

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 5C
Date of Meeting July 7, 2021

DATE: June 23, 2021

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Don Esterbrook, Deputy Chief Executive Officer

Project Manager: Ryan McFarland, Senior Manager of Government Affairs

SUBJECT: West Coast Port Interlocal Agreement for Canada-US federal funding study

A. ACTION REQUESTED

Request Managing Members of the Northwest Seaport Alliance (NWSA) authorize the Chief Executive Officer or their delegate to enter into an interlocal agreement with the ports of Los Angeles, Long Beach and Oakland on a study comparing Canadian federal investment in ports in British Columbia compared to US investment in West Coast ports.

B. SYNOPSIS

Work is underway on a study that will assess federal investment in West Coast container ports as compared to Canadian federal investment in ports in Canada. The study also will cover federal investments in other Washington and California ports, as well as a comparison of British Columbia provincial funding of its container ports vs. what NWSA, Oakland, Los Angeles and Long Beach receive from our respective states. The NWSA has engaged Davies Transportation Consulting Inc. (DTCI) to perform the work.

The ports of LA, Long Beach and Oakland have expressed interest in the study and have agreed to share the costs. An interlocal agreement (ILA) is required for the NWSA to accept payment from the other ports.

C. BACKGROUND

The NWSA has been the leader of this effort. NWSA proposed the idea for the study and also has taken point in managing the contracting process. The work is being managed under our pre-existing on-call contract with DTCL.

The proposal for the study is attached. We expect to see a draft of the full study by the end of June and a final draft by the end of July.

D. FINANCIAL IMPLICATIONS

Source of Funds

The NWSA's portion of the cost of this study will be funded by income earned from operations.

Financial Impact

The ILA will result in cost sharing of this study, reducing the amount the NWSA would have incurred if conducting the study alone. The total cost and contributions of each port are below.

TOTAL ESTIMATED COST	\$109,596
Port of Long Beach	\$31,532
Port of Los Angeles	\$31,532
Port of Oakland	\$15,000
Northwest Seaport Alliance	\$31,532

E. ATTACHMENTS TO THIS REQUEST

- Draft Interlocal agreement

F. PREVIOUS ACTIONS OR BRIEFINGS

- The study is referenced in a December 29, 2020 memo on the "NWSA/Canada Gateway comparison" agenda item for the January 5 FMC session.
- The study was referenced in the federal strategy briefing at the February 4 Managing Member retreat.
- Updates have been included in weekly update emails and the April federal government affairs update.

**INTERLOCAL AGREEMENT FOR JOINT FUNDING OF THE CANADIAN AND US
PORT INFRASTRUCTURE AND POLICY STUDY**

THIS INTERLOCAL AGREEMENT (" Agreement") is entered into by and between The Northwest Seaport Alliance, a Washington Port Public Development Authority ("NWSA"), The Port of Long Beach (POLB), The Port of Los Angeles (POLA) and The Port of Oakland (POOK) (referred to herein individually as "Party" and collectively as the "Parties").

WHEREAS, the Parties have a mutual interest in a study commissioned by the NWSA ("Study") and resulting report regarding Canadian port funding programs and policies currently being compiled by Davies Transportation Consulting Inc. ("Consultant");

WHEREAS, in order to improve efficiency, reduce cost, and eliminate duplication of efforts, the Parties desire to establish a co-funding agreement; and

WHEREAS, the Parties are authorized, pursuant to Chapter 39.34 Revised Code of Washington and California Government Code 6500, to enter into this Interlocal agreement.

NOW, THEREFORE, the Parties agree as follows:

- A. The NWSA will act as the lead agency in directing and interacting with Consultant.
- B. All Parties will be provided ongoing updates regarding the scope, timeline, and deliverables of the work being performed by Consultant.
- C. NWSA will make payment on invoices submitted by Consultant for work related to the report. Verification of these invoices and payments will be supplied to all Parties.
- D. Within thirty (30) days of receipt of a correct invoice from NWSA and after completion of the Consultant's Study and issuance of its report, POLB, POLA, and POOK will reimburse NWSA for an amount of the total project and report costs as shown below.

TOTAL ESTIMATED COST		\$109,596
Port of Long Beach	\$31,532	
Port of Los Angeles	\$31,532	
Port of Oakland	\$15,000	
Remaining Balance		\$31,532
Northwest Seaport Alliance	\$31,532	

E. Communications. Each Party will identify their contact person who will coordinate the with the other Parties' representatives. It is expected that the identified contacts will communicate regularly to confirm the status of the Consultant's work progress.

F. 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.

G. Binding Effect. This ILA shall be binding upon and inure to the benefit of the Parties, and their legal representatives, successors, and permitted assigns.

H. 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.

I. 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.

J. 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.

K. Governing Law.e (ii) this ILA; and eiii) any policies of the NWSA.

L. 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. 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.

M. 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.

N. Effective Date. 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.

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

DRAFT