

**WA CLIMATE COMMITMENT ACT GRANT
GRANT No. GCB 3945
SUBGRANTEE AGREEMENT**

Between

THE NORTHWEST SEAPORT ALLIANCE (NWSA)
As Recipient

And

TBD
As Subrecipient

This Subaward, between the Northwest Seaport Alliance, as Recipient (Pass-Through Entity; hereinafter referred to as Recipient or NWSA) and TBD; (hereinafter referred to as Subrecipient) is effective from the date of execution of this agreement until three years following project completion (Period of Performance), or such time as the grant award expires as defined by the Washington Department of Transportation (WSDOT) deadlines and extensions as applicable. The Period of Performance for this Agreement is from the executed date of this agreement, until three years following project completion.

The Recipient is a party to a Climate Commitment Act (CCA) Grant Agreement (“Grant Agreement”) with WSDOT for the NWSA Zero Emission Drayage Incentive Program. A copy of the Grant Agreement, executed 08/09/2024, is attached as **Exhibit 1**. This is not a research and development grant. Under the Grant Agreement, the Recipient is responsible for the management and administration of the subaward extended under the Grant Agreement (the “Award”) including the disbursement of all program funds as a pass-through entity. WSDOT administers the Award as the grantor.

A CCA grant in the amount of **\$6,240,000** from WSDOT has been awarded to the Recipient. WSDOT will administrate all relevant funds under the CCA grant agreement.

The Subrecipient has agreed to manage the procurement and delivery of zero-emission Class 8 trucks and installation of necessary charging/fueling infrastructure (“Project”) per the grant requirements. Upon completion of the Project, the Subrecipient will be reimbursed by the Recipient \$XXXXX.

The Recipient and the Subrecipient agree to this arrangement even though it may not reflect the actual cost each party will bear in completing the Project for which they are responsible.

The Subrecipient understands and agrees that the subaward made by this Agreement shall expressly be subject to and incorporate those terms and conditions set forth in and imposed upon the Recipient under the Grant Agreement (**Exhibit 1**). The Subrecipient shall ensure provisions appropriate to effectuate the purposes of these conditions and the Grant Agreement in all contracts of employment, consultant agreements, and other contracts issued under its approved application and related to Subrecipient’s Project covered by the Grant Agreement.

The Recipient and the Subrecipient mutually agree as follows:

I. Authority and Purpose

- A. Authority:** This Subaward is undertaken to pass through requirements for funding assistance awarded to the Recipient under the Grant Agreement with WSDOT No. GCB 3945 to Subgrantee.
- B. Purpose and Amount of Award:** This Subgrantee Agreement establishes the terms, conditions, assurances, certifications, scope of work and funding which the Recipient will pass through to the Subrecipient from the CCA grant Award Number GCB 3945.. The overall scope of work and program budget is identified in **Exhibit 1**, and that portion related to Subrecipient's Project is incorporated into this Subgrantee Agreement.

Breakdown of the Subrecipient's Zero Emission Drayage Project:

	Component 1: Procurement of ZE Class 8 drayage trucks	Component 2: Installation of Supporting Charging/Fueling Infrastructure	Total
CCA Funds:	TBD	TBD	TBD
Subrecipient Funds::	TBD	TBD	TBD
Total:	TBD	TBD	TBD

C. Subrecipient Agreement Roles:

Assumptions of roles and federal requirements:

- Washington Department of Transportation (WSDOT): Washington State Awarding agency
- Northwest Seaport Alliance (NWSA): Recipient and pass-through entity for Subrecipient funding
- TBD: Subrecipient

II. General Terms and Conditions

- A. Applicability of CCA Grant Award Number GCB 3945 with the Recipient:** As a condition of the Subaward, Subrecipient shall specifically adhere to all of the applicable terms, conditions and requirements related to Subrecipient's Project contained within the grant award in Exhibit A ~~(b)(5)~~

The Subrecipient shall assure that these conditions also apply to all contractors performing work within the scope of the Subaward.

