

**INTER-LOCAL AGREEMENT FOR MANAGEMENT SERVICES BY AND BETWEEN
THE PORT OF TACOMA AND THE NORTHWEST SEAPORT ALLIANCE**

**INTER-LOCAL AGREEMENT FOR MANAGEMENT SUPPORT BY AND BETWEEN
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THIS INTER-LOCAL AGREEMENT (“Agreement”) is entered into by and between the Port of Tacoma, a Washington municipal corporation, (“POT”) and The Northwest Seaport Alliance, a Washington Port Public Development Authority (“NWSA”) (referred to herein individually as “Party” and collectively as the “Parties”).

WHEREAS, the Port of Tacoma and the Port of Seattle previously entered into an agreement to establish The Northwest Seaport Alliance pursuant to the following federal and state authorities: (1) the Federal Maritime Commission Discussion Agreement NO. 201228, (2) an interlocal agreement with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240) which expressly permits joint operation and investment outside of a port district’s boundaries, (3) RCW 39.34.030, the state Interlocal Cooperation Act, and (4) pursuant to Title 53.57RCW, which authorizes the Port districts to create a port development authority to use, operate and manage certain marine facilities jointly, to be known as the NWSA;

WHEREAS, a significant portion of the Port of Tacoma’s business portfolio, consisting of its marine cargo operations has been licensed to the Northwest Seaport Alliance resulting in the Port of Tacoma staff supporting both entities, which a higher percentage of time spent on NWSA support;

WHEREAS, in order to efficiently and effectively provide direct NWSA management oversight to departments residing in the Port of Tacoma that spend a significant amount of time and resources in support of the NWSA, the Port of Tacoma and the NWSA desire to establish this Management Support Agreement (“Agreement”) pursuant to the terms and conditions contained herein; and

NOW, THEREFORE, the Parties agree as follows:

I. General Provisions for Support Services

- A. Purpose & Services Provided. The POT and NWSA agree that the primary purpose of this Agreement is to enter a contractual arrangement for the NWSA to carry out the following functional responsibilities on behalf of the POT:
1. NWSA leadership personnel will directly manage day to day operations of Port of Tacoma staff who work in departments that support the NWSA.
 2. Development and implementation of an effective performance management system for all non-represented employees to include coordination with Port of

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Tacoma leadership/staff regarding employee performance to the degree service is also in support of the Port of Tacoma.

3. Management of represented employees associated with Local 22 including negotiations and recommendations to the Port of Tacoma Commission regarding Collective Bargaining Agreements, and provided that the authority for approval of any Collective Bargaining Agreements for Port of Tacoma labor shall rest with the Port of Tacoma Commission.

B. Employees of Record. Notwithstanding any provision herein:

1. The Port of Tacoma shall remain the Employer of Record for all POT employees.
2. The NWSA shall remain the Employer of record for all NWSA employees.
3. Nothing in this Agreement shall impede the ability of POT or NWSA to designate or enter into an agreement with a third party in which the third party agrees to take over some or all of the employer's payroll and or benefits administration, and or Federal employment tax withholding, reporting and payment responsibilities and obligations.

C. Duration of this Agreement. The Management Services provided under this Agreement will be provided from its effective date and until this Agreement terminated by either Party by written notice provided to the other Party not less than 90 days prior to that year's annual budget deadline.

D. Annual Review During Parties' Budget Cycle. The specific costs of the Port of Tacoma departments to be managed as part of this Agreement shall be implemented through Support Services Directives ("Service Directives"), which shall be reviewed on an annual basis as part of the Parties' normal budget cycle. Each Service Directive when approved by the NWSA and the Port shall be in furtherance of this Agreement and are incorporated herein by reference, upon adoption. The effectiveness of this Management Support Agreement and costs, if any, associated with the Management Services shall also be reviewed, developed and approved as part of the Parties' annual budget cycle.

