



RESOLUTION NO. U-11541

1 A RESOLUTION related to the Department of Public Utilities, Beltline Division,
2 declaring approximately 15.25 acres of certain utility-owned real property
3 surplus and authorizing a five-year lease of said property to the
4 Northwest Seaport Alliance, a licensee/agent of the Port of Tacoma.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Beltline
6 Division ("Tacoma Rail") requests the Public Utility Board to declare surplus
7 and authorize the five-year lease, commencing on September 1, 2025,
8 approximately 15.25 acres of Tacoma Rail land, identified as 1738 Milwaukee
9 Way, in Tacoma, Washington (the "Lease Property"), to the Northwest Seaport
10 Alliance, a licensee/agent of the Port of Tacoma for \$100,000 per month, plus
11 8% for operating cost recovery and annual CPI adjustments for intermodal
12 facility, and

13 WHEREAS the Lease Property is located within the Tacoma Tideflats
14 and was originally acquired in 1944, for the purpose of making certain
15 betterments and extensions of the Municipal Belt Line Railway System, and

16 WHEREAS in 1985, the City Council and Public Utility Board determined
17 that certain property that included the Lease Property was no longer required
18 for continued public utility service, for a limited extent and duration, and
19 therefore approved a 41-year (31-years with two five-year extensions) lease to
20 the Port of Tacoma, which expires in 2025, and

21 WHEREAS Tacoma Rail has negotiated a proposed lease agreement for
22 the Lease Property with a lease price of \$100,000 per month, plus 8% for
23 operating cost recovery and annual CPI adjustments, which is considered within
24
25
26



the range of fair market value and as determined by a third-party appraiser (the
1 Proposed Lease Agreement, and

2 WHEREAS the Proposed Lease Agreement is subject to both Public
3 Utility Board and City Council approval, and

4
5 WHEREAS the Proposed Lease Agreement was reviewed by the City
6 Attorney's Office and approved by Tacoma Rail management and Real
7 Property Services, and

8 WHEREAS upon approval by the Board, a separate request will be made
9 to the City Council to hold a Public Hearing to be followed by Final Approval on
10 the Proposed Lease Agreement; and

11
12 WHEREAS the Director of Utilities, in coordination with Tacoma Rail, has
13 determined that the property is no longer required for continued public utility
14 service and has deemed the Property surplus to Tacoma Rail's needs pursuant
15 to RCW 35.94.040 and TMC 1.06.280f, but only to the extent and duration of
16 the Proposed Lease Agreement; Now, Therefore,

17
18 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

19 Sec. 1. That approximately 15.25 acres of property generally identified
20 as 1738 Milwaukee Way, in Tacoma, Washington, and as more specifically
21 described in the proposed lease agreement on file with the Clerk of the Board
22 (the "Lease Property" and the "Proposed Lease Agreement", respectively), is no
23 longer required for continued public utility service and is declared surplus to
24 Tacoma Rail's needs, but only to the extent of, and for the duration of, the
25 Proposed Lease Agreement.
26



Sec. 2. That it is in the best interests of the City of Tacoma to approve the Proposed Lease Agreement with the Northwest Seaport Alliance, a licensee/agent of the Port of Tacoma.

Sec. 3. That the City Council is requested to hold a public hearing on this matter pursuant to RCW 35.94.040, and thereafter approve this recommended Proposed Lease Agreement and authorize the proper officers of the City of Tacoma to execute all necessary documents, substantially in the same form as on file with the Clerk of the Board and as approved by the City Attorney's Office.

Approved as to form:

Chair

/s/
Chief Deputy City Attorney

Secretary

Clerk

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Alan Matheson, Rail Superintendent
Dylan Harrison, Manager, Real Property
MEETING DATE: July 9, 2025
DATE: June 23, 2025

GUIDING PRINCIPLE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- | | |
|--|--|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input checked="" type="checkbox"/> GP2 – Financial Sustainability | <input type="checkbox"/> GP9 – Economic Development |
| <input type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP5 – Environmental Sustainability | <input type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP14 – Resource Planning |
| <input type="checkbox"/> GP7 – Reliability & Resiliency | |

SUMMARY: Declare surplus and authorize the 5-Year lease, commencing on September 1, 2025, for approximately 15.25 acres of Tacoma Rail land identified as 1738 Milwaukee Way, Tacoma, Washington, to the Northwest Seaport Alliance licensee/agent of the Port of Tacoma for \$100,000 per month, plus 8% for operating cost recovery and annual CPI adjustments for an intermodal facility.

BACKGROUND: The lease property is located within the Tacoma Tideflats and was originally acquired in 1944 for the purpose of making certain betterments and extensions of the Municipal Belt Line Railway System. In 1985 the City Council and Public Utility Board determined the property was not necessary for utility purposes for a limited duration, and therefore approved a 41-Year (31-Years with Two 5-Year extensions) lease to the Port of Tacoma, which expires in 2025.

Tacoma Rail has negotiated the lease price of \$100,000 per month, plus 8% for operating cost recovery and annual CPI adjustments, which is considered within the range of fair market value as determined by a third-party appraiser. The lease is subject to both Public Utility Board and City Council approval. The lease document was reviewed by the City Attorney's Office and approved by Tacoma Rail management and Real Property Services.

Upon approval by the Board, a separate request will be made to the City Council to hold a Public Hearing to be followed by Final Approval.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes



Board Action Memorandum

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS 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: Declaration of Surplus and Lease Agreement

CONTACT:

Primary Contact: Dylan Harrison, Manager, Real Property, 253-502-8836

Supervisor: Justin Davis, Division Manager, Fleet and Facilities, 253-591-5449



TO: Hyun Kim, Acting City Manager
FROM: Jackie Flowers, Director of Utilities
COPY: City Council and City Clerk
SUBJECT: Resolution – Declaration of Surplus and Lease of Tacoma Rail Real Property – City Council
Consent Agenda for July 15, 2025
DATE: June 23, 2025

SUMMARY AND PURPOSE:

To set Tuesday, July 29, 2025 as the date for a Public Hearing regarding the declaration of surplus and 5-Year lease, commencing on September 1, 2025, of approximately 15.25 acres of Tacoma Rail land identified as 1738 Milwaukee Way, Tacoma, Washington, to the Northwest Seaport Alliance as licensee/agent of the Port of Tacoma for \$100,000 per month, plus 8% for operating cost recovery and annual CPI adjustments for an intermodal facility.