- B. The Subrecipient acknowledges that the General Terms and Conditions of this Agreement impose obligations to comply and non-compliance with the General Terms and Conditions may result in the Recipient imposing additional conditions. If the Recipient reasonably determines in good faith that noncompliance cannot be remedied by imposing additional conditions, the Recipient may take one or more of the following actions, as appropriate in the circumstances:**

1. Temporarily withhold cash payments pending correction of the deficiency by the Sub-recipient or more severe enforcement action by the state awarding agency.
2. Deny payment, use of funds and/or any applicable matching credit for all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the Subaward.
4. Recommend that the Federal awarding agency initiate suspension and/or debarment proceedings as authorized under 2 CFR part 180.
5. Withhold further incentive program subawards for the project.
6. Demand repayment of unallowed or prohibited costs paid under the Subaward including state funds.
7. With Subrecipient's agreement, the Parties may modify the Subaward terms to adjust for effects of the Subrecipients non-compliance.

The Subrecipient will perform Subrecipient's Project as described in this Subaward and in compliance with the Grant Agreement.

III. Additional Requirements

A. Report Requirements The Subrecipient agrees to submit, at such times and in such form as the Recipient may prescribe, reports on the Subaward and the Project in the Subaward scope.

1. Without limiting the generality of the foregoing, Subrecipient shall submit Project Quarterly Reports to the Recipient during each quarter that this Agreement is effective. The following reporting period end dates shall be used for quarterly reports: 3/31, 6/30, 9/30, or 12/31. Quarterly reports are due the 10th calendar day after the period end day. If the due date falls on a weekend, the report is due the prior business day. The final performance report must be filed with the Recipient within thirty (30) days after the Period of Performance of the Subaward. The Recipient must receive the final performance report prior to the final claim being paid. Instructions of what to include in quarterly reports are included in Section 2 and Exhibit D of the Grant Agreement.
2. The Subrecipient will review and certify the Project Quarterly Report as accurate prior to submission to the Recipient.
3. In addition to the Report Requirements set forth in this Section, Subrecipient shall provide notice to Recipient of any instance or occurrence of non-compliance with the Grant Agreement or the General Terms and Conditions by Subrecipient or its contractors, and Subrecipient shall be responsible to address and resolve any such non-compliance. Notice of non-compliance shall be provided within five (5) business days of Subrecipient's discovery of the non-compliance.

B. Assignability: The Subrecipient shall not assign or transfer any interest in this Subaward without the prior written consent of the Recipient except as specified herein; for the avoidance of doubt, the Subrecipient may engage subcontractors and affiliates of the Subrecipient to provide services to the Project without the prior

written consent of the Recipient.

1. **Continuation Funding:** The Subrecipient understands that the award of this Subaward in no way assures or implies continuation of funding beyond the Period of Performance indicated in this Subaward.

2. **Third Party Participation:**

Any contract or agreement that is entered into by the Subrecipient for execution of Project activities or provision of services to the Project shall be subject to applicable federal and state compliance requirements from the terms and conditions of this Subaward and the uniform guidance. All contracts and agreements shall provide that the Subrecipient will retain ultimate control and responsibility for the Project and that these conditions shall bind the contractor. In any case, where the Subrecipient enters into a contract with third parties, the Recipient is not a party to such contract and shall not be obligated or liable for any breach of contract or other action in law to any party other than the original Subrecipient under the specific terms of this Agreement.

- C. **Waiver:** It is agreed that the failure of the Recipient to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to Recipient under this Agreement.

- D. **Indemnity and Hold Harmless:** Subrecipient shall indemnify, defend and hold harmless the Recipient and the NWSA and their Homeports (Port of Seattle and Port of Tacoma) and their officers, directors, employees and agents, from and against all liability, loss, cost or expense (including reasonable attorney's fees) by reason of liability imposed upon the Recipient and/or the NWSA arising out of or related to Subrecipient's failure to perform its obligations under this Agreement, to the extent caused by or contributed to by the misfeasance, malfeasance, negligence or intentional acts of Subrecipient, its officers, agents, or employees.

If, as a result of Subrecipient's non-compliance with the terms and conditions of the state grant award, and as a result the Recipient is required to return all or part of the award to WSDOT related to Subrecipient's Project, Subrecipient will defend and indemnify Recipient for any such funds that must be returned to the Federal Agency. Notwithstanding the foregoing, the aggregate liability of Subrecipient arising from its obligations under this Agreement shall not exceed the total amount of grant funds received by Subrecipient under the Subaward.