D. Communications. Each Service Directive identifies the contact people for the Parties who will coordinate the work for each service area. It is expected that the identified contact people will communicate frequently, to coordinate the work, to confirm that services are being provided in a manner that meets service level expectations, and to evaluate financial performance of actual vs. projected spending.

E. Employment, Policies and Procedures. During the term of this Agreement, individuals providing services will remain full-time employees of their respective employer, which shall continue to be responsible for salary, benefits and retirement contributions. (The Employer of Record will not change). Nothing contained herein shall be construed as creating an employer/employee relationship between the individuals providing services and the entity

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receiving the service. Staff who are subject to this Agreement will follow the policies and procedures of the NWSA and the POT in conducting the work, as will be more specifically set for the Service Directives.

F. Billing Rate and Procedures. Any future proposed charges for management services will be determined during the budget cycle for the coming fiscal year, and reflected in the Service Directives.

G. 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.

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

I. 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.

J. Recording. Copies of this Agreement shall be posted to the web sites of the Parties.

K. 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 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.

II. Dispute Resolution

A. Process. The Parties' designated representatives under Paragraph III 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 Contact Person shall review the matter and use their best efforts to resolve it. If the Contact Person 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

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relating to this Inter-Local 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 or King Counties. In the event either Party reasonably believes mediation will not result in a solution to the disagreement, mediation may be waived.

B. Controlling law & Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington. Venue for any actions relating to interpretation of this Agreement will be in Pierce County Superior Court.

III. Notices

A. Contact Persons. 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 addresses as follows unless otherwise indicated by the Parties to this Agreement:

NWSA:	John Wolfe, Chief Executive Officer PO Box 1837 Tacoma, WA 98401 jwolfe@nwseaportalliance.com
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Port of Tacoma:	Don Meyer, Commission President PO Box 1837 Tacoma, WA 98401 dmeyer@portoftacoma.com
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B. Receipt. Notice shall be deemed “received” on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested, otherwise receipt if presumed three days after deposit of mail into US Mail, or by receipt of email.

IV. 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.

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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. Each Party agrees that it will include in any contract which is related to the work of this Agreement a provision requiring the contractor to defend, indemnify and hold harmless all the Parties to this Agreement against any claims arising out of or related to the work of the contractor.

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

V. 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.

VI. 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.

VII. Entire Agreement/Amendment

This Agreement, together with any documents, including Service Directives, incorporated by reference or adopted in furtherance of this Agreement shall constitute the entire agreement

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between the Parties with respect to the Services to be provided 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.

WHEREFORE, the parties have executed this Agreement this [numerical] day of [month], 2017.

