

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 9B
Date of Meeting April 2, 2024

DATE: March 25, 2024

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial Officer & Strategy Officer

Project Manager: Steve Balaski, Director of Business Development

SUBJECT: 2024 NWSA Incentive Programs – International Container Rail Cargo and Voyage Consistency and On-Time Arrival

A. ACTION REQUESTED

Request Managing Members of the Northwest Seaport Alliance (NWSA) authorize two cargo incentive programs and approve funding for each of those two programs at the initial levels as set forth below.

The two programs and requested funding amounts are:

1. International Container Rail Cargo Incentive Program at an initial level of \$9,000,000.
2. Voyage Consistency & On-Time Arrival Award Program at an initial level of \$1,000,000.

B. SYNOPSIS

Based on current market conditions, feedback from our carrier customers and results from prior incentive programs, the proposed 2024 Cargo Incentive Programs are expected to help protect NWSA rail market share, encourage incremental increases in intermodal rail volumes and incentivize consistent international ocean container service levels in the gateway.

1. Proposed International Container Rail Cargo Incentive Program Outline

Proposed Program Summary

- A per-lift incentive payment of \$100/lift for incremental year-over-year increases in international container rail volume, measured on aggregate rail lifts of a qualified participating ocean carrier at the NWSA.
- Eligible inland ramp locations include all intermodal inland ramp locations served and/or operated by the BNSF and Union Pacific Railroads with the EXCEPTION of Portland, OR. To support the NWSA's inland rail hub strategic initiative, ramp

- locations in Minot, ND, Pocatello, ID, Millersburg OR and Wallula, WA have been called out specifically as eligible for the program.
- The maximum reimbursement for any single participating carrier could not exceed 15% of the authorized funds available (\$1,350,000).
 - The suggested term of the program is **May 1, 2024 through April 30, 2025.** In Q1 of 2025, staff would update Managing Members on status of the program and may seek authorization to extend the program into future years.
 - Staff proposes a 12-month measurement and payout period.

Proposed Eligibility Requirements

- The program would be open to all international ocean carriers in good financial standing with the NWSA (i.e., current on financial accounts as defined by the NWSA in the associated Participation Agreement).
- The ocean carrier is required to enter into the NWSA's Participation Agreement that outlines program eligibility, requirements and other program details. An example of the Participation Agreement is attached.

2. Proposed Voyage Consistency & On-Time Vessel Arrival Award Program Outline

Proposed Program Summary

- A performance award program to encourage international container service voyage consistency and vessel arrival on-time performance.
- The top three performing carriers whose service levels meet the eligibility criteria would receive public recognition at the NWSA's annual North Star Awards ceremony and may qualify for a cash award.
- The NWSA would make \$1 million available to incentivize participation for year one of the program.
- Staff recommends that the Program award \$500,000 for first place, \$300,000 for second place, and \$200,000 for third place to the top 3 carriers that meet or exceed eligibility requirements for a cash award.
- The proposed 52-week period would start port week 18 (NWSA proforma arrival basis) and end port week 17 (NWSA proforma arrival basis.) The timing of these weeks aligns with calendar months **May 2024-April 2025.**
- Staff would update Managing Members on status of the program and may seek authorization to extend the program into future years in Q1 2025.

Proposed Eligibility Requirements

- Service Requirements: An ocean carrier would be eligible for this program if it meets or exceeds the following performance standards: no more than 4 void sailings for weekly services or 2 void sailings for fortnightly services in the designated 52-week period and no more than 24-hour average delay over same 52-week period vs. proforma ETA.
- Weekly and fortnightly international services are eligible.

- Ocean carriers MUST meet the Service Requirements to be eligible for a cash award. NWSA would NOT be required to provide the award if carriers do not meet the required criteria.
- The program would be open to all international ocean carriers in good financial standing with the NWSA (i.e., current on financial accounts as defined by the NWSA) who meet the service performance requirements.
- The cash award would be paid to the top three performing international ocean carrier that operates a vessel on the qualifying ocean service within the designated 52-week period; if multiple ocean carriers operate vessels in the same qualifying service, award money will be divided among vessel operators according to share of vessels they operate.
- The ocean carrier is required to enter into the NWSA's Enrollment Agreement that outlines program eligibility, requirements and other program details. An example of this Enrollment Agreement is attached.

3. BACKGROUND

The most immediate opportunity for discretionary international container volume growth at the NWSA is via import intermodal rail. Approximately half the import cargo that comes through the NWSA is bound for destinations outside of the Puget Sound region (primarily the Midwest). Intermodal rail shipments remain a key driver of volume growth for the NWSA. The discretionary nature of this cargo means it will most often move via the lowest cost and most efficient option.