If for any reason grant funds need to be repaid to the Washington state government, the Subrecipient agrees to refund the funds according to the same proportions as outlined under Section I. B of this Agreement for distributions of reimbursements from WSDOT for the project.

- E. **Insurance:** The Subgrantee agrees to obtain and keep in force during the terms of this Agreement, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW, where applicable and commercially available. Proof of insurance must be

submitted to the Recipient and Subgrantee acknowledges that it is their sole responsibility to ensure their insurance is valid and in force for the entire length of this agreement and failure to do so constitutes a material breach of this agreement.

1. Worker's compensation and employer's liability insurance as required by the State.
2. Commercial General Liability insurance for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$3,000,000 (or greater where required by the Recipient) per occurrence, and five million dollars (\$5,000,000) in the aggregate for each policy period. The insurance shall cover liability arising from premises, operations, independent Subrecipients, products completed operations, personal and advertising injury, and liability assumed under an insured Agreement.
3. Business auto liability insurance providing coverage for any "Auto" used in an amount not less than a three million dollar (\$3,000,000) combined single limit for each occurrence.
4. Excepting the Worker's Compensation Insurance, the State, its officers, employees, and agents and the Northwest Seaport Alliance, its officers, employees and agents will be named on all policies of any Subgrantee as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The Subgrantee's insurer shall waive any and all rights of subrogation against the AIs. The Subgrantee shall be required to furnish the State with verification of insurance and endorsements required by this Subgrantee Agreement.
5. If the Subgrantee maintains broader coverage and/or higher limits than the minimums shown above, the State and the NWSA shall be entitled to the broader coverage. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State and the NWSA.
6. Liability is not limited by the amount of insurance carried by the Subgrantee.
7. All insurance shall be obtained from an insurance company authorized to do business in the state of Washington. The Subgrantee shall submit a verification of insurance as outlined above to the NWSA within ten (10) days of the execution of this Agreement.
8. No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the State.
9. The Subgrantee is allowed to self-insure with the prior written consent of the State. If granted by the State, any self-insured retention or other financial responsibility for claims shall be covered directly by the Subgrantee in lieu of insurance. Any and all liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Subgrantee's insurance will be

covered as if Grantee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

10. **F. Contingent Interest :** The State is hereby granted by Subrecipient a Contingent Interest in the Subgrantee's Project and the equipment purchased with the funds from this Agreement, which shall be maintained and retained as specified herein and which binds the Subgrantee, and its successor(s), to continue and maintain the Project and any equipment purchased with the funds from this Agreement in an operating condition that is viable for use

11. 1. The State's Contingent Interest shall be maintained by Subrecipient for three (3) years following the Project's completion. During this time the Subgrantee shall not (a) use the infrastructure, property or equipment purchased with funds from this Agreement as collateral, (b) remove elements of the infrastructure or equipment purchased with funds from this Agreement for salvage, or (c) use the Project capital improvements or equipment in any manner subordinating the State's Contingent Interest without obtaining prior written approval from the State (WSDOT). The State's Contingent Interest specified under this provision shall apply to any person or persons, company or companies, to include but not limited to any parent or subsidiary company or corporation of Subgrantee, that may have an interest in the Project.

12. 2. The requirement that the Project capital improvements and equipment be maintained for port operations shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a material portion of, the facility for which the Project is constructed. The Subgrantee shall be obligated to include in any contract of sale or other dispositional agreement for all, or any portion of, the Project provisions sufficient to perpetuate the State's Contingent Interest to the Project capital improvements and equipment upon the consummation of any such conveyance. The Subgrantee shall be required to further agree that, as a precondition to the Subgrantee's execution of any agreement to transfer ownership of all, or a material or equipment portion of, the Project to a subsequent purchaser, assignee, or grantee, the State shall retain the right to review and, if necessary, reject, any such agreement that does not contain guarantees sufficient to protect the State's Contingent Interest.

