

## **MASTER LOCOMOTIVE LEASE AGREEMENT (NET)**

This **LOCOMOTIVE LEASE AGREEMENT (NET)** ("Lease") is dated as of \_\_\_\_\_, 2014, between **PROGRESS RAIL LEASING CORPORATION**, a Delaware corporation ("Lessor"), and **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION doing business as TACOMA RAIL** ("Lessee").

### **RECITALS**

WHEREAS, Lessor owns certain locomotives, more specifically identified on the Schedules attached hereto and such additional schedules as may be executed between the parties from time to time during the term of this Lease (collectively, the "Schedules");

WHEREAS, Lessee desires to lease the locomotive described in the Schedules (each such locomotive a "Unit," and collectively, the "Units") from Lessor, all upon the terms and conditions set forth in this Lease;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

### **AGREEMENT**

#### **1. Documents; Definitions; Glossary.**

(a) Each Schedule shall be considered a separate and enforceable agreement incorporating the terms and conditions of this Lease therein. In the event of a conflict between the terms of this Lease and any Schedule, the terms of the Schedule will control.

(b) In addition to the definitions included elsewhere in this Lease, certain terms are defined for purposes of this Lease as follows:

"AAR" means the Association of American Railroads.

"Casualty Unit" means a Unit, which suffers an Event of Loss.

"Delivery Date" for any Unit means the date on which such Unit is delivered to Lessee pursuant to the Lease.

"Environmental Claim" means any accusation, allegation, notice of violation, claim, demand, abatement order, direction, investigation, litigation, or any other proceeding by any governmental authority or any person (including any corporation, partnership, association, or any other organization, entity, individual or class of individuals) for personal injury (including sickness, disease, death, dismemberment, disfigurement, or mental anguish), tangible or intangible property damage, damage to environmental or natural resources, reimbursement of environmental cleanup cost, nuisance, pollution, contamination, fines, penalties, restrictions, attorneys' fees, health effects monitoring and any other adverse effects on the environment arising under any applicable foreign, federal, state or local statute, law (including common law), ordinance, rule, regulation, or order (whether voluntary or not) relating to the environment, natural resources, or human health and safety.

"FRA" means the Federal Railroad Administration.

"Hazardous Substances" means any pollutant, toxic substance, prohibited toxic substance, restricted substance, hazardous waste, PCB waste, controlled substance, petroleum or petroleum derived substance, waste or additive asbestos; radio-active material; or any other compound, element, material or substance in any form whatsoever regulated by or under any applicable environmental law, regulation, ruling or other governing authority.

"including" means "including, without limitation."

"Interchange Rules" means all codes, rules, interpretations, laws and orders governing hire, use, condition, repair and all other matters pertaining to the interchange of railroad freight traffic reasonably interpreted as being applicable to the Unit, as adopted and in effect from time to time by the FRA, AAR and any other organization, association, agency or governmental authority that may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders, including the Surface Transportation Board and the United States Department of Transportation.

"Repair Work" means repairs, maintenance, modifications, additions, or replacements required to keep and maintain the Unit in the same condition as when Accepted by Lessee (as described in Section 4), ordinary wear and tear excepted, being no less than substantially good running condition and in compliance with FRA requirements..

"Replacement Unit" shall mean a locomotive of substantially similar size and condition to a Unit originally subject to this Lease, which is substituted for a Unit.

"Uncontrollable Force" shall mean act(s) beyond the control of the parties, including, but not limited to, acts of God, legislation or regulation of any applicable government, war or acts of public enemy, court order, riots, strikes or other labor disputes, fires, or explosions. Economic hardship shall not constitute an act beyond the control of the parties.

(c) Glossary.

| TERM                | WHERE DEFINED |
|---------------------|---------------|
| Casualty Payment    | Section 17    |
| Casualty Value      | Schedules     |
| Claims              | Section 16(a) |
| Delivery Point      | Schedules     |
| Event of Default    | Section 19    |
| Event of Loss       | Section 17    |
| Expiration Date     | Schedule 1    |
| General Claim       | Section 16(a) |
| Hazardous Materials | Section 5(b)  |
| Holding Over        | Section 20    |
| Holdover Amount     | Schedules     |
| Indemnatee          | Section 16(a) |
| Inspection Deadline | Section 4     |
| Lease               | Preamble      |
| Lessee              | Preamble      |

|                            |               |
|----------------------------|---------------|
| Lessor                     | Preamble      |
| Lost Benefit of Bargain    | Section 19(b) |
| Notice of Cancellation     | Section 19(b) |
| Rent                       | Schedules     |
| Response Time              | Schedules     |
| Return Point               | Schedules     |
| Scheduled Termination Date | Schedules     |
| Taxes                      | Section 14    |
| Term                       | Section 6     |
| Termination Date           | Schedules     |
| Units                      | Recitals      |

2. **Lease of Unit.** Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions of this Lease from Lessor, the Units. This Lease shall become effective as to any Unit immediately upon the Delivery Date. It is the intent of the parties that no agency, joint venture, or partnership relationship shall arise or be created between Lessor and Lessee. Lessee's rights and interests hereunder shall be those of a Lessee only, and Lessee shall not acquire any ownership or other interest of or in the Units. From and after the Delivery Date, Lessee assumes and shall bear the entire risk of loss, theft, destruction or damage to each Unit during the Term, until returned to Lessor in accordance with this Lease.

