

**INTERLOCAL AGREEMENT
BETWEEN THE PORTS OF SEATTLE AND TACOMA
CREATING A JOINT SEAPORT ALLIANCE
[Exhibit 1 to FMC DISCUSSION AGREEMENT ____]**

This Interlocal Agreement (the “**ILA**”) is made this ____ day of _____, 2015, by and between the Port of Seattle and the Port of Tacoma (each, a “**Port**” and together, the “**Ports**”), each a port district organized under the laws of the State of Washington (the “**State**”), under the authority of the Washington State Interlocal Cooperation Act, RCW 39.34 and the Port Joint Powers authority (RCW 53.08.240), and the authority of the Federal Maritime Commission (“**FMC**”) in accordance with the provisions of the Federal Shipping Act of 1984 for the purpose of creating a Port of Seattle and Port of Tacoma joint marine cargo seaport alliance (“**Alliance**”).

RECITALS

WHEREAS, the Port of Seattle (the “**POS**”) and the Port of Tacoma (the “**POT**”) are municipal corporations of the State, organized under provisions of the laws of the State, now codified at Title 53 RCW. POS owns and operates the marine facilities at the Seattle harbor, Seattle-Tacoma International Airport, and other properties. POT owns and operates the marine facilities at the Tacoma harbor and other properties; and

WHEREAS, the Ports are the two largest ports in the State and together represent the third largest container trade gateway in the United States, serve as the primary gateway for our state’s export-based economy and support thousands of maritime-related jobs; and

WHEREAS, discretionary container cargo, principally bound for or from the Midwest, represents a significant segment of each Port’s cargo volume, supports the financial success of each Port’s seaport operations, and provides critical empty container capacity for Washington exporters; and

WHEREAS, the Ports understand significant changes in the shipping industry present challenges and opportunities for the future of the United States’ Pacific Northwest trade, including:

1. Increased competition from expanding international gateways across North America, including other West Coast ports,
2. Shipping line consolidations and alliances leading to fewer port calls,

3. The introduction of larger container ships and increased use of all water routes, leading to fewer port calls, and
4. Attracting and accommodating larger container ships will require substantial capital investment by the Ports; and

WHEREAS, these market developments present opportunities for expanded collaboration between the Ports to improve our region's capabilities to grow cargo volume and protect market share by:

1. Coordinating investment strategies to achieve terminal infrastructure needed to handle ultra-large container ships;
2. Improving terminal capacity utilization;
3. Adopting a sustainable financial business model that improves financial outcomes for the two public port authorities;
4. Jointly pursuing and executing a shared road and rail infrastructure strategy;
5. Enhancing the Ports' mission of responsible economic development through coordinated environmental stewardship;
6. Sharing advocacy on state and federal issues affecting marine cargo and related logistics issues; and
7. Improving infrastructure utilization and long-term financial stability by implementing a marine cargo gateway approach to mitigate the risks of changing markets and market uncertainty; and

WHEREAS, the continued competitiveness of the Puget Sound gateway and the resulting job growth would be enhanced by leveraging the strengths of each Port to reach shared goals for the region and the State in ways that either Port acting alone could not achieve; and

WHEREAS, State law allows the Ports to exercise any of their powers jointly by mutual agreement; and the Ports desire to come together to form, establish, and support a joint seaport alliance to carry out the unified management and operation of the marine cargo operations and functions of each Port; and

WHEREAS, this ILA reflects the actions of and approvals by the two Ports to create and implement a joint seaport alliance; and

WHEREAS, the Ports will remain separate port districts governed by locally elected port commissioners; these joint actions discussed herein will not consolidate or merge the Ports; and

WHEREAS, the Ports are committed to shared core objectives of financially viable business models that support customer success, value the Port-labor partnership, protect and increase regional jobs, benefit the citizens of Pierce and King counties, promote the Pacific Northwest corridor's role in US trade strategies and the greater North American economy, and ensure the ability of the Ports to reinvest in terminal assets and infrastructure; and

