

LEASE AMENDMENT NO. 3

This LEASE AMENDMENT NO. 3 ("Amendment"), effective September 1, 2020, is made and entered into by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, as Lessor, the PORT OF TACOMA, as Lessee, and THE NORTHWEST SEAPORT ALLIANCE as licensee/agent of the PORT OF TACOMA (collectively "Parties").

Recitals

WHEREAS, the City of Tacoma, Department of Public Utilities, as Lessor, and the Port of Tacoma, as Lessee, entered into a Lease dated August 30, 1984, regarding premises located at 1123 Milwaukee Way, Tacoma WA 98421 (the "Lease"), which was amended by a Lease Amendment No. 1 dated October 24, 1985; and

WHEREAS, pursuant to Section 2 "Term" and Section 3 "Rental and Consideration" the Lessee may elect to extend the Lease upon 6 month notice at a rental amount adjusted to reflect the rental value of the premises; and

WHEREAS, the Parties executed Lease Amendment No. 2 dated August 17, 2015, to memorialize the first extension of the Lease at an agreed upon rental value, and to change the next rent adjustment date to align with the next lease extension date; i.e., September 1, 2020; and

WHEREAS the Parties executed a 20-year Operating Agreement, dated July 1, 2013, to maximize the performance of the Port and rail system and enhance the level of coordination between the Parties (the "Operating Agreement"); and

WHEREAS, The Northwest Seaport Alliance (NWSA) is a marine cargo port development authority operating alliance formed in 2015 under RCW 53.57 and Federal Maritime Commission authorization and is governed by the Commissions of the Ports of Tacoma and Seattle pursuant to which the NWSA has the responsibility and authority to manage and operate certain properties owned and leased by each of the Ports, pursuant to the License Agreements entered into between each of the Ports and the NWSA, which includes the property subject to this Lease; and

WHEREAS, the Parties desire to extend the Lease and memorialize their agreement regarding rent; and

WHEREAS, the Lessor desires to provide the Lessee with an option to lower the rent under the Lease by extending the term of the Operating Agreement, to provide an opportunity for the Parties to collaborate on economic development and job creation with a focus on the Tacoma Tideflats area;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. **Term.** Pursuant to Section 2 of the Lease, the Parties acknowledge and agree that Lessee exercised its second option to extend the Lease, and the term of the Lease is extended through August 31, 2025.

2. **Rent.** The Parties agree that the rent for each year will be dependent upon the Lessee's annual exercise of its option to extend the Operating Agreement by one year per Section 6.1.1. of the Operating Agreement. (Section 6.1.1. is added to the Operating Agreement per Amendment No 1 to said Operating Agreement). By this Amendment, the Lessee shall be deemed to have exercised this option for each year of the extended Lease term from September 1, 2020, through August 31, 2025, (5 years) and the Parties agree that Rent Option A below shall be used in calculating the rent for the period of the Lease from September 1, 2020 through August 31, 2025. However, if Lessee gives written notice to Lessor on or before July 15th of any year that for the following Lease year (September 1 through August 31) Lessee elects not to extend the Operating Agreement for the upcoming one year period then Rent Option B below shall be used for calculating the rent for such year. Annual rent shall be payable annually in advance, and monthly rent shall be payable monthly in advance, at Lessor's office in Tacoma, Washington. For any year Lessee selects the option to extend the Operating Agreement and qualifies for Rent Option A, the dollar amount Lessee would have paid under Rent Option B for that year shall be made available by Lessee to be used by The Northwest Seaport Alliance to (i) incentivize rail cargo volume growth through the NWSA South Harbor (Port of Tacoma), and/or (ii) fund projects involving design, permitting and/or construction and/or maintenance of rail and/or rail-related infrastructure improvements in the NWSA South Harbor (Port of Tacoma). For each year the Lessee selects Rent Option A, The Northwest Seaport Alliance and/or the Port of Tacoma shall provide an annual report detailing the use of the funds that would have been paid under Rent Option B, including the projects and improvements receiving said funds and the distribution of any volume incentives, and providing rail lift volumes.