3. **Delivery of Unit.**

(a) Lessor shall deliver a Unit to the Delivery Point on the Delivery Date; provided, Lessor shall suffer no liability or bias if any Unit is not delivered by Lessor by the Delivery Date. This Lease shall be effective with respect to that number of Units actually delivered to the Delivery Point. Lessor shall use reasonable efforts to deliver Units on a timely basis; provided, however, the Delivery Date may be modified if (i) Lessor and Lessee otherwise mutually agree to a modified Delivery Date, or (ii) delays in delivery result from Uncontrollable Force, which for purposes of this Section 3(a) also includes, failure of suppliers to deliver or meet requirements, casualties or breakdown of or damage to plants, equipment or facilities of Lessor, any Unit manufacturer, repair facility, or their respective suppliers, breakdown in transportation services, and/or defaults and/or delays of the Lessee or any persons or entities controlling the Lessee. In the event of a delay beyond the Delivery Date caused by an Uncontrollable Force for more than one hundred twenty (120) days, either party shall have the right to terminate the applicable Schedule upon thirty (30) days prior written notice.

(b) Each Schedule will designate which party shall be responsible for freight charges with respect to movement of the Unit from the Delivery Point. In all events, from and after Acceptance of a Unit by Lessee, Lessee shall be liable for all costs, charges, and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation, or movement of a Unit.

4. **Condition of Units: Acceptance.** Lessee shall, by no later than two business days after delivery of any Unit to the Delivery Point, cause the Unit to be transported to Lessee's facility and have its authorized representative inspect such Unit at the Lessee's facility and accept ("Accept") or reject ("Reject") it on the basis of condition (as described in the last sentence of this Section 4) and, if applicable, material compliance with the specifications outlined in the applicable Schedule for such Unit. A Unit that is not inspected and either Accepted or Rejected within two (2) business days after delivery of the Unit to the Delivery Point by Lessee (the "Inspection Deadline"), shall be conclusively deemed to be Accepted. Within three days after the date of Acceptance of any

Unit (the "Acceptance Date"), Lessee shall issue and deliver to Lessor a Certificate of Acceptance in the form of **Exhibit A** for each such Unit. In the event Lessee Rejects any Unit, it shall immediately so notify Lessor in writing of such Rejection, and Lessor shall have a commercially reasonable opportunity to, at its option, remedy the deficiency and re-deliver such Unit to Lessee, or remove the Unit from the applicable Schedule. Lessee may reject any Unit not in substantially good running condition and compliant with FRA requirements.

5. **Use and Possession.** Provided that Lessee is not in default of this Lease, Lessee shall be entitled to possession of the Unit beginning on Delivery Date continuing throughout the Term of this Lease with respect to such Unit, subject to the holding over provision set forth in Section 20 of this Lease. Each Unit is to be used only in the service as specified with respect to such Unit in the applicable Schedule and shall not under any circumstances be used for any other purpose without the prior written consent of Lessor. Provided that Lessee is not in default of this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Units; provided that such possession, use and quiet enjoyment is in accordance with the terms of this Lease, including the Lessee's covenants below. Lessee covenants (i) that each Unit shall be used (A) in a careful and prudent manner; (B) solely in a use, service, and manner for which the Unit was designed; (C) in compliance with this Lease and any applicable laws, including specifically, but not limited to, the Interchange Rules; and (D) exclusively on Lessee's rail lines or on rail lines in which the Lessee exercises trackage rights all within the continental United States of America; (ii) that Lessee will only allow Lessee's properly trained employees to operate a Unit during the Term of Lease; and (iii) that Lessee further agrees to provide Lessor with copies of training records, upon request, for any Lessee employee who will operate a Unit; and (iv) that Lessee will not use any Unit to haul, transport or otherwise move any Hazardous Substances except as agreed to by the parties. The Units are not intended for use in connection with any nuclear facility or activity or shipment.

6. **Term.** The term of this Lease with respect to each Unit shall be set forth in each applicable Schedule.

7. **Rental.** For each Unit, Lessee shall pay to Lessor Rent during the period starting on the Acceptance Date and terminating on the Expiration Date of this Lease as to such Unit. Lessee shall promptly make all Rent and other sums payable by Lessee hereunder without notice or demand.