BACKGROUND:

This Department's Recommendation is Based On: The lease property is located within the Tacoma Tideflats and was originally acquired in 1944 for the purpose of making certain betterments and extensions of the Municipal Belt Line Railway System. In 1985 the City Council and Public Utility Board determined the property was not necessary for utility purposes for a limited duration, and therefore approved a 41-Year (31-Years with Two 5-Year extensions) lease to the Port of Tacoma, which expires in 2025. Tacoma Rail has negotiated the lease price of \$100,000 per month, plus 8% for operating cost recovery and annual CPI adjustments, which is considered within the range of fair market value as determined by a third-party appraiser. The lease is subject to both Public Utility Board and City Council approval. The lease document was reviewed by the City Attorney's Office and approved by Tacoma Rail management and Real Property Services.

COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:

Tacoma Rail has engaged with the Northwest Seaport Alliance as licensee agent for the Port of Tacoma, in addition to the BNSF Railway Co. and the Union Pacific Railroad, to determine the best use of the South Intermodal Yard is the continuation of use as a domestic intermodal traffic terminal.

2025 STRATEGIC PRIORITIES:

Equity and Accessibility: *(Mandatory)*

Continued use as a railroad interchange site supports Tacoma Rail's strategic plan objective of developing and implementing an internship program for Tacoma residents, by preserving activities associated with this diverse multi-organizational near dock facility.

Economy/Workforce: *Equity Index Score: Moderate Opportunity*

Increase the number of Tacoma households that have livable wage jobs within proximity to the city.

Increase the number of diverse livable wage jobs.

Explain how your legislation will affect the selected indicator(s).

Presumably, your recommendation is not the only potential course of action; please discuss other alternatives or



actions that City Council or staff could take. Please use table below.

ALTERNATIVES:

Presumably, your recommendation is not the only potential course of action; please discuss other alternatives or actions that City Council or staff could take. Please use table below.

Alternative(s)	Positive Impact(s)	Negative Impact(s)
1. Do not Lease property.	Tacoma Rail can explore other business partnerships	Immediate job loss and/or displacement for current railroad operators.
2.		
3.		

EVALUATION AND FOLLOW UP:

Tacoma Rail and Rail Property Services will monitor the lease terms to ensure ongoing compliance and to determine if future a lease agreement should be granted, which will require Public Utility Board and City Council approvals.

STAFF/SPONSOR RECOMMENDATION:

Tacoma Rail and Real Property Services recommend that the City Council set Tuesday, July 29, 2025 as the date for a Public Hearing regarding the declaration of surplus and 5-Year lease, commencing on September 1, 2025, of approximately 15.25 acres of Tacoma Rail land identified as 1738 Milwaukee Way, Tacoma, Washington, to the Northwest Seaport Alliance as licensee/agent of the Port of Tacoma for \$100,000 per month, plus 8% for operating costs and annual CPI adjustments for an intermodal facility.

FISCAL IMPACT:

Please provide a short summary of the fiscal impacts associated with the grant, agreement, policy action, or other action.

Fund Number & Name	COST OBJECT (CC/WBS/ORDER)	Cost Element	Total Amount
1. 4500-TPU Rail	591004	4347140	\$6,480,000 + CPI
2.			
TOTAL			

What Funding is being used to support the expense? N/A

Are the expenditures and revenues planned and budgeted in this biennium's current budget?

YES

New rental agreement was planned and budgeted for in the 2025/2026 biennium at \$100,000 per month starting September 2025.

Are there financial costs or other impacts of not implementing the legislation?

YES



City of Tacoma

City Council Action Memorandum

Will the legislation have an ongoing/recurring fiscal impact?

YES

Will the legislation change the City's FTE/personnel counts?

NO

ATTACHMENTS:

- Declaration of Surplus
- Lease Agreement



TACOMA PUBLIC UTILITIES

3628 South 35th Street

Tacoma, Washington 98409-3192

Date: 06/25/2025

From: Jackie Flowers, Director of Utilities

To: Dylan Harrison, Manager, Real Property Services

Subject: Declaration of Surplus of Tacoma Rail Property
1738 Milwaukee Way, Tacoma, Washington

Tacoma Rail owns approximately 15.25 acres of land located within the Tacoma Tideflats identified as 1738 Milwaukee Way, Tacoma, Washington and legally described in the proposed lease, attached hereto and incorporated herein (the "Proposed Lease").

The property was originally acquired in 1944 for the purpose of making certain betterments and extensions of the Municipal Belt Line Railway System. Tacoma Rail has leased the property to the Port of Tacoma since 1984, but it is still unclear if the property may be necessary or useful for utility operations in the future, so continuing to lease the property remains in the best interest of Tacoma Public Utilities.

Pursuant to City of Tacoma Municipal Code Section 1.06.280, I hereby certify the property described in the Proposed Lease is surplus to the needs of Tacoma Public Utilities, but only to the extent and for the duration of the Proposed Lease negotiated by Tacoma Rail.

Additional analysis will be performed at or near the end of the lease to determine whether the property may be necessary or useful for utility operations at that time.

Further, I hereby direct Real Property Services to lease of the property in accordance with applicable State Law and Tacoma Municipal Charter and Code.

APPROVED:

Signed by:

Jackie Flowers

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Jackie Flowers, Director of Utilities

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**LEASE OF REAL PROPERTY BY AND BETWEEN
THE CITY OF TACOMA AND
NORTHWEST SEAPORT ALLIANCE
PROJECT NO. 2024-150
LEASE NO. L187**

This Lease of Real Property ("Lease Agreement") is entered into as of September 1, 2025, (the "Effective Date") between the City of Tacoma ("City") – a first class City under the laws of the State of Washington, by and through the Tacoma Rail Beltline Division, a division of the City of Tacoma – Department of Public Utilities, hereinafter referred to as "Lessor", and The Northwest Seaport Alliance ("NWSA"), a port development authority organized under RCW 53.57 as licensee/agent of the Port of Tacoma and hereinafter referred to as "Lessee". Lessor and Lessee are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Lessor is owner of the Premises as described in Section 2.1 and Lessee remains the owner of certain leasehold improvements previously installed by the Lessee pursuant to their previous lease agreement and amendments thereto, including rail, ties, ballast, switches, grade crossings, signs, buildings and other appurtenances located on the Premises (collectively "Appurtenances"), which are located in Pierce County, State of Washington; and

WHEREAS, Lessee has the responsibility and authority to manage and operate certain properties owned and licensed to NWSA by its Homeports, including the Port of Tacoma; and

WHEREAS, the Port of Tacoma and the Lessee have leased the Premises for intermodal facility purposes since August 30, 1984, and said lease as amended will expire on August 31, 2025; and

WHEREAS, Lessee has used the Premises and Appurtenances to operate an intermodal rail facility; and

WHEREAS, Lessor also uses the Premises to provide common carrier freight rail service and to switch railcars; and

WHEREAS, the Parties believe it would be mutually advantageous if Lessee continued to lease the Premises and Appurtenances from Lessor for the purposes stated herein; and

NOW, THEREFORE, for and in consideration of the covenants herein contained, it is agreed between the Parties hereto as follows:

**ARTICLE I
DEFINITIONS**

SECTION 1.1 Definitions. Any term set forth herein that is defined and set forth in Exhibit "B", attached hereto and by this reference incorporated herein, shall have the meaning as set forth in said Exhibit "B".