Feedback from ocean carriers indicates that a rail incentive program can be an effective tool to support additional intermodal rail volumes through the NWSA. 2024 market conditions have carriers intensely focused on cost control. The NWSA also faces significant competition from other ports who have programs aggressively pursuing this same discretionary volume. Ensuring the NWSA is the most efficient and cost-effective gateway for both importers and ocean carriers is critical as the competitive nature of our industry continues to intensify.

At the same time, the NWSA seeks longer-term industry behavior change by awarding and incentivizing reliable, consistent and on-time international ocean container service levels at our gateway. We believe this will have downstream positive benefits for the entire supply chain. Consistent ocean carrier service can improve truck turn times at our marine terminal gates, minimize dwell times, increase capacity for exports, improve rail planning, and reduce costs of drayage inefficiencies. There is significant potential for local environmental benefits from services that have better on-time performance.

Recent announcements by ocean carriers indicate their goals in 2024, and beyond, align with this incentive concept. A stated objective of the new alliance between Maersk and Hapag Lloyd (Gemini Cooperation) is to achieve ocean service schedule reliability above 90%. Other ocean carriers are similarly embarking on initiatives to improve overall voyage consistency in 2024.

This renewed focus on consistency by the ocean carriers suggests that our award and incentive program should see broad support.

Shippers regularly evaluate port gateway performance to determine how much volume to allocate to each location. Consistent, efficient and reliable service levels make the gateway more attractive by improving overall supply chain performance. This builds confidence in the gateway and makes a strong business case justifying increased cargo allocations to the NWSA.

4. FINANCIAL IMPLICATIONS

Source of Funds

The two homeports are expected to receive funds between approximately \$6,000,000 and \$40,000,000 from Water Resource Development Act (WRDA) and Harbor Maintenance Tax (HMT) in 2024, and similar amounts in future years. These funds will impact the homeport Profit and Loss (P&L) statement and will not be reflected on the NWSA's P&L.

Financial Impact

The \$10,000,000 incentive fund will utilize cash generated from NWSA operations and available credit from Tacoma Rail in lieu of rent payments for the use of South Intermodal Yard (SIM) estimated at \$2,000,000 through May 2025. The WRDA/HMT funds received by the homeports will be used for eligible HMT projects that would have been funded by the NWSA generated operating cash that is now being used for this incentive program.

The 2024 to 2028 operating budget includes \$3,000,000 per year for the rail incentive expense. This incentive program is expected to retain current rail volumes and encourage additional cargo volumes. It is unknown if it will result in incremental revenue compared to the budget because of multiple factors. Assuming the total incentive payment for these two proposed programs of \$10,000,000, it could result in a \$7,000,000 total unbudgeted expense for the NWSA in 2024 and/or 2025.

5. ATTACHMENTS TO THIS REQUEST

- Example Participation Agreement for International Container Rail Cargo Incentive Program
- Example Enrollment Agreement for Voyage Consistency & On-Time Arrival Award Program

**2024 Northwest Seaport Alliance
RAIL CARGO INCENTIVE PROGRAM
PARTICIPATING CARRIER AGREEMENT**

This Northwest Seaport Alliance Rail Cargo Incentive Program Participating Carrier Agreement (“Agreement”) is entered into by and between The Northwest Seaport Alliance (“NWSA”) and _____ ocean carrier (“Participating Carrier”) (each a “Party” and collectively the “Parties”).

- A. The NWSA is the 7th largest trade gateway in North America, consisting of the combined marine cargo operations of the Port of Seattle (North Harbor) and the Port of Tacoma (South Harbor).
- B. The Ports and NWSA have invested billions of dollars in their marine cargo facilities and have prospered for many years by attracting cargo that generates jobs and revenue for the region.
- C. Approximately half the cargo through the NWSA is bound for destinations outside of the Puget Sound region, primarily the Midwest.
- D. The NWSA offers this 2024 Rail Cargo Incentive Program (“Incentive Program”) to encourage International Ocean Container Carriers to grow their international intermodal rail cargo volumes to and from all inland ramp locations served and/or operated by Burlington Northern/Santa Fe Railroad (BNSF) and Union Pacific Railroad (UP) (together, “Railroads”) with the exception of Portland, OR.
- E. International rail cargo volumes to and from the ramp locations in Minot, ND; Pocatello, ID; Millersburg, OR; and Wallula, WA served by the UP and/or BNSF are included in the scope of this program.

