full force and effect.

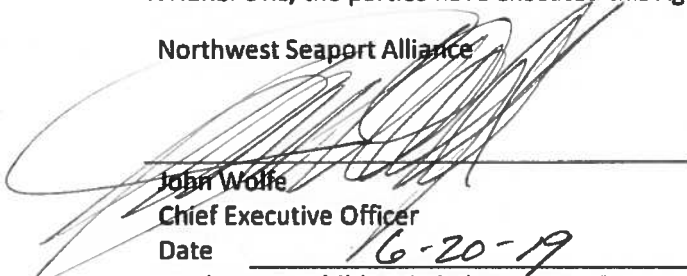
17. **Entire Agreement/Amendment:** This Agreement, together with any documents incorporated by reference shall constitute the entire agreement between the Parties with respect to the Program and shall supersede all prior agreements, proposals, understandings, representations, correspondence or communications relating to the subject matter hereof. No modification or amendment of this Agreement shall be valid and effective unless approved by both parties in writing.

16. **Authorization.** Each Party warrants that the signers below have authority to bind its respective Party hereto.


WHEREFORE, the parties have executed this Agreement this [numerical] day of [month], 2019.

Northwest Seaport Alliance

MTO: SSAT



John Wolfe
Chief Executive Officer
Date 6-20-19



By: Eli Bohm
Its: General Manager
Date 6-20-19

Attachment: Exhibit A Reimbursement Form.