3. Should the Subgrantee or its successor(s) fail to continue and maintain the Project for the Contingent Interest term, the State may pursue compensation, including, but not limited to, the following methods: (a) issuing a lien against the assets that were improved under the Project; and (b) requiring the Subgrantee to pay back funds for the remaining benefits period. The State may conduct periodic Project reviews to ensure that maintenance is occurring in accordance with its Contingent Interest.

IV. Operational Procedures

A. Project Implementation: Subrecipient agrees to implement the Project according to the Project's Estimated Schedule included in Grant Agreement GCB 3945. Notice of Project implementation is to be reported within the first sixty (60) days following the complete execution of this agreement.

B. Day to Day Administration: The NWSA will be responsible for and provide day-to-day administration and oversight of the Subaward. Key points of contact for Subaward administration are:

Nicola Graham: ngraham@nwseaportalliance.com

Steve Nicholas: snicholas@nwseaportalliance.com

Sammi Offield: soffield@portoftacoma.com

- C. Accounting Requirements:** The Subrecipient agrees to record all Project costs, both state grant and matching share, following generally accepted fund accounting procedures. A separate account number or cost recording system must separate all Project costs from the Subrecipient's other or general expenditures. Adequate documentation for all Project costs, both federal and matching share must be maintained. State share documentation must clearly indicate that the funds expended were the CCA grant funds.

Payment and Utilization of Funds: Funds awarded are to be expended only for purposes and activities covered by the Subrecipient's Project and Budget. Project funds (both state and matching share) may not be expended prior to the date of this Agreement and until WSDOT has issued a notice to proceed. Project funds will be made available through a reimbursement procedure.

No payment of funds shall be made to Subrecipient during any period of time within which Subrecipient is in default on filing any informational or financial reports required by the Recipient. All claims for reimbursement must be accompanied with copies of all supporting documentation (i.e. proof of payment, invoices, narrative to clearly document work achieved for costs indicated on invoice, proof of compliance with procurement policy, proof of work accomplished, etc., as requested). Claims for reimbursement can be submitted as incurred or not less frequently than monthly. Payments will be adjusted to correct previous overpayment and disallowances or underpayments resulting from audit.

Grant Adjustments: The Subrecipient must obtain prior written approval from the Recipient and WSDOT for major Project changes. Major Project changes include, but are not limited to: (a) changes of substance in Project activities, designs, or research plans set forth in the approved application; (b) changes or deviations which might alter the project scope or intent; (c) changes in the Project key professional personnel identified in the approved application; (d) changes in the approved budget with the exception of those changes permitted in accordance with provisions cited later in this section, and (e) changes in the schedule which result in length of the grant period.

Similarly, equipment and infrastructure not included in the approved budget may not be purchased without prior approval of the Recipient and WSDOT. The Subrecipient may, however, deviate from quantities of equipment items in the approved budget as long as (i) the total dollar amount of the equipment budgeted is not exceeded, and (ii) written notification is submitted to the Recipient. Both the Recipient and the Subrecipient shall maintain this notification in the Project file. Subrecipients may not add to the specified equipment list without prior approval of WSDOT unless the total dollar amount of the equipment budgeted is not exceeded.

- D. Pre-Award Costs: Describe elements that are pre-award costs and include the costs.**

None. WSDOT and the Recipient have not approved under this award any requests for the use of state grant funds. Because unapproved costs incurred

before the date of this agreement are not allowable costs under this award, WSDOT will neither reimburse those costs under this award nor consider them as a cost sharing contribution to this award. Costs incurred before the date of this agreement are allowable costs under this award only if approved in writing by WSDOT before being included in the Project costs and documented in this section 5.

E. Procurement Standards, Procedures and Reimbursement: Subrecipient shall adhere to the applicable minimum federal requirements for procurement which is available at: [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#). Subrecipient shall further adhere to any applicable state and local laws and regulations that may pertain to the Subrecipient's activities. Reimbursement procedures for Subrecipients are set forth on **Exhibit 2**.

F. Monitoring: Subrecipient agrees to allow the Recipient, WSDOT and any of their designees' reasonable access to the Project Records and Financial Statements upon reasonable written notice during normal business hours for the purposes of monitoring programmatic progress and the financial and business management aspects of the Subaward to ensure that Project objectives are met and funds are spent and accounted for properly. The required access specifically includes inspection of financial and program reports, site-visits, teleconferences and/or such other means necessary for the Recipient to carry out its subrecipient monitoring obligations.