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

1. NWSA Rail Cargo Incentive Payments.

1.1 Incentive Payments. During the Term of this program (May 1, 2024 – April 30, 2025, unless terminated earlier, or otherwise extended), and conditioned upon the Participating Carrier’s compliance with this Agreement, for all Qualifying Rail Volumes over the Base Measurement (as such terms are defined in Section 2 herein), NWSA will pay to Participating Carrier \$100 per rail lift (“Incentive Payment”). Incentive Payments to any Participating Carrier may not exceed 15% of the authorized funds during the Term of this program. Incentive Payments will be made within 60 days following the end of the program which is currently scheduled for April 30, 2025,

unless terminated earlier subject to Sections 1.2.4 and 4 of this Agreement, or extended

1.2 Conditions for Payments. Incentive Payments will be paid provided that all of the following conditions in Sections 1.2.1 – 1.2.4 have been met:

- 1.2.1** The Participating Carrier increases rail cargo volumes and establishes Qualifying Rail Volume growth as described herein;
- 1.2.2** The Participating Carrier is Current in all accounts with the NWSA. For purposes of this agreement, a carrier is deemed to be “Current” if all of its accounts with NWSA are paid or are less than 30 days past due on the date the program ends, which is currently April 30th, 2025, but which may be earlier if terminated pursuant to Section 1.2.4 and Section 4 of this Agreement. If a carrier is not Current and has an account held in abeyance while such account is in dispute, the carrier is not eligible for the pending Incentive Payment and will only be permitted to participate in future Incentive Payments if the Incentive Program remains active and there has been a resolution of the disputed amount and any payment required thereby has been paid in full;
- 1.2.3** The Participating Carrier executes and remains in compliance with this Agreement, expressly including ongoing permission for the Railroads to share a monthly report of Participating Carrier rail lifts to the NWSA; and
- 1.2.4** Funds remain in the 2024 Rail Incentive Program. The Parties acknowledge that a total of \$9 million has been authorized for the Incentive Program, and multiple carriers are expected to participate. If Qualifying Rail Volumes across all participating carriers exhaust the total authorized funds, the NWSA has no obligation to continue and may close or terminate the Incentive Program, making no further payments thereunder. If multiple carriers earn incentives in the period in which the funding for the program is exhausted, NWSA will allocate remaining payments reimbursements to the participating and eligible carriers in an equitable fashion, at NWSA's sole and absolute discretion. The NWSA may seek authorization to increase the program funding level, but is not obligated to do so, nor does NWSA make any representations regarding the availability of additional funds beyond the original authorization.

2. Qualifying Rail Volumes and Measurement of Growth. Incentive Payments are made only for Qualifying Rail Volumes, defined herein, which represent incremental growth in international intermodal rail cargo volumes to and from certain inland rail ramp locations based on a year over year comparison:

2.1 Base Measurement. A Base Measurement will be established by using reports provided by the Railroads showing international intermodal rail cargo lift activity to and from NWSA Gateway marine terminals and all inland ramp locations served and/or operated by the Railroads with the exception of Portland, OR by the Participating Carrier for the base period of May 1, 2023 through April 30, 2024 (“Base Measurement”).

2.2 Ongoing Reports. In addition to the reports used to form the Base Measurement, the Railroads will provide monthly volume updates by Participating Carrier in order to measure rail cargo growth.

2.3 Qualifying Rail Volumes. To be eligible for Incentive Payments, the Participating Carrier must increase total international intermodal rail lifts year-over-year compared with the corresponding Base Measurement’s full year period volumes for cargo moving between NWSA terminals and all inland ramp locations served and/or operated by Railroads with the exception of Portland, OR (“Qualifying Rail Volume”).

For example, if Carrier A moved 20,000 international intermodal lifts between May 2023 and April 2024, 20,000 lifts becomes the Base Measurement volume for Carrier A. If Carrier A moves 25,000 international intermodal rail lifts between May 2024 and April 2025, 5,000 lifts would be considered incremental and eligible for a \$100/lift reimbursement or \$500,000.

Import loads, export loads and empty container repositioning rail lifts are included in Qualifying Rail Volumes. For avoidance of doubt, both the Base Measurement and the Qualifying Rail Volumes will be calculated by combining the volume activity of the entities listed together in the introductory paragraph of this Agreement as comprising the “Participating Carrier.”

2.4 Timing of Lifts. Timing of a rail lift will be measured by the date on which the Railroads report a container being lifted on or off a rail car at a near-dock facility or interchanged to or from an NWSA on-dock facility.

2.5 Discrepancies in Reported Volumes. If a Participating Carrier disputes reported volumes from the information provided by the Railroads, the Participating Carrier shall address its dispute directly with the Railroads and the Participating Carrier is responsible for providing NWSA with the Railroads’ corrected volume report within 45 days of receipt of the initial report. NWSA will utilize any corrected reported volumes provided by the Railroads which shall be determinative. Failure of a Participating Carrier to provide NWSA with a corrected report by the Railroads within 45 days of receipt of the initial report waives any claim of discrepancy.

2.6 Ineligible cargo volumes. Domestic intermodal cargo is not eligible for this Incentive Program and will not be included in either the Base Measurement or the Qualifying Rail Volumes.