WHEREAS, pursuant to Federal law 46 USC Title 46, Congress has granted authority for ports and marine terminal operators in certain circumstances and if approved by the Federal Maritime Commission, to "discuss, fix or regulate rate or other conditions of service; or engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States." 46 USC § 40301(b)(1-2); and

WHEREAS, the Ports are committed to working together based on trust and transparency, mutual respect for the goals and public input of the people of both Pierce and King counties, and a recognition the region is stronger when its leaders collaborate and leverage limited public resources; and

WHEREAS, the Ports are committed to serving the citizens of Pierce and King counties and the manufacturing and agricultural exporters throughout the State by supporting thousands of existing jobs, growing new jobs, securing new investments, and generating significant tax revenues to state and local governments; and

WHEREAS, the Ports believe the ability to achieve these guiding objectives is through the creation of a joint seaport alliance that prioritizes regional interests in decision-making, with a unified vision for regional success, to better fulfill their shared economic development mission as defined in State law; and

WHEREAS, the Alliance will promote regional economic development, which is a legislatively authorized port and municipal purpose; and

WHEREAS, the Ports find mutual benefit in the creation and implementation of the

Alliance and in defining the operational scope, powers and roles of the Alliance and the two creating Ports; and

WHEREAS, pursuant to the laws of Washington and expressly subject to the approval of and oversight by the FMC, the Ports elect to enter into this ILA for the purpose of approving of the creation, operation, funding and delegated powers of the Alliance.

NOW THEREFORE, in consideration of the premises contained in this ILA, the Ports agree as follows:

AGREEMENT

I. GENERAL

- A. The Ports are port districts, organized under provisions of the laws of the State of Washington, and codified under Title 53 RCW.
- B. The Ports pursuant to Federal law 46 USC Section 40301(b)(1-2), have filed a Discussion Agreement with the FMC for permission to jointly operate certain marine cargo facilities through an Alliance.
- C. The Ports by this ILA form the alliance pursuant to the following federal and state authorities: (1) the FMC Discussion Agreement (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's district boundaries, (3) RCW 39.34.030, the state Interlocal Cooperation Act, and (4) Title 53.XX RCW, which authorizes the Ports to create a port development authority to use, operate and manage certain marine facilities jointly, to be known as The Northwest Seaport Alliance ("**Alliance PDA**").

II. ALLIANCE PDA

- A. **Effective Date.** Commencing August 1, 2015 ("**PDA Effective Date**"), and subject to (1) FMC approval, and (2) each Port's approval of the Charter, the Alliance PDA will begin operations under the terms of the Alliance PDA's Charter attached hereto as **Exhibit A** ("**Charter**") for a term commencing on the PDA Effective Date and continuing indefinitely until dissolution thereof in accordance with the provisions of the Charter or as otherwise provided by law.
- B. **Charter to be Adopted.** Immediately upon effectiveness of this ILA, each Port shall adopt by resolution the Charter.

- C. **Managing Members.** The Port of Tacoma and the Port of Seattle, as members of the Alliance PDA (each, a “**Managing Member**” and collectively, “**Managing Members**”) are the only governing members of the Alliance PDA. Each Managing Member shall act in such capacity through its own elected commission.
- D. **Licensed Properties.** Effective as of August 1, 2015, the Ports as Managing Members shall license to the Alliance the operation, management, and use of certain properties of each Port as set forth in the Charter at Schedule 2 (“Licensed Properties”), and as depicted on the attached **Exhibit B**, maps of each Port’s Licensed Properties.