V. Allowable Costs: Subrecipient acknowledges that only certain costs are allowable under the Subaward. The allowable costs are addressed within the documents referenced in Paragraph II.B of this Agreement. The subrecipient will indicate allowable and non-allowable costs for the grant reimbursement in all invoices submitted to the Recipient.

VI. Termination of Grant

A. This Agreement will terminate upon the earlier of: (i) the completion of the Project, or (ii), or such later date if WSDOT extends the expiration of or deadlines for the Grant Award as requested by the Recipient.

B. Notwithstanding Paragraph V.A., this Subaward may be earlier terminated, or fund payments suspended by the Recipient where there is a material failure to comply with the terms and conditions of:

1. the Subaward application form and attachments;
2. this Subaward;
3. any applicable state or federal law related to the Subrecipient's Project to which compliance is required; or
4. an audit report which includes audit exceptions not answered to the reasonable satisfaction of the Recipient.

Upon such a finding, the Recipient shall promptly notify the Subrecipient in writing to correct any deficiencies found. If said deficiencies are not corrected within thirty days. (30) days, the Recipient will have the right to suspend or cancel this Agreement and the Subaward after furnishing written notice to the Subrecipient.

- C. This Agreement may be terminated by the Subrecipient in the event there is a failure of the Recipient to perform any of its obligations under this Agreement.
- D. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- E. Notwithstanding the termination of this Agreement, Subrecipient's obligation to comply with the continuing requirements of all the applicable rules and regulations related to the Subaward as set forth in this Agreement, to account for property acquired with grant funds, to maintain and provide access to any records required under this Agreement, and to indemnify the Recipient as set forth in this Agreement shall specifically survive the expiration or earlier termination of this Agreement.

VII. Conflict of Interest:

The acceptance of this Subaward imposes a number of legal and ethical responsibilities upon Subrecipient and its personnel. Without limiting the generality thereof, Subrecipient's personnel and other officials connected with this grant shall adhere to the Conflict-of-Interest requirements set forth in Uniform Guidance 2 CFR 200.112. The Subrecipient must disclose in writing any potential conflict of interest to the Recipient. The subrecipient and its personnel shall specifically inform themselves about, and otherwise fully comply with, any such requirements. Violations of these standards may result in criminal, civil and/or administrative penalties.

VIII. General Provisions

- A. **Dispute Resolution** In the event that a dispute arises under this Agreement, which cannot be resolved between the parties, the dispute shall be settled in the following manner:
 - 1. Designated representatives from each party agree to meet in good faith to resolve the dispute to the mutual satisfaction of both parties. If after thirty (30) days a resolution is not reached, then;
 - 2. Each party to this Agreement shall appoint a member to a dispute board. The members so appointed shall jointly appoint an additional member who is not employed by or affiliated in any way with the parties to this Agreement. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The parties agree to each be responsible for its own costs and further agree to equally share the cost of the additional member of the dispute board. This Agreement shall be construed and enforced according to the laws of the State of Washington.
- B. **Modification.** No modification, termination or attempted waiver of this Agreement or any provision hereof shall be valid unless in writing signed by both parties to this Agreement.
- C. **Notices.** All notices, requests, demands and other communications required or permitted to be made under this Agreement shall be in writing and shall be given by

personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below. Either party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice. Notice shall be deemed to be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by certified mail; and if sent by nationally recognized overnight delivery service, on the next business day following delivery to such delivery service.

Notices and requests for modifications should be directed to:

For Northwest Seaport Alliance:

For TBD

Nicola Graham
Environmental Project Manager
PO Box 2985
Tacoma, WA 98401-2985

Agreement #:

In witness whereof, the **Northwest Seaport Alliance** and TBD have executed this Agreement effective as of the date below.

Recipient:
Northwest Seaport Alliance

Signature
John Wolfe
CEO, Northwest Seaport Alliance

Date

Subrecipient:
TBD

Signature
TBD

Date

Agreement #:

Exhibit #1

Insert link to executed WSDOT grant agreement.

Agreement #:

Exhibit #2