



## RESOLUTION NO. U-11216

1 A RESOLUTION authorizing the execution of amendments to the South Intermodal  
2 Yard Lease Agreement and the Operating Agreement with the Port of  
3 Tacoma and Tacoma Rail, to allow for the option of a lower lease payment  
4 in exchange for extending the Operating Agreement and request City  
5 Council approval of same.

6 WHEREAS, in 1984, the Department of Public Utilities, Beltline Division  
7 (d.b.a. "Tacoma Rail") and the Port of Tacoma ("Port") entered into a 31-year  
8 lease agreement for property located at 1123 Milwaukee Way, which the Port  
9 uses for the handling of domestic intermodal shipments, and  
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11 WHEREAS the lease agreement provides for two optional five-year  
12 extensions, subject to rent review, with the final five-year extension starting in  
13 2020, and  
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15 WHEREAS Tacoma Rail entered into a 20-year Operating Agreement with  
16 the Port in 2013, granting Tacoma Rail rights as the sole operator of Port-owned  
17 rail infrastructure in the Tideflats area, and  
18

19 WHEREAS the operating agreement also established an annual volume  
20 incentive allowance paid to the Port for the first nine years to attract the Grand  
21 Alliance shipping lines to Tacoma, and  
22

23 WHEREAS the volume incentive allowance ends in 2021 and is anticipated  
24 to be valued at zero, due to declines in intermodal traffic volumes, and  
25

26 WHEREAS, although the Grand Alliance has been replaced and has  
changed over time, the Port continues to rely on the volume incentive allowance to  
attract new intermodal business and invest in rail infrastructure, and

WHEREAS, rather than extend the volume incentive allowance program,  
Tacoma Rail and the Port propose to amend both the South Intermodal Yard



Lease Agreement and the Operating Agreement to allow for the option of a lower lease payment in exchange for extending the Operating Agreement, and

WHEREAS, if the Port selects the option of extending the Operating Agreement and making lower lease payments, then an amount equal to the difference between the lower lease payments and the higher lease payments due under the alternative option will be used by the Port to attract new intermodal business and invest in rail infrastructure, and

WHEREAS, the Port will report on how the money used to attract new intermodal business and invest in rail infrastructure is spent, and

WHEREAS the proposed amendments will allow the Port to make additional investments to its intermodal incentive programs while providing stability to future Tacoma Rail operations, and

WHEREAS intermodal traffic incited by the Port also adds to Tacoma Rail's revenue base, and

WHEREAS, Tacoma Rail requests that the Board approve the proposed amendments and request confirmation from the Council of the City of Tacoma;  
Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. That the request of the Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail") to enter into amendments to the South Intermodal Yard Lease Agreement and the Operating Agreement with the Port of Tacoma, to allow for the option of a lower lease payment in exchange for extending the



Operating Agreement, is hereby approved and the Board requests confirmation by the City Council for this approval.

Sec. 2. That upon said approval the proper officers of the City of Tacoma are authorized to execute and implement said amendments substantially in the same form as that on file with the Clerk, with the final form as approved by the City Attorney.

Approved as to form:

/s/  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** Dale W. King, Superintendent, Tacoma Rail  
**MEETING DATE:** October 28, 2020  
**DATE:** October 16, 2020

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**SUMMARY:** Tacoma Rail requests authorization to amend its South Intermodal Yard Lease Agreement and Operating Agreement with the Port of Tacoma.

**BACKGROUND:** Tacoma Rail entered into a lease agreement with the Port of Tacoma in 1984 for 31 years with two optional five year extensions subject to rent review. The final five year extension starts in 2020. The Port of Tacoma uses the property for the handling of domestic intermodal shipments.

Tacoma Rail entered into a 20 year Operating Agreement with the Port of Tacoma in 2013. It grants Tacoma Rail the rights as the sole operator of Port-owned rail infrastructure in the Tideflats area. The agreement also established an annual volume incentive allowance paid to the Port of Tacoma for the first nine years to attract the Grand Alliance shipping lines to Tacoma. The volume incentive allowance ends in 2021 and is anticipated to be valued at zero due to declines in intermodal traffic volumes.

Although the Grand Alliance has been replaced and has changed over time, the Port of Tacoma continues to rely on the volume incentive allowance to attract new intermodal business and invest in rail infrastructure.

Rather than extend the volume incentive allowance program, Tacoma Rail and the Port of Tacoma propose to amend both the South Intermodal Yard Lease Agreement and the Operating Agreement. The amendments allow for the option of a lower lease payment in exchange for extending the Operating Agreement. The Port of Tacoma's lease savings will be used to attract new intermodal business and invest in rail infrastructure with reporting on how the savings are spent. This arrangement allows for consistent monthly proceeds that the Port of Tacoma can utilize for its intermodal incentive programs while providing stability to Tacoma Rail's operations in the future. Intermodal traffic incited by the Port of Tacoma adds to Tacoma Rail's revenue base.



**Board Action Memorandum**

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED?** Yes.

**IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.**  
N/A.

**IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR?** No.

**ATTACHMENTS:** Rail Operating Agreement Amendment, SIM Lease Amendment 3.

**CONTACT:**

Primary Contact: Dale W. King, Superintendent, 253-502-8894

Supervisor: Jackie Flowers, Director of Utilities, 253-502-8203



**TO:** Mayor and City Council  
**FROM:** Jackie Flowers, Director of Utilities  
**COPY:** Elizabeth Pauli, City Manager and Doris Sorum, City Clerk  
**SUBJECT:** Resolution – Amend Port of Tacoma Lease and Operating Agreements –  
November 10, 2020  
**DATE:** October 16, 2020

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**SUMMARY:**

Tacoma Rail requests authorization to amend its South Intermodal Yard Lease Agreement and Operating Agreement with the Port of Tacoma.

**STRATEGIC POLICY PRIORITY:**

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

**BACKGROUND:**

Tacoma Rail entered into a lease agreement with the Port of Tacoma in 1984 for 31 years with two optional five year extensions subject to rent review. The final five year extension starts in 2020. The Port of Tacoma uses the property for the handling of domestic intermodal shipments.

Tacoma Rail entered into a 20 year Operating Agreement with the Port of Tacoma in 2013. It grants Tacoma Rail the rights as the sole operator of Port-owned rail infrastructure in the Tideflats area. The agreement also established an annual volume incentive allowance paid to the Port of Tacoma for the first nine years to attract the Grand Alliance shipping lines to Tacoma. The volume incentive allowance ends in 2021 and is anticipated to be valued at zero due to declines in intermodal traffic volumes.

Although the Grand Alliance has been replaced and has changed over time, the Port of Tacoma continues to rely on the volume incentive allowance to attract new intermodal business and invest in rail infrastructure.

Rather than extend the volume incentive allowance program, Tacoma Rail and the Port of Tacoma propose to amend both the South Intermodal Yard Lease Agreement and the Operating Agreement. The amendments allow for the option of a lower lease payment in exchange for extending the Operating Agreement. The Port of Tacoma's lease savings will be used to attract new intermodal business and invest in rail infrastructure with reporting on how the savings are spent. This arrangement allows for consistent monthly proceeds that the Port of Tacoma can utilize for its intermodal incentive programs while providing stability to Tacoma Rail's operations in the future. Intermodal traffic incented by the Port of Tacoma adds to Tacoma Rail's revenue base.

**ISSUE:**

Support the Port of Tacoma's incentive programs to attract new intermodal business.

**ALTERNATIVES:**

Negotiations have been ongoing since October 2019. One alternative is to keep the agreements as-is which wouldn't support the Port of Tacoma intermodal incentive programs and limit Tacoma Rail's Operating Agreement.



**RECOMMENDATION:**

Tacoma Rail recommends approval of the amendments to the South Intermodal Yard Lease Agreement and Operating Agreement with the Port of Tacoma.

**FISCAL IMPACT:**

There is no fiscal impact.



**AMENDMENT NO. 1 TO  
PORT OF TACOMA/CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES  
OPERATING AGREEMENT**

This Amendment No. 1 to the Port of Tacoma/City of Tacoma Department of Public Utilities Operating Agreement ("Amendment"), effective September 1, 2020, is made and entered into by and between the Port of Tacoma ("Port"), and The Northwest Seaport Alliance as licensee/agent of the Port of Tacoma ("NWSA"), and the City of Tacoma, Department of Public Utilities, Beltline Division dba Tacoma Rail ("Tacoma Rail"), collectively the "Parties".

**RECITALS**

A. The Port and Tacoma Rail entered into that Port of Tacoma/City of Tacoma Department of Public Utilities Operating Agreement dated July 1, 2013, ("Operating Agreement") which set forth the Parties' rights and obligations in relation to the 1990 Beltline Agreement and the 1993 Agreement, as those terms are defined in the Operating Agreement, in order to maximize the performance of the Port and the rail system and enhance the level of coordination between their respective organizations, and to facilitate the handling of increased rail traffic volumes.

B. As described in the recitals of the Operating Agreement, on August 30, 1984, the Parties entered into a Lease ("TACSIM Lease") whereby the City of Tacoma Department of Public Utilities leased certain property to the Port for use as a rail intermodal yard.

C. 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 and subject matter that is subject to the Operating Agreement.

D. Per Lease Amendment No. 3 to said TACSIM Lease ("Amendment No. 3), the Parties have agreed to two rent options for the remaining five year term of the TACSIM Lease. The selection of either rent option depends upon the yearly decision of Lessee under the TACSIM Lease to extend or not to extend the term of the Operating Agreement by an additional year.

E. In order to effectuate the terms of TACSIM Lease Amendment No. 3, the Parties have agreed to amend the Operating Agreement to provide an option to extend its term in one year increments.

**AGREEMENT**

1. The following is added as Section 6.1.1. to the Operating Agreement:

6.1.1. Term Extension. As further described in TACSIM Lease Amendment No. 3, starting in 2020, Lessee under the TACSIM Lease has the option in each year of the



The term of the Rail Volume Incentive Allowance detailed in Exhibit A to the Operating Agreement shall not be extended by the NWSA or Port's exercising of its option to extend the term of the Operating Agreement detailed in this section.

**3. 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.

DEPARTMENT OF PUBLIC UTILITIES

Date: \_\_\_\_\_

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: \_\_\_\_\_

My commission expires on \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Dated: \_\_\_\_\_

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Dated: \_\_\_\_\_

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

### **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 15<sup>th</sup> 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 ( $\$76,515 \times 2.29\% = \$1,752.19 + \$76,515 = \$78,267.19$ ).

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 \_\_\_\_\_