Northwest Seaport Alliance

Port of Tacoma

John Wolfe
Chief Executive Officer

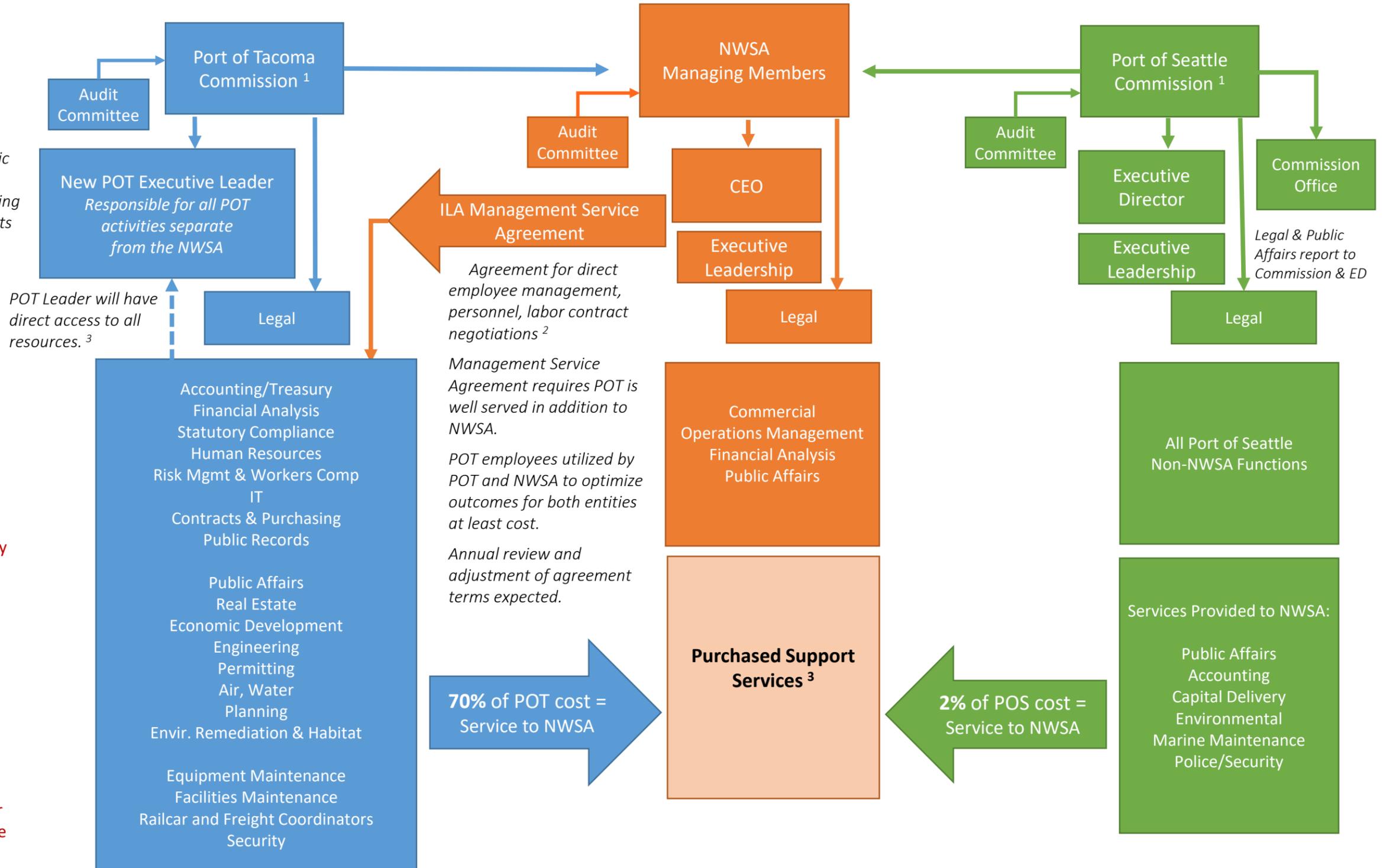
Commission President Don Meyer

Date _____

Date _____

Proposed NWSA Management Structure – 7/23/18

POT Leader will develop strategic approach to optimize and grow POT business. Will include staffing approach to ensure best interests of POT are met efficiently and effectively.