A. Rent Option A. Pursuant to Section 3 of the Lease, the Parties agree to the following rent for the one year periods from September 1, 2020 through August 31, 2025 for which Lessee has agreed to extend the Operating Agreement as specified above:

For the first year (September 1, 2020 – August 31, 2021), \$1,200/year plus \$1,200 multiplied by the percentage change for the period from June 2019 to June 2020 in the Consumer Price Index for the Seattle-Tacoma-Bellevue Area, All Items, Not Seasonally Adjusted, 1982-84 = 100, All Urban Consumers (CPI-U), as issued by the U.S. Department of Labor, Bureau of Labor statistics, or the successor index or closest comparable index if the above index is no longer published ("Applicable Price Index"), calculated in accordance with the example below. As an example only, if the percentage change in the CPI-U for June 2019 to June 2020 is 2.29%, then the annual rent for September 1, 2020 through August 31, 2021 would be \$1,227.48 ($\$1,200.00 \times 2.29\% = \$27.48 + \$1,200.00 = \$1,227.48$).

For subsequent years, \$1,200/year plus \$1,200 multiplied by the percentage change in the Applicable Price Index from June 2019 to the June preceding the applicable year. As an example only, for the year September 1, 2022, through August 31, 2023, the percentage change would be for the period from June 2019 to June 2022. The calculation shall be based on data for June, since data for August is not available until after the beginning of each Lease year, and the next earlier month for which data is currently issued is June. The manner of calculating the percentage change is illustrated by the following example:

Current CPI Index (June 2019)	278.631
Less previous CPI Index (June 2018)	- 272.395
Equals index point change	= 6.236
Divided by previous CPI Index	÷ 272.395
Equals	= 0.0228932
Result multiplied by 100	x 100
Percentage Change	= 2.29%

The resulting product, or the percentage change, shall be rounded to 2 places after the decimal point.

B. Rent Option B. Pursuant to Section 3 of the Lease, the Parties agree to the following rent for the one year periods from September 1, 2021 through August 31, 2025 for which Lessee has not agreed to extend the Operating Agreement as specified above:

For the first year (September 1, 2020 – August 31, 2021), \$76,515/month plus \$76,515 multiplied by the percentage change for the period from June 2019 to June 2020 in the Applicable Price Index, calculated in accordance with the example below. As an example only, if the percentage change in the CPI-U for June 2019 to June 2020 is 2.29%, then the monthly rent for September 1, 2020 through August 31, 2021 would be \$78,267.19 (\$76,515 x 2.29% = \$1,752.19 + \$76,515 = \$78,267.19).

For subsequent years, \$76,515/month plus \$76,515 multiplied by the percentage change in the Applicable Price Index from June 2019 to the June preceding the applicable year. As an example only, for the year September 1, 2022 through August 31, 2023, the percentage change would be for the period from June 2019 to June 2022. The calculation shall be based on data for June, since data for August is not available until after the beginning of each Lease year, and the next earlier month for which data is currently issued is June. The manner of calculating the percentage change is illustrated by the following example:

Current CPI Index (June 2019)	278.631
Less previous CPI Index (June 2018)	- 272.395
Equals index point change	= 6.236
Divided by previous CPI Index	÷ 272.395
Equals	= 0.0228932
Result multiplied by 100	x 100

Percentage Change = 2.29%

The resulting product, or the percentage change, shall be rounded to 2 places after the decimal point.

3. **New Lease.** At either Party's request, beginning twelve (12) months prior to the expiration of the Lease, the Parties agree to engage in good faith discussions regarding whether and under what terms the Parties may enter into a new lease.

4. **Savings Clause.** Except to the extent expressly modified by the provisions of this Amendment, the provisions of the Lease shall remain unchanged and in full force and effect according to its terms and are hereby affirmed and ratified by Lessor and Lessee.

5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same agreement.

LESSOR: CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES

By: _____
Title: _____
Date: _____

State of Washington)
County of Pierce) ss

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____
Notary Public in and for the State of Washington
My commission expires on _____

LESSEE:

THE PORT OF TACOMA

By: _____

Title: _____

Date: _____

The Lessee by its signature hereby acknowledges that it extended the Lease per the Lease terms, acknowledges and agrees that NWSA is authorized to sign the Amendment as licensee/agent of the Lessee, and the Lessee is bound to fulfill the obligations of the Lease in the event NWSA fails to meet its obligations or any of the Lessee's obligations under the Lease.

State of Washington)
) ss
County of Pierce)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF TACOMA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____
Notary Public in and for the State of Washington
My commission expires on _____

LESSEE AGENT

THE NORTHWEST SEAPORT ALLIANCE
as licensee/agent of the Port of Tacoma

By: _____
Title: _____
Date: _____

State of Washington)
) ss
County of Pierce)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of THE NORTHWEST SEAPORT ALLIANCE, as licensee/agent of the Port of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____
Notary Public in and for the State of _____
My commission expires on _____