III. **ALLIANCE PDA STARTUP PERIOD; ASSIGNED PORT EMPLOYEES**

- A. **Startup Period.** The Alliance PDA “**Startup Period**” is defined as the term from August 1, 2015 through December 31 2015.
- B. **Assigned Port Employees.** During the Startup Period, staff of the Ports identified as appropriate to be working full time (or near full time) on the Alliance PDA will be assigned by the port where they are employed or contracted as of July 31, 2015 to perform duties full time (or near full time) on behalf of the Alliance PDA (“**Assigned Port Employees**”). Service agreements between the Ports will be put in place for other staff support. Each Port will collect their respective costs associated with Alliance PDA activities in preparation for the Alliance PDA budget and accounting activities which will commence on January 1, 2016.
- a. Initially, approximately 30 to 40 people who are currently Port of Seattle and Port of Tacoma employees will be Assigned Port Employees, including all “customer facing” employees in the commercial and operations segments of the Alliance PDA business, plus management positions for all primary Alliance PDA functions.
 - b. Beginning January 1, 2016, the Assigned Port Employees will begin to transition to Alliance PDA employment or formal assignment. Most transition processes are anticipated to be complete by the end of 2016, although some will be provided after a longer timeframe if needed to support a sound transition. It is expected that by the end of 2016, all Assigned Port Employees will be Alliance PDA employees. The Alliance PDA will implement a compensation package (salary and benefits) that

is designed to attract, retain, reward and motivate the productivity and commitment of a highly qualified and diverse workforce.

- C. **Support Services.** Focused support will be provided to the Alliance PDA from the staff of each Port through specific service agreements. These include non-represented employees who will provide services to the Alliance PDA for engineering, construction management, permitting and environmental services, public affairs, accounting, financial analysis, human resources, information technology, public records management, legal, and similar. These also include represented employees (under collective bargaining agreements), who will provide services to the Alliance PDA for equipment and facilities maintenance, Port security/police, railroad operations, construction inspection, and similar. During the initial years of Alliance PDA operations, Alliance PDA employee functions and those functions provided through service agreements will be evaluated and adjusted as appropriate to best support the Alliance PDA business model. Following Alliance PDA organizational development, Alliance PDA staff could also provide support to the Ports if needed, using service agreements.

IV. **ALLIANCE PDA STRATEGIC BUSINESS PLAN.**

- A. **Creation.** The commercial teams from the two Ports and the Managing Members shall together develop a Strategic Business Plan for the Alliance PDA, with a 10-year planning horizon. This Strategic Business Plan shall set forth a strategic vision for the Alliance for the period 2015-2025.
- B. **Defining Principles.** The Strategic Business Plan shall define the principles for increased cargo volumes, job creation and financial performance. It shall define opportunities for development of strategic terminals with the ability to handle ultra-large container ships and increased throughput. It shall propose approaches for phased build-out of strategic terminals based on market drivers, opportunities to optimize existing facilities, and opportunities to use excess container terminal acreage for alternative cargos and to boost the Alliance PDA diversified cargo and maritime portfolio. The Strategic Business Plan additionally shall address the Alliance PDA's commitment to deliver best value to customers and stakeholders, through focus on operational excellence - ease of doing business, reliability, operational efficiency and cost of doing business.
- C. **Framework for Decisions.** The Strategic Business Plan shall be used as a framework for individual future build-out decisions, which will be based on

market demand, capital capacity, speed to market, and improved Alliance PDA financial results.

- D. **Periodic Reporting.** Periodic reporting and evaluation of key Alliance PDA metrics is essential to success. Beginning in the fourth quarter of 2014, the two Ports commenced reporting joint, combined cargo statistics. The Strategic Business Plan will be periodically evaluated relative to market and performance data, and updated accordingly.

V. ALLIANCE PDA FINANCIAL DECISION CRITERIA.

- A. Based on recommendations from the CEO and financial teams from the two Ports, the Alliance PDA Managing Members shall together develop Alliance PDA Financial Decision Criteria, to include a standard approach to developing a net present value calculation for projects.
- B. Based on recommendations from the CEO and financial teams from the two Ports, the Alliance PDA Managing Members shall establish standard financial modeling assumptions for use in evaluating Alliance projects.