**ARTICLE II
RIGHTS AND RESPONSIBILITIES AND FEES**

SECTION 2.1 Grant by Lessor. Subject to the terms conditions set forth in this Lease Agreement, Lessor leases to Lessee, and Lessee leases from Lessor, commencing on the Effective Date of this Agreement the following real property:

A PORTION OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 21 NORTH, RANGE 3 EAST AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, LOCATED WITHIN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2.5-INCH DIAMETER SURFACE BRASS DISK MARKING THE MONUMENTED INTERSECTION OF MILWAUKEE WAY (AKA SITCUM AVENUE) AND EAST 11TH STREET FROM WHICH ANOTHER CASED 2-INCH DIAMETER BRASS DISK WITH PUNCH MARKING THE CENTERLINE OF MILWAUKEE WAY BEARS SOUTH 30°58'23" EAST A DISTANCE OF 2681.63 FEET;

THENCE SOUTH 30°58'23" EAST ALONG SAID MONUMENT LINE A DISTANCE OF 116.95 FEET TO INTERSECT THE WESTERLY PROJECTION OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SAID EAST 11TH STREET, BEING 113.00 FEET SOUTH AS MEASURED PERPENDICULAR TO THE MONUMENT LINE OF EAST 11TH STREET;

THENCE NORTH 44°05'48" EAST ALONG SAID PROJECTION A DISTANCE OF 41.40 FEET TO THE INTERSECTION OF THE EASTERLY MARGIN OF SAID MILWAUKEE WAY WITH THE SOUTHERLY MARGIN OF EAST 11TH STREET AS DESCRIBED IN CITY OF TACOMA DEED NUMBER 951, RECORDED UNDER AUDITOR'S FILE NUMBER 983921, BEING THE WESTERLY LIMIT OF THE 20-FOOT WIDE STRIP OF LAND DESCRIBED IN CITY OF TACOMA VACATION ORDINANCE NUMBER 14834 AND **TRUE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 44°05'48" EAST ALONG SAID SOUTHERLY MARGIN A DISTANCE OF 448.02 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 774.85 FEET AND WHOSE CENTER OF CURVATURE BEARS SOUTH 72°43'08" EAST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°09'35" AN ARC DISTANCE OF 326.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 553.44 FEET AND WHOSE CENTER OF CURVATURE BEARS NORTH 81°33'00" EAST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°31'31" AN ARC DISTANCE OF 217.58 FEET;

THENCE SOUTH 30°58'28" EAST A DISTANCE OF 2288.27 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1718.77 FEET AND WHOSE CENTER OF CURVATURE BEARS SOUTH 58°49'13" WEST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9°44'32" AN ARC DISTANCE OF 292.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 635.00 FEET AND WHOSE CENTER OF CURVATURE BEARS SOUTH 67°39'44" WEST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 6°31'20" AN ARC DISTANCE OF 72.28 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 467.00 FEET AND WHOSE CENTER OF CURVATURE BEARS SOUTH 75°15'40" WEST;
THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°00'35" AN ARC DISTANCE OF 220.15 FEET TO A POINT OF COMPOUND CURVATURE AND CURVE TO THE RIGHT HAVING A RADIUS OF 485.88 FEET AND WHOSE CENTER OF CURVATURE BEARS NORTH 77°43'45" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9°46'58" AN ARC DISTANCE OF 82.96 FEET TO INTERSECT WITH THE EASTERLY MARGIN OF SAID MILWAUKEE WAY, BEING THE WESTERLY LIMIT OF A 20-FOOT STRIP OF VACATED LAND WITHIN SAID SECTION 3 AS DESCRIBED IN SAID ORDINANCE NUMBER 14834;

THENCE NORTH 31°02'20" WEST TO AN ANGLE POINT IN SAID EASTERLY MARGIN A DISTANCE OF 658.25 FEET TO THE INTERSECTION WITH THE NORTH LINE OF SECTION 3, TOWNSHIP 20 NORTH, RANGE 3 EAST, W.M.;

THENCE NORTH 30°31'20" WEST TO AN ANGLE POINT IN THE EASTERLY LIMIT OF THAT CERTAIN AREA DESCRIBED WITHIN SAID ORDINANCE NUMBER 14834 AS LANDS TRANSFERRED AND ASSIGNED FROM THE DESCRIBED PROPERTY FOR THE BENEFIT OF MUNICIPAL BELT LINE RAILWAY TO THE CITY FOR STREET PURPOSES, A DISTANCE OF 941.44 FEET;

THENCE NORTH 30°08'23" WEST ALONG SAID EASTERLY MARGIN A DISTANCE OF 177.10 FEET TO THE INTERSECTION OF THE NORTHWESTERLY LINE OF GOVERNMENT LOT 5 WITH A LINE 40.00 FEET EAST AND PERPENDICULAR TO SAID MILWAUKEE WAY MONUMENT LINE AND BEING THE EASTERLY MARGIN THEREOF;

THENCE NORTH 30°58'23" WEST ALONG SAID EASTERLY MARGIN OF MILWAUKEE WAY A DISTANCE OF 1476.22 FEET TO THE **POINT OF BEGINNING**.

CONTAINING +/-664,265 S.F. OR 15.249 AC., MORE OR LESS

Situated in Pierce County, State of Washington; and as further shown in Exhibit "A" attached hereto and by this reference incorporated herein (collectively, the "Premises") together Appurtenances for the specific purposes set forth in Section 2.2.

SECTION 2.2 Purpose and Authorized Uses.

- (a) Lessor authorizes Lessee to use and occupy the Premises and Appurtenances for the sole and exclusive purpose of operating a freight rail intermodal facility and further authorizes Lessee to utilize Pacific Rail Services to conduct freight rail intermodal operations on the Premises. Should Lessee decide to use another vendor for same services, Lessee shall notify Lessor at least 30-days in advance of any anticipated change of vendor. Should Lessor have any concerns, a written notice must be submitted to Lessee within 5 business days from the date of vendor change notification. Lessee shall address these concerns.
- (b) The Lessee shall not make any alterations or changes to the Premises or Appurtenances without first requesting and obtaining prior written approval by Lessor. Lessor shall provide approval or rejection within 30 days from receipt of detailed written tenant improvement request. Any alterations or changes approved by Lessor and made by the Lessee to the Premises or Appurtenances (hereinafter "Improvements") shall be done without cost to Lessor and shall be consistent with the Lessee's authorized use stated herein.