- 3. Permission to Share Volume Reports.** Participating Carrier hereby gives permission for the Railroads to provide reports of Participating Carrier's rail lifts from May 1, 2023 through April 30, 2024 as well as monthly during the Term of this Agreement to the NWSA. The Railroads' reports will cover both on-dock and near-dock facilities. The report template in Exhibit B of this agreement must be used to submit monthly updates.
- 4. Term & Termination.** The Term of this Agreement and the Incentive Program is May 1, 2024 through April 30, 2025. In addition to exhaustion of allocated funding for the Incentive Program as described in Section 1.2.4 of this Agreement, the NWSA reserves the right to cancel, terminate, or extend the Incentive Program at any time, in NWSA's sole and absolute discretion. The NWSA will provide notice of any cancellation, termination, or extension of the Incentive Program and this Agreement by email sent to the Participating Carrier Designated Representative identified herein at Paragraph 5. The Participating Carrier may terminate by providing notice of termination by email sent to the NWSA Designated Representative identified herein at Paragraph 5.
- 5. 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 email addresses below unless otherwise indicated by the Parties to this Agreement. The Parties identify the following Designated Representatives:

NWSA: Ms. Tong Zhu, Chief Commercial & Strategy Officer
Phone: (253) 428-8642
Email: tzhu@nwseaportalliance.com

Participating Carrier: Company Name:
Contact Name/Title:
Phone:
Email:

It is expected that the identified Designated Representatives will communicate frequently, to coordinate the execution of the Incentive Program.

- 6. Independent Parties.** Nothing contained herein shall be construed as creating an employer/employee relationship between the NWSA and any Participating Carrier or individuals participating in the Incentive Program and/or benefiting from the Incentive Program payments. 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.

- 7. Legal Obligations.** This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.
- 8. Timely Performance.** The requirements of this Agreement shall be carried out in a timely manner according to the terms herein.
- 9. Audit of Records.** During the term of this Agreement, and for a period not less than six (6) years from the date of termination, the Parties shall retain all records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept by the Parties 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 Parties 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.
- 10. Dispute Resolution Process.** The Parties' Designated Representatives under Paragraph 5 herein shall use their best efforts to resolve disputes between the Parties, provided however, any discrepancies in reported volumes shall be addressed as set forth in Section 2.5 herein. For all other disputes, if the Designated Representatives are unable to resolve a dispute, the matter shall be reviewed by the Chief Executive Officer of each Party or their designee to attempt to reach resolution. The Parties agree to exhaust each of these procedural steps before seeking to further resolve the dispute by arbitration. Any remaining controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be submitted for determination by binding arbitration. Subject to preliminary resolution requirements of this dispute resolution process, the Parties agree to arbitration of all disputes arising under this agreement in Pierce County, Washington before a single arbitrator using the rules for adjudication of the American Arbitration Association. The arbitrator shall be selected by mutual agreement of the parties, and any such arbitrator shall be an attorney admitted to practice law Washington State.
- 11. Controlling Law & Venue.** This Agreement shall be construed and enforced according to the laws of the State of Washington, and venue for any dispute resolution arising out of this Agreement shall be in Pierce County Washington.
- 12. Indemnification and Hold Harmless.** 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. 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. 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 which provision is the subject of mutual negotiation. Neither Party will be held responsible for the other Party's attorney's fees, costs or other legal expenses incurred to enforce the provisions of this Agreement. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein. The provisions of this Article 12 shall survive any termination or expiration of this Agreement.

13. 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.

14. Entire Agreement/Amendment. This Agreement, together with any documents incorporated by reference shall constitute the entire agreement between the Parties with respect to the Incentive 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.

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

WHEREFORE, the parties have executed this Agreement on the dates set forth below.

The Northwest Seaport Alliance

Participating Carrier:

John Wolfe
Chief Executive Officer

By:
Its:

Date _____

Date _____

Attachments: **Exhibit A** Payment Information Form

Exhibit B Monthly Report Template

Example

EXHIBIT A -PAYMENT INFORMATION

Ocean Carrier: _____ Federal ID #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____ Phone #: _____

Job Title: _____ Email: _____

Remit to Address (if different from above): _____

City: _____ State: _____ Zip Code: _____

Exhibit B - Monthly report template [to be inserted]

Example

**2024 Northwest Seaport Alliance
VOYAGE CONSISTENCY AND ON-TIME ARRIVAL
AWARD PROGRAM
CARRIER ENROLLMENT AGREEMENT**

This Northwest Seaport Alliance Voyage Consistency and On-Time Arrival Award Program Carrier Enrollment Agreement (“Agreement”) is entered into by and between The Northwest Seaport Alliance (“NWSA”) and _____ ocean carrier (“Participating Carrier”) (each a “Party” and collectively the “Parties”).