8. **Payment.** Lessee shall pay Rent to Lessor monthly in advance beginning on the Acceptance Date and on the first day of each succeeding month until the Expiration Date. The Rent payment due on the Acceptance Date shall be prorated for the then current month based upon the number of days remaining in the month starting with the Acceptance Date. Lessee shall send all Rent payments, and any other payment due to Lessor at the address provided in the Schedules or at such other place as Lessor may specify in a written notice delivered to Lessee. Lessor may deliver an invoice to Lessee for the payment of Rent or other amounts due hereunder as a courtesy to Lessee; provided, the provision (or lack thereof) of any such invoice shall not affect Lessee's obligation hereunder to pay such amounts when due.

9. **Markings, Record Keeping, Recording, Inspections.**

(a) Lessor will cause each Unit to be stenciled with the running marks and identifying numbers as shown on each Schedule. Lessee shall not change or alter such running marks or identifying numbers without prior written consent of Lessor. Lessor may, from time to time, upon giving reasonable notice to Lessee, restencil the Unit with such other running marks and identifying numbers, as Lessor shall in its sole discretion elect. Lessee may affix to each Unit its corporate name

and its logo, the corporate name(s) and logo(s) of its parent corporation or such other identification or reporting markings as are customary in Lessee's operations. Except as provided herein, Lessee shall not place any other lettering or marking upon any of the Units.

(b) The Lessor shall, at its cost, cause each Unit to be registered at all times in the Universal Machine Language Equipment Register (UMLER) with Lessor's reporting marks. Lessee shall reimburse Lessor for any registration costs, if any, incurred due to Lessee's change of the reporting marks and shall maintain such records as shall be required from time to time by any Interchange Rule, or any rules or which relate to the use and handling of the Unit.

(c) Lessor may, at its own cost and expense, inspect each Unit and all records relating to the Unit upon reasonable prior written notice.

**10. Repairs and Maintenance.** All costs of Repair Work shall be the responsibility of Lessee.

**11. Omitted.**

**12. No Abatement of Rent.** Except as provided in the applicable Schedule, Lessee's obligations to pay all Rent and other sums when due and to otherwise perform its obligations under this Lease are absolute and unconditional, and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment, or recoupment, for any reason whatsoever, including, but not limited to: (a) any past, present, or future claims of Lessee against Lessor under this Lease or otherwise; (b) any defect in, damage to, loss of use or possession of, or destruction of any Unit, whatsoever the cause; (c) the prohibition of, or other restriction against, Lessee's use of any Unit; (d) the interference with such use by any private person, entity, or governmental authority; or (e) for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent and other payments payable by Lessee hereunder shall continue to be payable in all events in the manner and at all times as herein provided. Each Rent or other payment made by Lessee hereunder shall be final and shall not be subject to recovery of, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

**13. Insurance.** During the term of this Lease, Lessee, at its own expense, shall provide and maintain public liability and property damage insurance for the Unit against all risks of loss including Casualty Values, in the amounts and subject to the terms indicated in the applicable Schedules. If Lessee fails to maintain such insurance, Lessor, at its option, may provide or procure such insurance. In that event, upon Lessor's demand, Lessee shall reimburse Lessor for the cost of such insurance, plus an administrative fee equal to: (i) 5% of the cost paid by Lessor; or (ii) the highest amount allowed by applicable law, whichever is less. Notwithstanding the foregoing, the fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including liability under the indemnification provisions of this Lease, and damages recoverable by Lessor shall not be limited by the amount of required insurance.

**14. Taxes.** During the term of this Lease, Lessee shall be responsible for the filing and payment when due of all Taxes. For purposes of this Section, "Taxes" means taxes, assessments, and other governmental charges, license fees, assessments, fines, levies, imposts, duties, tariffs, customs duties, switching charges, mileage equalization charges, empty movement charges, track storage, detention or demurrage charges, ad valorem and other property taxes, sales and use taxes, excise taxes, withholding taxes, and business or occupation taxes, all including penalties and interest thereon, levied or imposed by any domestic or foreign, federal, state, or local government or taxing

authority, railroad, or other agency, imposed upon, or with respect to, either the Units, this Agreement, Lessee, or Lessor in connection with this Lease or other amounts paid on or with respect to any Unit (including payments in the event of a casualty) or this Lease, except for taxes on or measured by Lessor's income, or income taxes associated with this Lease. Lessee agrees to promptly reimburse Lessor for any of the foregoing paid by Lessor after written demand to Lessee from Lessor. To the extent any Taxes are withholding Taxes required to be deducted from any Rent or other amount due hereunder, Lessee shall pay to Lessor an additional amount sufficient to enable Lessor to receive and retain, after such withholding (including withholding from such additional payment), an amount equal to the amount Lessor would have otherwise received hereunder if such withholding had not been required.

**15. Liens.** Lessee covenants that it will promptly pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation, or claim which, if unpaid, might become an encumbrance, cloud, lien, or charge upon any Unit in favor of anyone claiming by, through, or under Lessee or as a result of the acts or omissions of Lessee.