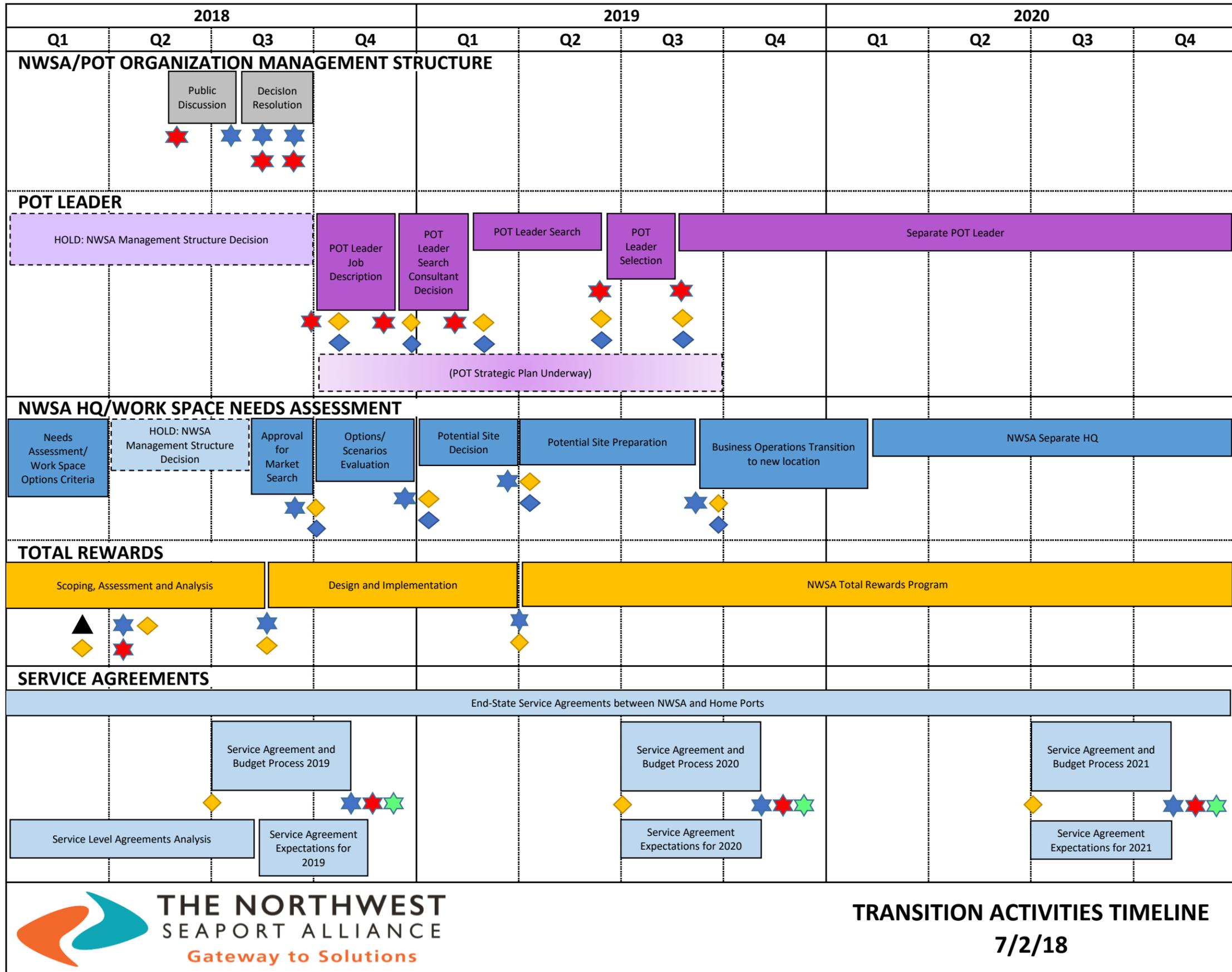


RATIONALE

- Provides independent Port of Tacoma Executive Leadership, responsible and accountable for growing POT business outside of the NWSA.
- Removes responsibility and distractions from NWSA leadership for POT matters beyond the NWSA scope.
- Minimizes any additional overhead expense for all three entities: NWSA, POT and POS. Any other alternative adds staff and associated expense. This approach leverages advantages and maximizes homeport revenues.
- Fully supports NWSA objectives, and ensures NWSA leadership is able to structure and manage critical service provision.
- Empowers the new Port of Tacoma Executive Leader to propose the strategy, approach and staffing to ensure the best interests of the POT are met.
- Enables new Port of Tacoma Executive Leader to focus fully on growing POT business/revenue outside of the NWSA.

Notes:

1. Per NWSA By-Laws, Homeport Commissions set policy for NWSA projects and contracts within their home harbors, unless superseded by specific NWSA policy
2. Collective Bargaining Agreements for labor in each Homeport are formally approved by the Homeport Commission.
3. Strengthened requirements for participation in employee performance reviews will be implemented in all three organizations – entity being served will provide input to performance reviews and goal setting.