SECTION 2.3 Prohibited Uses. Prohibited Uses shall include, but are not limited to the following:

- (a) With the exception of routine rehabilitation and maintenance or emergency response cleanup for derailments or other emergencies as may be required by the terms of this Lease Agreement or Governmental Bodies, all construction activities, property development or other subsurface disturbance unless approved in writing by Lessor as outlined in Subsection 2.2(b) herein.
- (b) Cross tie treating, waste treatment, or any underground storage tanks.
- (c) Passenger rail service equipment without Lessor's prior written approval.
- (d) With the exception of freight rail transportation of hazardous materials consistent with Environmental and Transportation Laws and Lessor's common carrier obligations or any activity otherwise expressly authorized by this Lease Agreement, no Hazardous Activities on or about the Premises or Appurtenances.
- (e) Construction of new railroad tracks, extensions or spurs on, extending into, off of, or along the Premises without Lessor's prior written approval as outlined in

Subsection 2.2(b) herein.

SECTION 2.4 Rights Reserved by Lessor.

- (a) Lessor shall retain trackage rights over and across the Premises and connecting rail infrastructure for the purpose of interchange with the Lessee, the BNSF Railway Company, and the Union Pacific Railroad.
- (b) Lessor shall retain the right to utilize the Appurtenances and Improvements over and across the Leased Premises as is reasonable and necessary to maintain compliance with Lessor's common carrier obligations.
- (c) Lessor shall retain the rights to any Federal or State tax credits that may be asserted related to ownership of the Premises, Appurtenances and Improvements.

SECTION 2.5 Rent. Effective upon September 1, 2025, Lessee shall pay Lessor \$100,000.00 per month in rent, plus 8% for Lessor's applicable operating costs. Thereafter, monthly rent shall be automatically adjusted on September 1st (each a "Rent Adjustment Date") by the percent change over the one-year period preceding the applicable Rent Adjustment Date based on data for June 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. The calculation shall be based on data for June, since data for August is not available until after the Rent Adjustment Date, and the next earlier month for which data is currently issued is June. The manner of calculating the adjustment is illustrated by the following example:

Current CPI Index (June 2024)	354.824
Less previous CPI Index (June 2023)	- 341.734
Equals index point change	= 13.09
Divided by previous CPI Index	÷ 341.734
Equals	= 0.0383046
Result multiplied by 100	x 100
Percent Change	= 3.83%

SECTION 2.6 Leasehold Excise Tax/Assessments. If applicable, Lessee shall pay the Lessor as an additional charge/fee hereunder, (a) all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Lease Agreement, (b) any surface water, fire protection assessments and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and (c) any taxes levied or assessed against the Premises in lieu of the foregoing, in whole or in part. Leasehold excise tax is calculated by the State, and assessed against leasehold interests in real property using a percentage multiplier of either the annual fee required

hereunder or an imputed fair market value of the same, and as a result, Lessee shall be responsible for any increases in leasehold excise tax that result from an increase in annual fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Lease Agreement. If Lessee provides the Lessor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Lessee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Lessee shall be required to obtain documented renewal of such exemption and provide such to the Lessor in order to claim continued exemption under this Lease Agreement.

SECTION 2.7 Payment. Payment of all fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, PO Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

SECTION 2.8 Penalty for Late Payments. Payment of fees and any other payments due and payable from Lessee under this Lease Agreement shall be subject to a late payment charge of one percent (1%) per month (twelve percent (12%) per annum).

SECTION 2.9 Lessee's Right to Revenue. Lessee shall be entitled to set rates, charge for services and retain all revenue derived from operating leased Premises.

**ARTICLE III
TERM AND TERMINATION**

SECTION 3.1 Effective Date and Term. This Lease Agreement shall become effective as of the Effective Date, and the terms hereof shall continue in effect until August 31, 2030 (the "Expiration Date"). Notwithstanding the foregoing, and for a period of ninety (90) days from the Effective Date only, Lessee may void this Lease upon written notice to Lessor that Lessee's lease agreements with Union Pacific Railroad and BNSF Railway Company have both terminated without renewal. Also, notwithstanding the foregoing, to the extent provided herein certain terms and conditions of this Lease Agreement and any related provisions necessary for the enforcement and or administration thereof may survive and be enforceable beyond the term of this Lease Agreement where expressly provided in this Lease Agreement.

SECTION 3.2 Termination for Material Breach. In addition to and without prejudice to pursuit of any and all other rights and remedies available at law or in equity, Lessor and Lessee shall have the option to terminate this Lease Agreement prior to the expiration of the full term hereof, upon one-hundred and thirty (130) days' written notice, in the event of a material breach by either party. Except for Lessee's failure to pay Rent or other monies due under this Lease Agreement, the breaching Party may request an opportunity to cure its material breach within ten (10) days of receiving the non-breaching Party's notice to terminate under this section (the "Cure

Request"). The defaulting Party shall cure its breach within sixty (60) days of delivering it's Cure Request, or otherwise this Lease Agreement shall terminate on the 30th day following the non-defaulting Party's receipt of the Cure Request. In the event that a cure cannot be reasonably accomplished within thirty (30) days, the breaching Party may request an additional sixty (60) days to cure its breach for a total of ninety (90) days, provided that it can demonstrate to the non-breaching Party that it is substantively and diligently pursuing such cure throughout the additional time period. In the event that a cure is not reached within ninety (90) days, the Lease Agreement shall terminate on the 90th day following the Cure Request. Material breach may include, but is not limited to, severe service disruptions, failure to pay Rent or late fees, failure to maintain adequate insurance pursuant to the terms of this Lease Agreement, failure to maintain the Premises to the standards required under this Lease Agreement, a declaration of bankruptcy or inability to pay debts when due by Lessee, or creation or maintenance of an environmental hazard or nuisance on the Premises.

SECTION 3.3 Termination Obligations.

- (a) Upon the expiration or termination of this Lease Agreement, Lessee shall immediately vacate the Premises and leave in place all Appurtenances and Improvements and allow Lessor to resume the provision of rail services upon the Premises.
- (b) The parties acknowledge money damages alone are insufficient to remedy a breach of the terms of this Section by Lessee, and Lessor shall have in addition to any other remedies available at law or in equity, a right of specific performance and/or injunctive relief.
- (c) Upon expiration or termination of this Lease Agreement and/or ultimate surrender and return of the Premises, Appurtenance and Improvements to Lessor, Lessee shall ensure such Premises, Appurtenance and Improvements are surrendered to Lessor in a condition at least maintained, where required, to the standards set forth in Article IV of this Lease Agreement. In the event Lessee fails to surrender the Premises, Appurtenance and Improvements in a condition conforming to the standards set forth in Article IV of this Lease Agreement Lessee shall reimburse Lessor for the actual cost of performing such maintenance or rehabilitation to conform the Premises, Appurtenance or Improvements to the condition required by Article IV of this Lease Agreement. Lessee shall have the right to a joint inspection with Lessor's representative to assess condition of property. Findings of joint inspection shall be mutually agreed upon record of condition of property at time of surrender. If conditions are identified during joint inspection that are determined to in a condition less than required under this Lease Agreement, Lessee shall have ninety (90) days to correct at Lessee's expense with Lessee's own labor force and equipment, or Lessee's contractor. Lessee shall have no liability for conditions identified in the joint inspection that were caused by Lessor.