**16. Indemnity.**

(a) Lessee will defend, indemnify, and hold Lessor and its parent companies, subsidiaries and other affiliates and their respective officers, directors, employees, agents, successors and assigns of any of the foregoing (each, a "Lessor Indemnitee") harmless from and against, on an after-tax basis, any loss, liability, damage, claim, cause of action, expense (including reasonable attorneys' fees and expenses of litigation), or injury of any nature or kind incurred or suffered by or asserted against Lessor, including any loss, liability, damage, claim, and expense arising under any applicable law, rule, or regulation relating to the environment, natural resources, or human health and safety ("Lessor General Claims"), arising at any time in contract or tort (including, but not limited to, strict liability in tort) (A) to the extent relating to or arising out of (i) this Lease, including (but not limited to) the acceptance, use, rejection, ownership, possession, use, operation, presence, leasing, subleasing, maintenance, repair, removal, replacement, substitution, alteration, reconstruction, improvement, return, repossession, of any Unit or any part thereof (including, without limitation, any claim for loss of lading or damage asserted by third parties to be caused by any commodity, hazardous or toxic substance or material, or solid waste), (ii) any act or omission of the Lessee inconsistent with law or Lessee's rights or obligations hereunder, to the extent Lessor is materially and adversely affected thereby, (iii) the failure of this Lease to be duly authorized and executed by Lessee, (iv) the failure of Lessee to perform any of its material obligations under this Lease, and (B) for all expenses and charges for transportation, movement or use of any Unit that are required to be paid by the Lessee. Lessee shall, at its own cost and expense, defend any and all suits and other proceedings which may be brought against any Lessor Indemnitee upon any such Lessor General Claim, and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against any Indemnitee in any such action or proceeding; provided however, that without Lessor's express written consent Lessee shall not have the authority to enter into any settlement or other binding agreement which includes any admission or guilt or wrongdoing by or on behalf of the Lessor. This indemnity will not apply to the extent that a Lessor General Claim is attributable to the gross negligence or willful misconduct of Lessor, its agents, or employees or the nonperformance or default of Lessor under this Lease.

(b) Lessor will defend, indemnify, and hold Lessee and its respective officers, directors, elected officials, employees, agents, successors and assigns of any of the foregoing (each, a "Lessee Indemnitee") harmless from and against, on an after-tax basis, any loss, liability, damage, claim, cause of action, expense (including reasonable attorneys' fees and expenses of litigation), or injury of any nature or kind incurred or suffered by or asserted against Lessee, including any loss, liability,

damage, claim, and expense arising under any applicable law, rule, or regulation relating to the environment, natural resources, or human health and safety ("Lessee General Claims"), arising at any time in contract or tort (including, but not limited to, strict liability in tort) (A) to the extent relating to or arising out of (i) the failure of this Lease to be duly authorized and executed by Lessor, (ii) any act or omission of the Lessor inconsistent with law or Lessor's rights or obligations hereunder, to the extent Lessee is materially and adversely affected thereby, or (iii) the failure of Lessor to perform any of its material obligations under this Lease, and (B) for all expenses and charges for transportation, movement or use of any Unit that are required to be paid by the Lessor. Lessor shall, at its own cost and expense, defend any and all suits and other proceedings which may be brought against any Lessee Indemnitee upon any such Lessee General Claim, and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against any Lessee Indemnitee in any such action or proceeding; provided however, that without Lessee's express written consent Lessor shall not have the authority to enter into any settlement or other binding agreement which includes any admission or guilt or wrongdoing by or on behalf of the Lessee. This indemnity will not apply to the extent that a Lessee General Claim is attributable to the gross negligence or willful misconduct of Lessee, its agents, or employees or the nonperformance or default of Lessee under this Lease.

(c) Lessee will defend, indemnify, and hold the Indemnitees harmless from and against any loss, liability, damage, claim, cause of action, expense (including reasonable attorneys' fees and expenses of litigation), or injury of any nature or kind incurred or suffered by or asserted against Lessor, including any loss, liability, damage, claim, and expense for Environmental Claims in connection with, or alleged to be in connection with: (i) the use, operation, possession, storage, abandonment, or return of any Unit; (ii) any site or location whatsoever (including, without limitation, any landfill) owned, operated, or used (intentionally or unintentionally) by Lessee for the treatment, transportation, storage, or disposal of any waste or Hazardous Substance; (iii) any site or location whatsoever (including, without limitation, any landfill) used by Lessor for the treatment, transportation, storage, or disposal by Lessor of any waste or Hazardous Substance remaining on any Unit upon return or abandonment of any Unit or upon assignment; (iv) the use of the Units in connection with any nuclear facility or activity or shipment or handling of any Hazardous Materials. Lessee shall, at its own cost and expense, defend any and all suits and other proceedings which may be brought against any Indemnitee upon any such Environmental Claim, and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against any Indemnitee in any such action or proceeding; provided however, that without Lessor's express written consent Lessee shall not have the authority to enter into any settlement or other binding agreement which includes any admission or guilt or wrongdoing by or on behalf of the Lessor. This indemnity will not apply to the extent that such Environmental Claim is attributable to the gross negligence or willful misconduct of Lessor, its agents, or employees or the nonperformance or default of Lessor under this Lease.