- A. The NWSA is the 7th largest trade gateway in North America, consisting of the combined marine cargo operations of the Port of Seattle (North Harbor) and the Port of Tacoma (South Harbor).
- B. The Ports and NWSA have invested billions of dollars in their marine cargo facilities and have prospered for many years by attracting cargo that generates jobs and revenue for the region.
- C. The NWSA offers this 2024 Voyage Consistency and On-Time Arrivals Award Program (“Award Program”) to encourage industry behavior change by recognizing, awarding and incentivizing reliable, consistent and on-time international ocean container service levels at our gateway.
- D. NWSA expects improvements in on-time arrivals to have downstream positive benefits for the entire supply chain by improving truck turn times, minimizing dwell times, increasing capacity for exports, improving rail planning, and reducing costs of drayage inefficiencies. Additionally, there is potential for local environmental benefits from services that have better on-time performance.

Wherefore, based on the above, the Participating Carrier seeks to enroll in the Award Program and agrees as follows:

- 1. NWSA Voyage Consistency and On-Time Arrival Award Program.** The Award Program is a new annual public recognition and financial award program recognizing the top three international container carriers whose service delivers the best voyage consistency and on-time arrival performance in the NWSA Gateway. The awards will be publicly announced and the awardees may also be eligible to receive a monetary award as more specifically set forth herein.
 - 1.1 Recognition and Financial Award.** NWSA will publicly recognize and provide a monetary award to the top three performing Participating Carriers in this Award

Program, provided those Participating Carriers meet the Eligibility Requirements and the Service Performance Requirements set forth herein.

1.2 Award Eligibility. A Participating Carrier is eligible for the monetary portion of this award if, at the end of the Term, it meets the eligibility requirements set forth in Sections 1.2.1 – 1.2.2 (“Eligibility Requirements”).

1.2.1 The Participating Carrier must be Current in all accounts with the NWSA on the final day at the end of the Term of the Award Program. For purposes of this agreement, a carrier is deemed to be “Current” if all of its accounts with NWSA are paid or are less than 30 days past due on the date the program Term ends, which is currently April 30th, 2025, but which may be sooner if the Award Program is terminated earlier per Section 2 of this Agreement; and

1.2.2 The Participating Carrier executes and remains in compliance with this Agreement.

1.3 Service Performance. In addition to the Award eligibility requirements of Section 1.2, a Participating Carrier must meet or exceed the following Service Performance Requirements set forth in Section 1.3.1, which will be measured as set forth in Section 1.3.3.

1.3.1 Service Performance Requirements. As used herein, the term Service Performance Requirements are:

1.3.1.1 Qualifying services are those for international container sailings to NWSA licensed terminals (for example: Terminals 5, 18, 25/30 in the North Harbor and Husky, WUT, and PCT in the South Harbor).

1.3.1.2 The Participating Carrier may have no more than 4 void sailings for weekly services or 2 void sailings for fortnightly services during the Term of the Award Program. A void sailing, also known as a blank sailing, is when ocean carrier(s) cancel a scheduled voyage to a NWSA port call that was previously announced as part of its originally advertised pro forma rotation (“Sailing Schedule”). Participating Carrier is required to provide a listing of the services on which it participates, which is attached hereto as Exhibit A. Void sailings and Sailing Schedules will be evaluated against the services listed on Exhibit A.

1.3.1.3 Participating Carrier may have no more than a 24-hour average delay measured against the Participating Carrier’s pro forma estimated time of arrival including time and day of week to arrival at berth, as published

and defined by the third-party maritime reporting platform eeSea.com (“Pro Forma ETA”) over the Term of this Award Program. Pro Forma ETA will be provided by third-party reporting service eeSea (see section 1.3.3 Service Performance Tracking), which Participating Carrier will have opportunity to review and correct Pro Forma ETA with mutual agreement with NWSA.

1.3.1.4 Performance is measured on weekly and fortnightly international container services.

1.3.1.5 Measurement and evaluation of top performers would be weighted by the following:

1.3.1.5.1 Most voyages that called NWSA by service during the Term; and

1.3.1.5.2 If multiple services achieve the same number of voyages, the lowest average hours delayed by service during the Term.

As an example:

Carrier A had 48 of 52 voyages and average 8 hrs delayed

Carrier B had 51 of 52 voyages and average 20 hrs delayed

Carrier C had 25 of 26 voyages (fortnightly service) and avg 5 hrs delayed

Above would be awarded as follows:

1st Place: Carrier B (had most voyages, still within 24-hour average delay), receives \$500,000.

2nd Place: Carrier A (had second most voyages, still within 24-hour average delay), receives \$300,000.

3rd Place: Carrier C (had fewer voyages than B or A, still within 24-hour average delay), receives \$200,000.