ARTICLE IV

MAINTENANCE

SECTION 4.1 Condition of Premises. Lessee acknowledges that it has had an opportunity to inspect the Premises and Appurtenances and accepts the Premises and Appurtenances in an "as is, where is", "with all faults" condition.

SECTION 4.2 Mutually Agreed Inspection of Premises. Within thirty (45) days of Effective Date, Lessor and Lessee will perform joint inspection of premises. It will be agreed that mutual findings of inspection will be memorialized as Attachment C hereto, and shall be basis for assessment of condition at termination or expiration as outlined in Section 3.3(c).

SECTION 4.3 Rehabilitation and Maintenance. Lessee shall at all times, and at its sole cost and expense, maintain the Premises, Appurtenances and any Improvements, and maintain, or cause to be rehabilitated and/or maintained, the Premises to its current condition or better as of the Effective Date, surfaces, signs, and other structures located upon the Leased Premises in such safe and satisfactory condition as necessary to conform with Lessor's and industry standards and specifications, and to conform with all applicable Legal Requirements and standards promulgated by the Federal Railroad Administration and other Governmental Bodies regardless of the condition of the Premises upon transfer thereof to Lessee. Lessee shall control, maintain, all existing grade crossings (including the surface of all grade crossings), right-of-way vegetation, and fencing or other structure requirements pursuant to any Legal Requirements of any Governmental Body. Additionally, use of all grade crossings by the Lessee or it's vendor shall comply with any Legal Requirements of any Governmental Bodies. Lessee shall indemnify, defend, and hold harmless Lessor from and against all actions, claims, fines, losses or penalties against Lessor as a result of Lessee's failure to comply with any obligations referenced in this Section 4.3.

SECTION 4.4 Inspections by Lessor. With exception of track inspection, at all times and on reasonable advance notice to Lessee, Lessor shall have the right to enter upon the Premises and make inspections to determine compliance with the terms of this Lease Agreement. In no event shall Lessor be obligated to make any such inspections, and Lessor shall not be liable for any failure to make any such inspections or failure to identify any matters which are not in compliance with this Lease Agreement. In no event shall Lessor's conduct of inspections (or lack thereof) be deemed to result in a waiver of compliance with any terms of this Lease Agreement by Lessee.

SECTION 4.5 Grade Crossing and Structures Inventory and Governmental Reporting. Lessor shall be responsible for reporting of grade crossing and structures inventory and other information as may be required by the FRA and any other Governmental Body. At the request of Lessor, Lessee shall make and/or cooperate in any filings with or notices to FRA concerning the transfer of maintenance and operating responsibility to Lessee pursuant to the terms of this Lease Agreement.

SECTION 4.6 New Grade Crossing. Any voluntary installation of new

grade crossings by Lessee shall require written approval of Lessor.

SECTION 4.7 **Grade Crossing Improvements or Modifications.** Lessee shall be solely responsible to maintain, improve, or modify, at Lessee's sole cost and expense, all grade crossings and grade crossing warning devices in accordance with all applicable laws, regulations, and orders of any Governmental Body. Elimination or consolidation of grade crossings may be undertaken by Lessee at any time, provided such elimination or consolidation is consistent with applicable law and that salvage of any grade crossing warning devices or other crossing installations which may be owned in whole or in part by any third party (including any Governmental Bodies) shall be coordinated with such third party. Any remaining net salvage value obtained for elimination or consolidation of grade crossings shall be remitted to Lessor.

SECTION 4.8 **Title to Improvements.** All Appurtenances and Improvements, including track work and any improvements installed by Lessee during the term of this Lease Agreement, or any prior lease agreements, shall become the property of the Lessor at Lessee's termination and non-renewal of the Lease. Lessee shall not be entitled to compensation from Lessor for any work performed upon the Premises. Lessee shall not be entitled to any salvage value of the track, ties, crossing protection or other track related materials, unless it is utilized to replace and/or improve said track, ties, crossing protection or other track related materials during the term of this Lease Agreement.

ARTICLE V

LESSEE'S INSPECTION PRIOR TO LEASE AGREEMENT

SECTION 5.1 **Acknowledgement of Inspection.** By signing this Lease Agreement, Lessee acknowledges that Lessee has inspected the Premises and Appurtenances, including all improvements and structures on the Premises. Lessee further acknowledges that:

- (a) No representation has been made by Lessor to Lessee concerning the state or condition of the Premises or Appurtenances, or the age of any improvements on or quality of title to the Premises;
- (b) Lessee has not relied upon any statement or declaration of Lessor with respect to the physical condition of the Premises or Appurtenances, Lessor's title to the Premises, Lessor's freight traffic volumes to or from the Premises, or any other matter, either oral or in writing, as an inducement to enter into this Lease Agreement, other than as stated in this Lease Agreement; and
- (c) The sole consideration for execution of this Lease Agreement by Lessee is set forth in this Lease Agreement.

SECTION 5.2 **Lessor's Disclaimers.** EXCEPT AS OTHERWISE PROVIDED IN THIS LEASE AGREEMENT, LESSOR HEREBY DISCLAIMS ANY

REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE PREMISES OR APPURTENANCES, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PREMISES AND APPURTENANCES, OR THE CONFORMITY OF THE PREMISES AND APPURTENANCES TO THEIR INTENDED USES. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING STRICT LIABILITY IN TORT, WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PREMISES AND APPURTENANCES TO THEIR INTENDED USES. LESSOR OFFERS, AND LESSEE ACCEPTS THE PREMISES AND APPURTENANCES "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION AND SUBJECT TO ALL LIMITATIONS ON LESSOR'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE PREMISES AND APPURTENANCES. LESSOR DOES NOT UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE OF THE PREMISES OR APPURTENANCES. NO COVENANT OF QUIET ENJOYMENT IS MADE.