(c) The obligations of the parties under this Section 16 shall survive and continue in full force and effect, notwithstanding the expiration or termination of this Lease.

17. **Events of Loss.** In the event that any Unit is lost, stolen, destroyed, damaged beyond economic repair, cannot be located, or the title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (any such event being hereinafter called an "Event of Loss"), Lessee shall promptly (but no later than ten (10) days after the date Lessee has notice of such Event of Loss) notify Lessor in writing with the date and other facts and circumstances related to the Event of Loss. Within 30 days after an Event of Loss, Lessee shall pay to Lessor the Casualty Value of such Casualty Unit as of the date of such Event of Loss as determined in accordance with the Casualty Value as shown on the applicable Schedule (such amount referred to as the "Casualty Payment"). Lessee's rental obligations with respect to a Casualty Unit shall terminate on the date Lessor receives the Casualty Payment with respect to such Casualty

Unit. Upon Lessor's receipt of the Casualty Payment and upon Lessee's satisfaction of all of its obligations under this Lease, this Lease shall terminate with respect to the Casualty Unit. Upon payment of all amounts due from Lessee under this Lease with respect to a Casualty Unit, Lessor shall deliver to Lessee a bill of sale (without warranty) to such Casualty Unit transferring ownership to Lessee, provided that Lessor has received the Casualty Payment pursuant to this section and Lessee has no further obligations hereunder to Lessor respecting the Casualty Unit.

**18. Return of Unit.**

(a) Except for any Casualty Unit, upon the expiration or termination of this Lease with respect to any Unit, Lessee shall, as promptly as practicable, surrender possession of such Unit to Lessor at the Return Point. Lessee will be responsible for delivering the Unit to the Return Point, at its sole cost and expense.

(b) Each Unit shall be returned in similar condition as when accepted, ordinary wear and tear excepted, and in satisfactory condition acceptable for movement by connecting carrier in accordance with the Interchange Rules, clean, free of damage, and in need of no Repair Work for which Lessee is responsible (the "Return Condition"). If any Unit is not returned to Lessor in the Return Condition, Lessee shall reimburse Lessor for any expense incurred in cleaning and repairing such Unit. Lessee will remain responsible for all Rent for such Unit until all repairs, maintenance, and/or cleaning have been completed.

(c) Lessee agrees to store any Unit at Lessor's request for up to forty-five (45) days following the expiration or termination of the Term. If Lessor elects to have Lessee store any Units under this Section 18(c), then (i) Lessee shall have no rights to use such Units, (ii) Lessee will retain all risk of loss for the Units until delivered to Lessor at the Return Point, (iii) Lessee will remain responsible for all costs of delivery to the Return Point, and (iv) Lessor will compensate Lessee for any direct and documented expenses related to the storage, insurance, and maintenance of the Units during such storage period.

(d) Upon the Expiration Date, subject to Section 30 hereof, neither Lessor nor Lessee shall have any further obligations under this Lease with respect to such Unit.

**19. Default.**

(a) Event of Default. The occurrence of any of the following events shall constitute an event of default with respect to this Lease (an "Event of Default"): (i) Lessee fails to make any payment within 20 days after the payment becomes due; (ii) a proceeding is commenced by or against Lessee under any bankruptcy laws; (iii) a receiver, assignee, or trustee is appointed over Lessee's property; (iv) Lessee makes a general assignment for the benefit of creditors; (v) any representation or warranty of Lessee contained in this Lease is proved to be untrue or incorrect and the interests of Lessor are adversely and materially affected thereby; (vi) after a period of 30 days following receipt of written notice specifying any other default of any covenant, condition, term, or obligation of Lessee under this Lease, Lessee has not commenced and maintained reasonable efforts to cure such default as quickly as possible; (viii) Lessee makes or permits an unauthorized assignment, sublease, or transfer of this Lease, the Units or any interest therein, (ix) any representation or warranty of Lessor contained in this Lease is proved to be untrue or incorrect when made and the interests of Lessee are adversely and materially affected thereby; or (x) after a period of 30 business days following receipt of written notice specifying any other default of any material



covenant, condition, term or obligation or Lessor under this Lease, Lessor has not commenced and maintained reasonable efforts to cure such default as quickly as possible.