VI. SHARED GOVERNANCE FLEXIBILITY AND TRANSPARENCY.

- A. **Attendance at Executive Sessions.** To facilitate overall Alliance PDA coordination, all POT commission executive sessions and all POS commission executive sessions addressing Alliance PDA matters, will be open for attendance by any of the ten commissioners of either Port.
- B. **Limitation.** No Alliance business will be discussed in executive session at either Port commission meeting unless jointly agreed to in advance by both Port commission presidents.
- C. **Communication Protocols.** The Alliance PDA and the Ports' management teams will establish communication and work flow protocols to ensure information is shared with each Port and its commissioners in a consistent and timely manner. This activity is crucial to build trust and effectiveness that will support success.

VII. MISCELLANEOUS

- A. **Third Party Beneficiaries.** This ILA does not create any rights, claims, or benefits inuring to any person that is not a party hereto, and it does not create

or establish any third party beneficiary hereto.

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

C. **Severability.** If any provision of this ILA shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Ports 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 Ports 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 Ports.

D. **Notices.** Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications authorized or required to be given pursuant to this ILA shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the addresses on Schedule 3 of the Charter (as such may be updated by notice from time to time).

E. **Usage Generally; Interpretation.**

1. The captions and headings of this ILA are for convenience of reference only and shall not affect the interpretation of this ILA.
2. Any statute or law defined or referred to herein means such statute or law as from time to time amended, modified, or supplemented, including by succession of comparable successor statutes.

F. **Entire Agreement.** This ILA, together with the Charter, embodies the entire agreement of the parties and supersedes all prior agreements and understandings between the Ports with respect to the subject matter hereof.

G. **Counterparts.** This ILA may be executed in any number of counterparts, including by electronic transmission or facsimile, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

- H. **Amendments.** The terms and provisions of this ILA may only be modified or amended at any time and from time to time by mutual agreement of the Ports.
- I. **Further Assurances.** Each Port shall execute and deliver any additional documents and instruments and perform any additional acts that the Ports determine to be necessary or appropriate to effectuate and perform the provisions of this ILA.
- J. **Governing Law.** This ILA shall be governed and construed in accordance with the laws of the State of Washington, without regard to the conflicts of law principles thereof. Generally, in the event of a conflict, the following sources of authority shall prevail in descending order of supremacy: (i) Federal law and regulation, including those of the Federal Maritime Commission; (ii) state law and regulation, including the Joint Powers, the Port PDA Act, and the ILA; (iii) the Charter; (iv) any policies of the Alliance.
- K. **Waiver of Jury Trial.** Each of the parties to this ILA acknowledges and agrees that any controversy arising under this ILA is likely to involve complicated and difficult issues. As a result each party to this ILA irrevocably and unconditionally waives any right that such party may have to resort to the courts for a judicial remedy and to a trial by jury in respect to litigation arising out of this ILA or any of the transactions related hereto. Each party to this ILA understands and has considered the implications of this waiver and makes this waiver voluntarily.
- L. **Costs, Fees and Expenses.** The Ports shall share on a prorata basis, consistent with the Membership Interest as defined in the Charter, 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.
- M. **Waivers.** No waiver of any breach of any of the terms of this ILA shall be effective unless such waiver is made expressly in writing and executed and delivered by the party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a further or continuing waiver of such breach or a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power, or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power, or remedy by such party preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

N. **Ratification.** Acts taken in conformity with this ILA prior to its execution are hereby ratified and affirmed.

O. **Document Execution and Filing.** The Ports agree that there shall be _____ (___) signed originals of this ILA procured and distributed for signature by the necessary officials of each Port. Upon execution by both Ports, each such signed original shall constitute an ILA binding upon both Ports. The executed originals of this ILA shall either recorded with the respective County Auditors or shall be posted on both Ports' web site as authorized by RCW.39.34.040.

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SIGNED BY:
PORT OF SEATTLE COMMISSIONERS

PORT OF TACOMA COMMISSIONERS

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