ARTICLE VI

INSURANCE

SECTION 6.1 The Lessee shall maintain for itself and the Lessor, throughout the entire period the Lessee operates on the Premises, adequate insurance to protect the Parties and their elected and appointed officers, agents, attorneys, and employee against all of Lessor's and Lessee's liability arising out of Lessee's operations within, on or upon, ownership of, or use of the Premises, Appurtenances and Improvements, or any part thereof. This obligation shall require the Lessee to maintain insurance at least in the following amounts:

- (a) **COMMERCIAL GENERAL LIABILITY.** Insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include blanket contractual coverage, including coverage for the Lease Agreement as now or hereafter amended and specific coverage for the indemnity provisions set forth herein. Coverage must be written with the following limits of liability:

Bodily and Personal Injury & Property Damage
\$ 25,000,000 per Occurrence
\$ 50,000,000 aggregate

- (b) **WORKERS' COMPENSATION.** If required by law, and to the extent required by law, Lessee shall maintain during the life of this Lease Agreement statutory required coverage limits for all employees, and in the case any work is sublet, the Lessee shall require its contractors and subcontractors similarly to provide

workers' compensation insurance for all their employees to the extent required by law. The Lessee shall also maintain, during the life of this policy, employer's liability insurance to the extent Lessee is required by law to have and maintain Worker's Compensation Insurance Coverage.

- (c) **COMMERCIAL AUTO LIABILITY.** Insurance shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.
- (d) **RAILROAD ACCIDENT POLLUTION LIABILITY INSURANCE.** This insurance shall name the Lessor as an additional insured with coverage of at least \$25,000,000 per occurrence and \$50,000,000 in the aggregate.

SECTION 6.2 The required insurance must be obtained and maintained for the entire period the Lessee operates on the Premises and such requirements shall survive termination of this Lease Agreement. If the Lessee, its contractors, or subcontractors do not have the required insurance, the Lessor will require such entities to stop operations until the insurance is obtained and approved.

SECTION 6.3 Certificates of Insurance reflecting evidence of the required insurance and approved by the Lessor's Risk Manager for the GENERAL LIABILITY, POLLUTION LEGAL LIABILITY, and policies described above, shall be sent to:

City of Tacoma dba Tacoma Rail
c/o Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed on or before the Effective Date of the Lease Agreement, and annually thereafter, and as provided in Section 6.5 below. All coverage shall be listed all on one certificate with the same expiration dates.

SECTION 6.4 Policies providing insurance coverage as required by this Section shall be issued by companies authorized to do business under the laws of the State of Washington.

SECTION 6.5 Lessee shall within 24 hours provide Lessor with written notice in the event an insurance carrier providing coverage required by this Section notifies Lessee of its intent to terminate insurance coverage, terminates coverage or fails to renew insurance coverage. In that event, the Lessee shall furnish, at least 30 days prior to the expiration of the date of such insurance coverage, a certificate of insurance as proof that equal and like coverage required by this Section has been or will be obtained prior to any such lapse or termination of insurance coverage during the balance of the period of the Lease Agreement.

SECTION 6.6 The Lessor reserves the right, during the term of the Lease

Agreement, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures and common practices of short lines railroads. Lessee shall have up to ninety (90) days to procure additional required insurance.

SECTION 6.7 Each insurance policy required pursuant to this Lease Agreement shall be primary and non-contributing as respects any coverage maintained by Lessor and shall include an endorsement reflecting the same. Any other coverage maintained by Lessor shall be excess of this coverage herein defined as primary and shall not contribute with it. The certificate of insurance must reflect that the above wording is included in all such policies.

SECTION 6.8 Each insurance policy obtained pursuant to this Lease Agreement shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial rating at all times during coverage of no less than an "A XII" in the latest edition of "Best's Key Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Lessee shall give prompt notice to the Lessor and shall seek coverage from an insurer that meets the foregoing standards. The Lessor reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

SECTION 6.9 Commercial general liability insurance policies and coverage obtained pursuant to this Lease Agreement shall include an endorsement deleting all exclusions for work or incidents occurring within 25 feet or any distance from a railroad track or railroad property, or on, over, or under a railroad track and shall have no exclusions for explosions or collapse.

SECTION 6.10 Insurance policies required pursuant to this Lease Agreement shall have no non-standard exclusions unless approved of by the Lessor's Risk Manager or designee.

SECTION 6.11 Commercial general liability insurance policies required by Lessee pursuant to this Lease Agreement shall name the City of Tacoma as an additional named insured without limitation, pursuant to an endorsement approved of by the Lessor's Risk Manager or designee. Any contractors of Lessee who perform work on the Premises or Appurtenances shall also be required to have their commercial general liability insurance policies name the City of Tacoma as an additional named insured without limitation, pursuant to an endorsement approved by the Lessor's Risk Manager or designee.

SECTION 6.12 Lessee and Lessee's Contractors' insurers, through policy endorsement, shall waive their rights of subrogation against the Lessor for all claims and suits. The certificate of insurance must reflect this waiver of subrogation rights endorsement.

SECTION 6.13 If coverage is purchased on a "claims made" basis, then the Lessee shall warrant continuation of coverage, either through claims made policy renewals or the purchase of an extended discovery period, for not less than three (3) years from the date of termination of this Lease Agreement.

SECTION 6.14 Policies and coverage required herein may include a deductible and/or self-insured retention not to exceed to \$50,000.00; provided, however, that as to any loss or damage arising out of Lessee's operations, on or upon, or use of the Premises, or that would otherwise be covered by any coverage as required herein, if Lessee elects to obtain insurance coverage subject to any deductible and/or self-insured retention, Lessee shall itself directly pay, in lieu of insurance coverage for the deductible or self-insured retained limit exposure, any and all Lessor liabilities that would otherwise in accordance with the provisions of this Lease Agreement, be covered by Lessee's insurance if Lessee had elected not to have its insurance coverage subject to a deductible and/or self-insured retention amount. Such direct coverage by Lessee shall be in an amount equal to the amount of Lessee's actual deductible and/or self-insured retention amount. The self-insured retained limit payment obligation on the part of Lessee shall not be subject to off-set, set-off or reduction by operation of any claim by the Lessee against the Lessor, or any claim of comparative fault on the part of the Lessor.

ARTICLE VII **INDEMNITY**

SECTION 7.1 To the fullest extent permitted by law, Lessee shall, indemnify, defend, and hold harmless the Lessor and the Lessor's successors, assigns, legal representatives, officers (elected or appointed), employees, and agents (collectively, "Indemnitees") from, and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (collectively "Claims"), (including, but not limited to claims for court costs, attorneys' fees, and costs of remedial investigations, feasibility studies, removal and remediation and associated reporting, environmental mitigation and/or restoration, and governmental oversight costs), other environmental costs, including natural resource damages (collectively "Liabilities") of any nature, kind, or description, of any person or entity, directly or indirectly, arising out of, resulting from, or related to:

- (a) Lessee's occupation and use of the Premises, Appurtenances and Improvements;
- (b) Lessee's and/or lessee's assigns movement of railcars;
- (c) Lessee's exercise of any rights under this Lease Agreement; and
- (d) any act or omission of Lessee or Lessee's agents under the terms of this Lease Agreement.