1.3.2 Service Performance Exceptions. Events such as port congestion in other ports, engine malfunction, severe weather will not apply as exceptions to the Service Performance Requirements. Only the following exceptions set forth in Sections 1.3.2.1- 1.3.2.4 to specific voyages which delay a vessel from berthing at NWSA terminal (“Exceptions”) will be considered. The condition of the Exception will be established by AIS data tracking. Any request for an Exception shall be made in writing by Participating Carrier via email to John Tullis at jtullis@nwseaportalliance.com and must be made within seven (7)

calendar days of the occurrence giving rise to the claimed Exception or is otherwise waived. Requests for Exceptions shall also include any substantiation or evidence the Participating Carrier seeks to have considered in support of its request, including AIS data tracking. NWSA will, in its sole and absolute discretion, determine whether the Exception is granted, and advise the Participating Carrier of its determination within seven (7) days of the written request.

1.3.2.1 Malfunction of a ship-to-shore crane at the ocean service's designated NWSA marine terminal, e.g. unable to raise crane boom that prevents berthing.

1.3.2.2 All berths occupied by other non-affiliated ocean carrier vessels. If a vessel operated by the same ocean carrier or operational alliance is occupying the berth, this exception does not apply.

1.3.2.3 Lack of labor availability or other labor issue that prevents timely arrival to berth.

1.3.2.4 Waterway or terminal berth obstruction that is within NWSA's or the marine terminal operator's control that prevents timely arrival to berth.

1.3.3 Service Performance Tracking. The NWSA will use eeSea (<https://www.eesea.com/>) to track service proforma schedules and actual arrival information and to evaluate Service Performance Requirements. eeSea will generate a tracking report that NWSA will make available to participating carriers quarterly throughout the Term. eeSea's "Berth Arrival" date and time will be the actual time of arrival (ATA) at NWSA terminals and will be used for measurement against the proforma ETA to find the average delay over the 52-week measurement period.

1.3.4 Service Rotation Change or Suspension. The Parties recognize that ocean services may change throughout the year, including port calls, NWSA proforma schedule, and vessel operators within a vessel sharing agreement.

1.3.4.1 The Award Program measures performance by service name and does allow for changes within the proforma, so long as the ocean carrier(s)

continue to market the service by the same name during the same measurement period.

1.3.4.2 For any service operated within a vessel sharing agreement (VSA) and a carrier leaves the VSA during the measurement period, but the service continues under the same name, Participating Carriers for that service will still be eligible to receive the award. Any financial award achieved will still be paid to carrier(s) based on number of voyages operated, regardless of whether the carrier stopped operating vessels in that service during the Term.

1.4 Allocation of Monetary Award. The Parties hereto acknowledge and agree that a total of \$1 million USD has been authorized for the Award Program during its Term, and multiple carriers are expected to participate.

1.4.1 Only the top three performing international container services and the associated vessel operating ocean carrier(s) meeting the Service Performance Requirements and will be eligible for recognition and the monetary award.

1.4.2 Monetary awards will be allocated as follows: \$500,000 for first place, \$300,000 for second place, and \$200,000 for third place. If multiple ocean carriers operate vessels in the same qualifying service, award money will be divided among vessel operators according to share of voyages they operate within the measurement period.

1.5 Recognition. Public recognition will be made of the top three Participating Carriers meeting Eligibility Requirements even if one or more such carriers do not achieve Service Performance Requirements for a monetary award.

1.6 Discrepancies in Reported Schedules. If a Participating Carrier disputes the information provided by eeSea, the Participating Carrier shall address its dispute directly with eeSea, with a copy to NWSA, and the Participating Carrier is responsible for providing NWSA with the eeSea's corrected record of proforma schedule, record of voyage performed/void, or record of berth arrival report within 45 days of receipt of the initial report. NWSA will utilize any corrected data from eeSea, which shall be determinative. Failure of a Participating Carrier to provide NWSA with a corrected report by eeSea within 45 days of receipt of the initial report waives any claim of discrepancy.

1.7 NWSA Has Sole Award Authority. Eligibility for this Award Program, measurement of Participating Carriers' Service Performance, tracking of Service Performance, granting of any Exceptions thereto, and determination the top three awardees hereunder are all in the NWSA's sole and absolute discretion.

- 2. Term & Termination.** The Term of this Agreement and the Award Program is April 27, 2024 through April 25, 2025. The NWSA reserves the right to cancel, terminate, or extend the Award Program at any time, in NWSA's sole and absolute discretion, and under such terms and conditions by NWSA, including whether to award or withhold any monetary award. The NWSA will provide notice of any cancellation, termination, or extension of the Award Program and this Agreement by email sent to the Participating Carrier Designated Representative identified herein at Paragraph 3. The Participating Carrier may terminate by providing notice of termination by email sent to the NWSA Designated Representative identified herein at Paragraph 3.
- 3. 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 email addresses below unless otherwise indicated by the Parties to this Agreement. The Parties identify the following Designated Representatives:

NWSA: Ms. Tong Zhu, Chief Commercial & Strategy Officer
Phone: (253) 428-8642
Email: tzhu@nwseaportalliance.com

Participating Carrier: Company Name:
Contact Name/Title:
Phone:
Email:

It is expected that the identified Designated Representatives will communicate frequently, to coordinate the execution of the Incentive Program.