(b) **Cancellation of Lease.** If an Event of Default occurs, the non-defaulting party may, in its sole discretion, cancel this Lease by no less than twenty (20) days advance written notice to the defaulting party ("Notice of Cancellation"). In the event of cancellation of the Lease (i) the Unit(s) shall be immediately returned to the Lessor, and (ii) Lessee shall immediately pay to Lessor any and all amounts that may then be due or may have accrued to the date of such cancellation; in addition, in the event the Lease is cancelled by Lessor due to an Event of Default of Lessee, Lessee shall also immediately pay to Lessor, as liquidated damages, any and all costs and expenses of termination, retaking, and reselling or releasing the Unit(s) (including reasonable attorneys' fees) plus the Lost Benefit of the Bargain. The "Lost Benefit of the Bargain" shall equal 80% of all Rent for the unexpired balance of the Term unpaid as of said date of cancellation. If any Unit is not returned within 60 days of a Notice of Cancellation, Lessee shall also pay the Casualty Value as of the date of cancellation. Lessor may sell the Unit at public or private sale, with or without notice, advertisement, or publication, as Lessor may determine, or otherwise dispose of, hold, use, operate, or lease to others the Unit as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee. The parties acknowledge that actual damages in the case of an Event of Default are difficult or impossible to estimate and that the liquidated damages in this Section 19(b) are not a penalty and are a reasonable pre-estimate of the probable loss in light of the anticipated harm caused by the Event of Default. If this Lease is cancelled by Lessee due to an Event of Default of Lessor, Lessee shall not be liable to Lessor for the Lost Benefit of the Bargain described above, nor shall the Lessee be required to store any Units as required in Section 18(c).

(c) **Remedies Cumulative.** The rights and remedies in this Lease shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other rights and remedies existing at law or in equity.

(d) **Performance on Behalf of Other Party.** Without limiting a parties' rights hereunder upon an Event of Default, in the event that a party fails duly and promptly to perform any of its obligations under this Lease, a party may, at its option, perform the same for the account of the other party without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty, or other liability incurred by a party in such performance, shall be payable by the non-paying party upon demand, plus an administrative fee equal to: (i) 5% of the cost paid by the paying party; or (ii) the highest amount allowed by applicable law, whichever is less.

**20. Holding Over.** If Lessee continues to use or otherwise retain possession of any Unit beyond the Term of this Lease with respect to such Unit ("holding over"), Lessor, at Lessor's option, may deem this Lease to have been extended on a month-to-month basis, terminable by Lessor upon 15 days written notice to Lessee. All obligations of Lessee will remain in full force with respect to such holding over (including obligations concerning rentals, use of the Unit, Repair Work, Casualty Value, insurance, Taxes, return of the Unit, and Lessor's remedies for default); provided, however, that the Rent for any Unit during such holding over shall increase to the Holdover Amount. The foregoing provisions shall not be construed as giving Lessee any right to hold over, or as otherwise waiving or limiting any of Lessor's rights or remedies hereunder.

**21. Sublease and Assignment.** The right to assign this Lease or any Unit by either party and Lessee's right to sublease shall exist only as follows:

(a) Lessee shall not assign or sublease this Lease or any Unit without the prior written

consent of Lessor, which consent may be withheld in Lessor's sole discretion.

(b) All rights of Lessor hereunder and in a Unit may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, with prior notice to Lessee but without Lessee's consent. Any Unit, this Lease, and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement, or equipment trust or other security instrument covering the Unit heretofore or hereafter created by Lessor. If Lessor shall have given written notice to Lessee stating the identity and address of any assignee entitled to receive future Rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Notwithstanding any provision in this Section 21(b) to the contrary, so long as Lessee is not in default under this Lease, Lessee's right to quiet enjoyment in the Unit will not be disturbed pursuant to any provisions or rights pursuant to this Section 21(b).

(c) The making of an assignment or sublease by Lessee shall not serve to relieve Lessee of any liability, obligation, or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein and as expressly assumed in writing by such sublessee or assignee.

**22. Notice.** All notices, demands, consents, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given if: (i) sent by registered or certified mail, return receipt requested, postage prepaid; (ii) sent by Express Mail or other responsible overnight delivery service; (iii) sent by telephone facsimile transmission; or (iv) by electronic mail, confirmation of read receipt requested, to the address set forth in the applicable Schedule or to such other addresses as may hereafter be furnished in writing by the respective parties if given in the manner required above. Any notice, demand, consent, or communication given hereunder in the manner required above shall be deemed to have been effected and received as of: (i) the date hand delivered; (ii) the date three days after posting of the mail; (iii) the date confirmed as sent by telephone facsimile; (iv) the day after delivery to Express Mail or other responsible overnight delivery service; or with respect to electronic mail, the date and time the sender receives a confirmation of read receipt.