SECTION 7.2 Lessee agrees to indemnify, defend, and hold harmless the Indemnitees against any Liabilities asserted against any Indemnitee under the Federal Employees Liability Act ("FELA") whenever employees of Lessee or any of its agents, invitees, contractors claim or allege they are employees of any Indemnitee.

SECTION 7.3 The Lessee waives immunity under RCW Title 51 and affirms that the Lessor and the Lessee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

ARTICLE VIII **HAZARDOUS MATERIALS**

SECTION 8.1 **Intent Of Parties.** Any liability regarding a hazardous material or hazardous substance, which includes any designated substances under federal and state environmental laws and any substances that may not be classified under an environmental law but are still considered hazardous (collectively hereinafter "Hazardous Materials") arising during the term of this Lease Agreement will be controlled by this Article VIII of this Lease Agreement.

SECTION 8.2 **Obligation To Abide By Laws.** Lessee shall at all times perform under this Lease Agreement in strict compliance with all applicable environmental and transportation laws as the same may presently exist or may hereafter be enacted, promulgated, or amended, including, but not limited to, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Clean Water Act, as amended ("CWA"), the Oil Pollution Act, the Hazardous Materials Transportation Act, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (collectively referred to hereinafter as "Environmental and Transportation Laws").

SECTION 8.3 **Hazardous Materials Or Railcars Brought On Premises.** Lessee shall not utilize any materials containing Hazardous Materials or railcars containing Hazardous Materials on the Premises at Lessee's direction except to the extent such Hazardous Materials are kept, and stored in strict compliance with all Environmental and Transportation Laws. If Lessee fails to keep, store, dispose, handle, treat these materials and substances in compliance with all Environmental and Transportation Laws, Lessee agrees to be solely responsible for all resulting liability, costs, and expenses.

SECTION 8.4 **Release of Hazardous Materials.** Lessee shall immediately report all releases of Hazardous Materials to the environment on or around the Premises to the appropriate regulatory agency and to Lessor and seek all necessary assistance from its emergency services contractor. Lessee shall use best efforts to promptly respond to any such release, violation, inspection, condition, or activities affecting the Premises. Lessee shall promptly respond to the Lessor's request for information regarding such releases, conditions, or activities.

SECTION 8.5 **Notice.** If the Lessor has notice from Lessee or otherwise of a release by Lessee or violation of Environmental and Transportation Laws on or around the Premises during the term of this Lease Agreement and the act or omission of Lessee or its employees, agents, contractors, subcontractors, guests, licensees or invitees was a cause of the release or violation, the Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises.

SECTION 8.6 **Environmental Indemnification by Lessee.** Lessee shall indemnify, defend, and hold harmless the Lessor from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, costs, and expenses (including investigation and clean up costs and attorneys' fees and disbursements), that arise out of (a) the inaccuracy of the representations and warranties of Lessee contained in this Article VIII of this Lease Agreement, (b) Lessee's failure to fully comply with, or breach of, any covenant or obligation of Lessee under this Article VIII of the Lease Agreement, or (c) any act or omission of Lessee or its employees, agents, contractors, subcontractors, guests, licensees, or invitees that results in a release or exacerbation of any Hazardous Substances on or near the Premises, as those terms are defined in this Agreement and by applicable law. The obligation of Lessee to indemnify, defend, and hold harmless the Lessor shall include, but shall not be limited to, all Environmental Costs. Provided, however, notwithstanding anything to the contrary, the obligation of Lessee to indemnify, defend, and hold harmless the Lessor shall not apply to any Environmental Conditions to the extent caused by the act or omission of the Lessor or its employees, agents, contractors, subcontractors, guests, licensees, or invitees. If an Environmental Conditions caused by the act or omission of the Lessor or its employees, agents, contractors, subcontractors, guests, licensees, or invitees is exacerbated by the act or omission of Lessee or its employees, agents, contractors, subcontractors, guests, licenses, or invitees, Lessee shall indemnify, defend, and hold harmless the Lessor only to extent of the actual damage caused by Lessee actions.

ARTICLE IX **LIENS AND ENCUMBRANCES**

In no event shall Lessee cause any Encumbrance against the Premises, Appurtenances or Improvements. Lessee shall promptly pay and discharge any and all Encumbrances, including liens, which arise out of any actions or omissions of Lessee, (including without limitation, liens which arise out of any construction, alterations or repairs done, suffered or permitted to be done by Lessee on the Premises) and shall indemnify Lessor against any Loss, liability or expense incurred by Lessor on account of such liens. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises, Appurtenance or Improvements that is or may be permitted by law to prevent the attachment of any interests in and to the Premises, Appurtenance or Improvements by any Governmental Body or third party claiming rights to the Premises, Appurtenance or Improvements; provided, however, that actions or failure of Lessor to take any such actions shall not relieve Lessee of any obligation or

liability under this Section or any other Section of this Agreement. If, because of any act of omission of Lessee, any mechanic's lien or other lien, Encumbrance, charge or order for the payment of money shall be filed against Lessor or any portion of the Premises, Appurtenance or Improvements, Lessee shall, at its own expense, cause the same to be discharged of record within thirty (30) days after written notice thereof from Lessor to Lessee, and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, penalties, and claims, including legal expenses, relating therefrom.

Notwithstanding anything above, Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

ARTICLE X **NO ASSIGNMENT AND SUBLEASE**

Lessee shall not assign this Lease Agreement except to the Port of Tacoma in the event of an agreement relating to operation of the Premises between Lessee and the Port of Tacoma, in whole or in part or any interest herein, or grant a security interest in the Premises, Appurtenances or Improvements, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet, without the express prior written consent of Lessor. Any permitted assignee of Lessee's rights under or property acquired by this Lease Agreement, shall assume in writing all of Lessee's continuing and existing or thereafter arising obligations under the Lease Agreement, and under any then effective contract assigned by Lessor to Lessee, in whole or in part, in accordance with the terms of this Lease Agreement, which obligations are related to the property or rights involved in the assignment.

In the event the Lessor sells or otherwise conveys the Premises to a third party, Lessor shall have the express right to assign this Lease Agreement to said third party without consent of the Lessee.