- 4. Independent Parties.** Nothing contained herein shall be construed as creating an employer/employee relationship between the NWSA and any Participating Carrier or individuals participating in the Award Program and/or benefiting from the Award Program payments. 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.
- 5. Legal Obligations.** This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

6. **Timely Performance.** The requirements of this Agreement shall be carried out in a timely manner according to the terms herein.
7. **Audit of Records.** During the term of this Agreement, and for a period not less than six (6) years from the date of termination, the Parties shall retain all records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept by the Parties 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 Parties 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.
8. **Dispute Resolution Process.** The Parties' Designated Representatives under Paragraph 3 herein shall use their best efforts to resolve disputes between the Parties, provided however, any discrepancies in reported volumes shall be addressed as set forth in Section 1.6 herein. For all other disputes, if the Designated Representatives are unable to resolve a dispute, the matter shall be reviewed by the Chief Executive Officer of each Party or their designee to attempt to reach resolution. The Parties agree to exhaust each of these procedural steps before seeking to further resolve the dispute by arbitration. Any remaining controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be submitted for determination by binding arbitration. Subject to preliminary resolution requirements of this dispute resolution process, the Parties agree to arbitration of all disputes arising under this agreement in Pierce County, Washington before a single arbitrator using the rules for adjudication of the American Arbitration Association. The arbitrator shall be selected by mutual agreement of the parties, and any such arbitrator shall be an attorney admitted to practice law Washington State.
9. **Controlling Law & Venue.** This Agreement shall be construed and enforced according to the laws of the State of Washington, and venue for any dispute resolution arising out of this Agreement shall be in Pierce County Washington.
10. **Indemnification and Hold Harmless.** 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. 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. 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 which provision is the subject of mutual negotiation. Neither Party will be held responsible for the other Party's attorney's fees, costs or other legal expenses incurred to enforce the provisions of this Agreement. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein. The provisions of this Article 12 shall survive any termination or expiration of this Agreement.

11. 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.

12. Entire Agreement/Amendment. This Agreement, together with any documents incorporated by reference shall constitute the entire agreement between the Parties with respect to the Award 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.

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

WHEREFORE, the parties have executed this Agreement on the dates set forth below.

The Northwest Seaport Alliance

Participating Carrier:

John Wolfe
Chief Executive Officer

By:
Its:

Date _____

Date _____

EXHIBIT A

For purposes of this Agreement and the associated Award Program, Participating Carrier discloses its participation on the following service strings calling the NWSA Gateway: _____

Example

Item No.: 9B
Meeting Date: April 2, 2024

2024 Northwest Seaport Alliance Incentive Programs

Tong Zhu, Chief Commercial & Strategy Officer
Steve Balaski, Director, Business Development
John Tullis, Senior Mgr., Business Development
Jeff Bellerud, Chief Operations Officer



ACTION REQUESTED

Request Managing Members of the Northwest Seaport Alliance (NWSA) authorize three cargo incentive programs and approve funding for each of those three programs at the initial levels as set forth below.

The three programs and requested funding amounts are:

1. International Container Rail Cargo Incentive Program at an initial level of \$8,000,000.
2. Voyage Consistency & On-Time Arrival Award Program at an initial level of \$1,000,000.
3. Expanded Gate Hours Program at an initial level of \$1,000,000.



Background

- Based on current market conditions, feedback from our carrier customers and results from prior incentive programs, the proposed 2024 Incentive Programs are expected to help protect NWSA rail market share, encourage incremental increases in intermodal rail volumes and incentivize consistent international ocean container service levels in the gateway.
- Consistent, efficient and reliable service levels make the gateway more attractive by improving overall supply chain performance. This builds confidence in the gateway and makes a strong business case justifying increased cargo allocations to the NWSA by shippers and ocean carries.
- The most immediate opportunity for discretionary international container volume growth at the NWSA is via import intermodal rail.
- At the same time, the NWSA seeks longer-term industry behavior change by awarding and incentivizing reliable and consistent international ocean container service levels at our gateway.

2023 Rail Cargo Incentive Program Results

- Initial funding authorized: \$3 million
- Eligible rail lifts generated: 54,397
- Represents 15% of total international 2023 rail volumes at the NWSA.
- Total YoY incremental lifts: 3,318
- Participating ocean carriers: 12
- Six carriers had incremental volumes qualifying for incentive reimbursements.
- Total funds distributed: \$2,719,850



1) Proposed International Container Rail Cargo Incentive Program Summary

- A per-lift incentive payment of \$100/lift for incremental year-over-year increases in international container rail volume, measured on aggregate rail lifts of an ocean carrier at the NWSA.
- Eligible inland ramp locations include all intermodal inland ramp locations served and/or operated by the BNSF and Union Pacific Railroads with the exception of Portland, OR. To support the NWSA's inland rail hub strategic initiative, ramp locations in Minot, ND, Pocatello, ID, Millersburg OR and Wallula, WA have been called out specifically as eligible for the program.
- The maximum reimbursement for any single participating carrier could not exceed 15% of the authorized funds available (\$1,200,000).
- The suggested term of the program is May 1, 2024 through April 30, 2025. In Q1 of 2025, staff would update Managing Members on status of the program and may seek authorization to extend the program into future years.
- Staff proposes a 12-month measurement and payout period.