**23. Warranties and Limitation of Damages.**

(a) EXCEPT AS EXPRESSLY DESCRIBED IN SECTION 32, LESSEE ACKNOWLEDGES THAT LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION OR WARRANTY OR COVENANT OF ANY KIND, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION, WARRANTY, OR COVENANT WITH RESPECT TO MERCHANTABILITY, CONDITION, DESIGN, WORKMANSHIP, QUALITY, DESCRIPTION, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY OF ANY UNIT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE OR UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE AS ADOPTED BY THE JURISDICTION SET FORTH IN SECTION 24. TO THE EXTENT LESSOR HAS ASSIGNED TO LESSEE ANY MANUFACTURERS' OR SUPPLIERS' WARRANTIES APPLICABLE TO THE UNIT(S), LESSEE ACKNOWLEDGES THAT ITS SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO A BREACH OF OR NON-COMPLIANCE WITH SUCH WARRANTY WILL BE AS PROVIDED IN SUCH WARRANTY AND ENFORCEABLE SOLELY AGAINST THE PARTY MAKING SUCH WARRANTY.

(b) LESSOR SHALL NOT BE LIABLE IN ANY EVENT OR UNDER ANY CIRCUMSTANCES, IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSS OF BUSINESS, LOSS OF PROFIT OR REVENUE, COSTS OF REPLACEMENT OR

OTHER CONSEQUENTIAL, SPECIAL, COLLATERAL, EXEMPLARY, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES OF ANY KIND RESULTING FROM OR RELATING TO THE MANUFACTURE, LEASE, USE, POSSESSION, OR OPERATION OF ANY UNIT OR IN CONNECTION WITH LESSOR'S PERFORMANCE HEREUNDER OR THE BREACH OF ANY WARRANTY OR OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR ARISING BY REASON OF ANY IMPERFECTION OR DEFECT IN ANY UNIT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LESSOR'S LIABILITY TO THE LESSEE EXCEED AMOUNTS ACTUALLY PAID BY THE LESSEE TO THE LESSOR PURSUANT TO THIS LEASE.

24. **Governing Law.** The terms of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Washington (without giving effect to any choice or conflict-of-laws rule that would cause the application of the laws of any jurisdiction other than the State of Washington).

25. **Amendment.** The terms of this Lease and the rights and obligations of the parties may be changed or terminated only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

26. **Counterparts.** This Lease, the Schedules and Exhibits may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart. The parties agree that facsimile and electronically delivered signatures shall have the same force and effect as an original signature.

27. **Entire Agreement.** Each Schedule (each of which incorporates this Lease therein) sets forth the entire agreement between the parties with respect to the subject matter thereof and hereof and supersedes any and all previous and contemporaneous agreements, arrangements, negotiations, and understandings, between the parties relating to the subject matter thereof.

28. **Severability; Waiver.** If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. Any party's failure to exercise or delay in exercising any right, power, or remedy available to such party shall not constitute a waiver or otherwise affect or impair its rights to the future exercise of any such right, power, or remedy. No waiver, indulgence, or partial exercise by any party of any right, power, or remedy shall preclude any further exercise thereof or the exercise of any additional right, power, or remedy.

29. **Past Due Payments.** Any nonpayment of Rent or other sums due hereunder, whether during the period within which a default may be cured, or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of a party to pay also an amount of interest equal to eighteen percent (18%) per annum (or, if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time such sum is overdue and unpaid. If any action at law or in equity is necessary to enforce the terms of this Lease, including the collection of any amounts owing hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and any other reasonable litigation expenses in addition to any other relief to which such party may be entitled.

30. **Survival.** The obligation to pay any deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder (including any indemnity obligations provided for herein) shall survive the cancellation or expiration of the Lease and the

retaking of the Unit and the terms of Sections 13, 14, 16, 18, 19, 20, 23, 24, 29, 30, 31, 32, 33 and 34 shall survive the expiration of the Term to the extent required by this Lease.

**31. Recording.** Upon request by Lessor, Lessee shall join in the execution of a memorandum or short form of this Lease and any assignment of this Lease for use in recordation under 49 U.S.C.A. Section 11301 or such other recordation as Lessor reasonably deems appropriate. Such memorandum or short form of lease may describe the parties, the Unit being leased, and the term of this Lease, including any options to extend, and shall incorporate the Lease by reference.

**32. Representations and Warranties of Lessor.** Lessor represents and warrants that:

(a) Lessor is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has taken all corporate action necessary to validly enter into this Lease and carry out its obligations hereunder;

(b) This Lease has been duly executed on behalf of Lessor and constitutes the legal, valid, and binding obligation of Lessor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with general principles of equity;

(c) Any Unit which is subject to this Lease is owned by Lessor free and clear of any and all liens or encumbrances of any kind whatsoever and Lessor has the full right, power, and authority to commit the Unit to the terms and conditions of this Lease; and

(d) No governmental, administrative or judicial authorization, permission, consent, or approval is necessary on the part of Lessor in connection with this Lease or any action contemplated on its part thereunder.

**33. Representations and Warranties of Lessee.** Lessee represents and warrants that:

(a) Lessee has taken all corporate and governmental action necessary to validly enter into this Lease and carry out its obligations hereunder and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it requires qualification or in which failure to do so would have a material adverse impact on it;

(b) This Lease has been duly executed on behalf of Lessee and constitutes the legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with general principles of equity;

(c) Any Unit which is subject to this Lease shall be held by Lessee under and subject to the provisions of this Lease prior to any lien, charge, or encumbrance in favor of anyone claiming against the Unit by, through, or under Lessee; and

(d) No further governmental, administrative, or judicial authorization, permission, consent, or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part thereunder.