ARTICLE XI **MISCELLANEOUS**

SECTION 11.1 **Utilities.** Lessee shall be responsible for the payment of all utilities on and after the Effective Date and shall defend, indemnify and hold harmless Lessor from and against any such charges. Lessee's liability for utilities begins with first billing cycle after the Effective Date. There shall be no proration between Lessor and Lessee of utility bills applicable to the Premises. Lessee shall be required to notify all providers of utilities for the Premises and arrange to switch over all utilities to Lessee's

own account.

SECTION 11.2 Notices. Unless otherwise expressly agreed to between the Parties, all notices which may be or are requested to be given pursuant to this Lease Agreement shall be in writing and deemed to have been duly given to the required Party five business days after having been posted in a properly sealed and correctly addressed envelope, postage prepaid or when hand delivered or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below:

TO LESSOR:
Superintendent
Tacoma Rail
2601 SR 509 N Frontage Road
Tacoma, WA 98421

With a copy to:
City of Tacoma dba Tacoma Rail
c/o Real Property Services
3628 South 35th Street
Tacoma, WA 98409

IF TO LESSEE:
Chief Commercial & Strategy Officer
The Northwest Seaport Alliance
One Sitcum Way
Tacoma, WA 98421

With a copy to:
General Counsel
Northwest Seaport Alliance
401 Alaskan Way
Suite 300
Seattle, WA 98104

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

SECTION 11.3 Choice of Law. The Lease Agreement shall be governed by and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws, and the Lessee agrees that any action brought relative to enforcement of this Lease Agreement shall be initiated in the Superior Court of Pierce County, and shall not be removed to a federal court, except as to claims over which the Superior Court of Pierce County has no jurisdiction. Removal to federal court

shall be to the Federal Court of the Western District of Washington, at Tacoma.

SECTION 11.4 Severability. In the event that any of the provisions of this Lease Agreement, or portions or applications hereof, are held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

SECTION 11.5 Amendment. This Lease Agreement may not be modified or amended except by an instrument in writing signed by both Lessor and Lessee.

SECTION 11.6 Binding Effect. Subject to the provisions of Article X, this Lease Agreement shall be binding upon each of the Parties and their respective successors, legal representatives and permitted assigns, and shall inure to the benefit of each of the parties, and their respective successors, legal representatives and permitted assigns.

SECTION 11.7 No Waiver. Except as may be expressly provided otherwise in this Lease Agreement, no failure on the part of either Party or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder or thereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party or any of its agents of any right, power or remedy hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 11.8 No Third Party Beneficiaries. This Lease Agreement is made and intended for the benefit of the Parties hereto and their respective successors and permitted assigns and for no other parties.

SECTION 11.9 Integration. The Exhibits referenced in this Lease Agreement and attached hereto are specifically made a part of this Lease Agreement by reference. This Lease Agreement together with its Exhibits embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements (whether oral or written) concerning the subject matter hereof. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Lease Agreement are for convenience only and shall not be deemed to modify or affect the rights or duties of the parties. All rights and obligations of the parties set forth in this Lease Agreement are integral parts of this Lease Agreement. The consideration inducing the parties to enter into this Lease Agreement includes all of the commitments by Lessor to Lessee, and by Lessee to Lessor, as set forth in this Lease Agreement. The terms of this Lease Agreement have been arrived at after considerable arms length negotiation and mutual review of the parties.

SECTION 11.10 Survival of Indemnities. Unless expressly provided

otherwise, all obligations of any indemnity under this Lease Agreement shall survive expiration or termination of this Lease Agreement.

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first above written.

LESSOR:

CITY OF TACOMA

By: _____
Mayor Date

Attest:

City Clerk

State of Washington)
County of Pierce) ss

I certify that I know or have satisfactory evidence that Victoria Woodards 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 Mayor 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 _____

APPROVED:

AUTHORIZED:

REVIEWED:

APPROVED AS TO FORM:

LESSEE:

By: _____
Title: _____
Date: _____

State of Washington)
) ss
County of Pierce)

Dated: _____

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 _____

**EXHIBIT A
LEASED PREMISES**



EXHIBIT B

DEFINITIONS

"Encumbrance" shall mean any charge, claim, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment" shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental Conditions" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, releasing, placing, or disposing of Hazardous Materials on, from, or about the Premises other than in compliance with applicable Environmental and Transportation Laws. The term "Environmental Conditions" includes, but is not limited to, the presence of Hazardous Materials on, from, or about the Premises attributable to the operation of any storage tanks, oil/water separators, or in-ground hydraulic lifts or hoists, and associated equipment.

"Environmental Costs" shall mean any and all judgments, damages, penalties, fines, costs, liabilities, obligations, losses, or expenses (including, without limitation, reasonable attorneys' fees and expenses of counsel) arising from or incurred in connection with Environmental Conditions, including, but not limited to, those relating to the presence, investigation, or remediation of Hazardous Materials.

"Environmental and Transportation Laws" shall mean the laws and regulations identified in this Article VIII of this Lease Agreement, and all other federal, state (including Washington State and various subdivisions and agencies thereof), or local laws, regulations, rules, permit requirements, or orders relating to Hazardous Substances, as the same may presently exist or may hereafter be enacted, promulgated, or amended.

"FRA" shall mean the Federal Railroad Administration or its successor agency (ies).

"Governmental Body" shall mean: (i) any state, county, city, town, borough, village, district or other jurisdiction; (ii) any federal, state, local, municipal or other government; (iii) any governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (iv) any body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (v) the Surface Transportation Board (STB); or (vi) any official of any of the foregoing.

"Hazardous Activity" shall mean the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Materials into the Environment and any other act, business, operation or anything that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Premises.

"Hazardous Materials" shall mean any (1) hazardous waste as defined in the federal Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.) (RCRA), and regulations promulgated thereunder, and WAC 173-303, Washington State Dangerous Waste Regulations; (2) hazardous substance as defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. §9601, et seq.) (CERCLA), and regulations promulgated thereunder; (3) petroleum or liquid petroleum or wastes; and (4) any other toxic or hazardous substances or pollution that may be regulated from time to time by federal, state, or local Environmental and Transportation Laws.

"Legal Requirement" shall mean any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

"Losses" shall mean all costs, expenses, fees or liabilities of, or in any way related to: (a) any violation of Legal Requirement including Environmental Law; (b) any damage to property, the environment or to natural resources; (c) any bodily injury or death of any person; or (d) the breach of any contract. Losses shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees.

"Offer of Financial Assistance" shall mean an offer to purchase the Premises through the abandonment and/or discontinuance proceedings pursuant to the terms of and regulations promulgated pursuant to 49 U.S.C. Section 10904, or its successor statutes, all as may be amended from time to time.

"Release" shall be defined as provided in 42 U.S.C. 9601 and RCW 70.105D.020. In the event a conflict exists between the two definitions, the broader definition shall apply. For purposes of this Lease Agreement, the term release shall also include a threatened release.