1) Proposed International Container Rail Cargo Incentive Program Summary

Proposed Eligibility Requirements

- The program would be open to all international ocean carriers in good financial standing with the NWSA (i.e., current on financial accounts as defined by the NWSA in the associated Participation Agreement).
- The ocean carrier is required to enter into the NWSA's Participation Agreement that outlines program eligibility, requirements and other program details.



2) Voyage Consistency & On-Time Arrival Award Program Summary

- A performance award program to encourage international container service voyage consistency and on-time performance.
- The top three performing carriers whose service levels meet the eligibility criteria would receive public recognition at the NWSA's annual North Star Awards ceremony, and may qualify for a cash award.
- The NWSA would make \$1 million available to incentivize participation for year one of the program. Staff recommends that the Program award \$500,000 for first place, \$300,000 for second place, and \$200,000 for third place to the top three carriers that meet or exceed eligibility requirements for a cash award.
- The proposed 52-week period would start port week 18 (NWSA proforma arrival basis) and end port week 17 (NWSA proforma arrival basis.) The timing of these weeks aligns with calendar months May 2024-April 2025.
- Staff would update Managing Members on status of the program and may seek authorization to extend the program into future years in Q1 2025.



2) Voyage Consistency & On-Time Arrival Award Program Summary

Proposed Eligibility Requirements

- An ocean carrier would be eligible for this program if it meets or exceeds the following performance standards: maximum 4 void sailings for weekly services or 2 void sailings for fortnightly services in the designated 52-week period and maximum 24-hour average delay over same 52-week period vs. proforma ETA.
- Weekly and fortnightly international services are eligible.
- Ocean carriers must meet the service requirements to be eligible for a cash award. NWSA would not be required to provide the award if carriers do not meet the required criteria.
- The program would be open to all international ocean carriers in good financial standing with the NWSA
- The ocean carrier is required to enter into the NWSA's Enrollment Agreement that outlines program eligibility, requirements and other program details.



3) Expanded Gate Hours Program Summary

- Proposed Expanded Gate Hours (EGH), will extend terminal hours throughout the gateway to provide a best-in-class trucker experience.
- The program will allow for the trucking community to plan with certainty and have confidence that all international marine terminals will operate a minimum of Monday – Friday 0800-1700.
- The program will allow for terminals to extend hours beyond the M-F dayshifts to best meet the needs of their customers and community.
- The community will benefit from truck traffic being spread across more hours of the day and days of the week, reducing the surges when traffic is at it's heaviest.
- Staff would update Managing Members on status of the program.



3) Expanded Gate Hours Program Summary

Proposed Eligibility Requirements

- The allocation of \$1 million will allow funding to roll out the program without significant financial impact to the trucking community. The goal would be to offer the EGH at no-cost or reduced-cost for the first two months. Funds would be used to offset costs for gates offered outside normal working plans.
 - A terminal that currently offers four days would receive an incentive to offset the partial cost of running the fifth day.
 - A terminal that currently offers five days but needs to extend beyond that to offer excellent service could receive an incentive from the NWSA to run a hoot or night shift.



Financial Implications

Source of Funds

- The two homeports are expected to receive funds between approximately \$6 million and \$40 million from Water Resource Development Act (WRDA) and Harbor Maintenance Tax (HMT) in 2024, and similar amounts in future years. These funds will impact the homeport Profit and Loss (P&L) statement and will not be reflected on the NWSA's P&L.

Financial Impact

- The \$10 million incentives and gate funds will utilize cash generated from NWSA operations and available credit from Tacoma Rail (for the rail incentive only) in lieu of rent payments for the use of South Intermodal Yard (SIM) estimated at \$2 million through May 2025. The WRDA/HMT funds received by the homeports will be used for eligible HMT projects that would have been funded by the NWSA generated operating cash that is now being used for this incentive program.
- The 2024 to 2028 operating budget includes \$3 million per year for the rail incentive expense and no funds for a gate or on-time performance programs. The rail incentive program is expected to retain current rail volumes and encourage additional cargo volumes. It is unknown if it will result in incremental revenue compared to the budget because of multiple factors. Assuming the total incentive payment for these three proposed programs of \$10 million, they could result in a \$7 million total unbudgeted expense for the NWSA in 2024 and/or 2025.

ACTION REQUESTED

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