- ▲ Executive Decision Point
- ★ NWSA Managing Member Engagement
- ★ POT Commission Engagement
- ★ POS Commission Engagement
- ◆ Employee Engagement
- ◆ Community Engagement



TRANSITION ACTIVITIES TIMELINE
 7/2/18

MARINE CARGO SUPPLY CHAIN MANAGEMENT



THE NORTHWEST
SEAPORT ALLIANCE



Resolution 2018-05-PT



A Resolution of the Port Commission of the Port of Tacoma, Washington adopting a
Port of Tacoma Management Structure

WHEREAS, the Port of Tacoma (“POT”) is a port district, organized under provisions of the laws of the State of Washington, and codified under Title 53 RCW; and

WHEREAS, the POT and the Port of Seattle (“POS”) previously entered into an agreement to establish The Northwest Seaport Alliance (“NWSA”) pursuant to the following federal and state authorities: (1) the Federal Maritime Commission (“FMC”) Discussion Agreement No. 201228, (2) an interlocal agreement with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240) which expressly permits joint operation and investment outside of a port district’s boundaries, (3) RCW 39.34.030, the state Interlocal Cooperation Act, and (4) pursuant to Title 53.57 RCW, which authorizes the Port districts to create a port development authority to use, operate and manage certain marine facilities jointly, to be known as the NWSA;

WHEREAS, the operations, management and business of the NWSA is managed by the port districts as Managing Members of the NWSA (“Managing Members”) pursuant to an adopted Charter approved by the Ports and the FMC and each port district member shall act in such capacity through its own elected commissioners;

WHEREAS, the NWSA Charter Section 6.4 allowed for a temporary period of duality, whereby the NWSA CEO may also serve as the Port of Tacoma CEO for a period of five years commencing August 4, 2015 (“Transition Period”);

WHEREAS, POS, POT and NWSA mutually seek to address post-duality POT and NWSA management structures which will also include the adoption of an ILA between the parties which address the procedures to be used in standing up those management structures;

NOW, THEREFORE, be it resolved that:

The POT hereby memorializes certain understandings and commitments to address the POT/POS/NWSA post-transition period POT Management Structure, which shall include:

- The POT engaging independent Port of Tacoma Executive Leadership, responsible and accountable for growing POT business outside of the NWSA;
- Minimizing any additional overhead expense for all three entities: NWSA, POT and POS, to leverage advantages and maximize homeport revenues;
- Empowering the new Port of Tacoma Executive Leader to propose the strategy, approach and staffing for non-alliance needs, and simultaneously collaborates to ensure the best interests of the POT are met;
- Empowering the new Port of Tacoma Executive Leader to propose the strategy,

approach and staffing for POT non-alliance needs, and simultaneously collaborates to ensure the best interests of the POT, POS and NWSA are met, as is expected of the other two organization's leaders;

- Engaging the NWSA Executive Leadership in a Management Services Inter-local agreement ("ILA") to provide day to day management for all Port of Tacoma departments that provide service to the NWSA, including hiring, performance management, and collective bargaining negotiations;
- Clarifying the new Port of Tacoma Executive Leader will be accountable for leasing activities associated with POT properties not licensed to the NWSA;
- Clarifying the NWSA Executive leadership will be the lead for promoting growth of the Puget Sound Gateway's marine cargo, advancing initiatives to improve the efficiency of the marine cargo supply chain and managing customer relations with NWSA marine cargo owners and key logistics service providers. As the larger goods movement system is both diverse and complex, all three organizations will closely coordinate on those cargo owners and service providers whose interests overlap the NWSA and homeport operations.
- Developing a partnership expectation for the NWSA and homeport leaders to leverage licensed and non-licensed properties where necessary in support of the Marine Cargo supply chain, including an annual review of properties in both harbors that are strategic to the mission of the NWSA.

Adopted by the Commission of the Port of Tacoma at a meeting thereof, held this **20th day of September, 2018**, and duly authenticated in open session by the signatures of the Commissioners present and voting in favor thereof.

Port of Tacoma Commissioners:

Donald G. Meyer

Donald C. Johnson

Clare Petrich

John McCarthy

Dick Marzano