**34. No Third Party Beneficiary.** This Lease is solely for the benefit of Lessor and Lessee and the parties disclaim any interest to confer any right, claim, interest, privilege or benefit of

any kind upon any other party except as set forth herein.

**35. Affiliates.** Lessor's parent, subsidiaries or affiliates, specifically including Progress Rail Services Corporation (each, a "Lessor Company" and collectively, the "Lessor Companies") may lease Units from time to time to Lessee under this Lease on the terms and conditions stated herein by the execution of a Schedule between such Lessor Company and Lessee. In such event, "Lessor" as used throughout this Lease and incorporated by reference into such Schedule will refer to the applicable Lessor Company.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Lessor and Lessee have duly executed this Lease as of the day and year first above written.

**LESSOR:**  
**PROGRESS RAIL LEASING CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**  
**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION** DOING BUSINESS AS  
**TACOMA RAIL**

By: \_\_\_\_\_

Name: Dale W. King

Title: Superintendent/COO

**EXHIBIT A**

**Form of Certificates of Acceptance**

[see attached]

**CERTIFICATE OF ACCEPTANCE FOR LOCOMOTIVE**

The undersigned, being a duly authorized inspector and representative of **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION doing business as TACOMA RAIL** ("Lessee"), for the purpose of accepting the Unit that is to become subject to Schedule No. \_\_, dated as of \_\_\_\_\_, 2014, by and between **PROGRESS RAIL LEASING CORPORATION** ("Lessor") and Lessee, which Schedule No. \_\_ expressly incorporates by reference that certain Locomotive Lease Agreement (Net) dated as of \_\_\_\_\_, 2014, between Lessor and Lessee (collectively with Schedule No. \_\_, the "Lease"), hereby certifies that railroad locomotive specified below (the "Unit") has been inspected on behalf of Lessee, has been accepted by the undersigned under the Lease and has been delivered to Lessee on \_\_\_\_\_, 2014 (the "Delivery Date").

**DESCRIPTION OF UNIT:**

Number of Units Accepted: \_\_\_\_\_

Description of Unit: \_\_\_\_\_

Road Number and Marking: \_\_\_\_\_

**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION doing business as TACOMA RAIL**

By: \_\_\_\_\_

Its: Superintendent/COO

Name: Dale W. King

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



**SCHEDULE NO. 1**

This Schedule No. 1 is dated as of \_\_\_\_\_, 2014 (the "Effective Date"), by and between **PROGRESS RAIL LEASING CORPORATION**, a Delaware corporation ("Lessor") and **CITY OF TACOMA, Department of Public Utilities, Beltline Division doing business as TACOMA RAIL** ("Lessee"), and hereby incorporates by reference that certain Master Locomotive Lease Agreement (Net), dated \_\_\_\_\_, 2014, by and between Lessor and Lessee (the "Lease"), and by such incorporation hereby constitutes a separate agreement. Capitalized terms used herein but not defined shall have the meanings given in the Lease. In the event of a conflict between the terms of the Lease and the terms of this Schedule No. 1, the terms of this Schedule No. 1 control.

**Units:**

| <b>Description</b>    | <b>Mark</b> | <b>Number</b> |
|-----------------------|-------------|---------------|
| SD70Ace-P4 Locomotive | EMDX        | 1211          |
| SD70Ace-P4 Locomotive | EMDX        | 1212          |

**Delivery of Units:** Delivery of the Units will be as follows

| <b>Description</b>    | <b>Mark</b> | <b>Number</b> | <b>Delivery Point</b>   |
|-----------------------|-------------|---------------|---|
| SD70Ace-P4 Locomotive | EMDX        | 1211          | Progress Rail Services Corporation facility in Tacoma, Washington |
| SD70Ace-P4 Locomotive | EMDX        | 1212          | Progress Rail Services Corporation facility in Tacoma, Washington |

Lessor will exercise commercially reasonable efforts to deliver the Units within 6 months from the Effective Date (the date of such delivery, the "Delivery Date"). Lessee will bear all freight and transportation costs for each Unit from and after their respective deliveries hereunder at the Delivery Point. Units will be painted in accordance with the three-color paint scheme and graphics arrangement chosen by Lessee prior to delivery, at no additional cost.

**Service:** Lessee shall place and retain the Unit in service in Lessee's general fleet of locomotives. The primary use of the Unit will be for switching of railroad freight cars on Lessee trackage. Lessee shall at all times operate and maintain the Unit in conformity with the Interchange Rules.

**Repair Work:** Lessee will be responsible for all Repair Work, including 92-day and annual inspections. Lessee will also be responsible for any repairs resulting from Lessee abuse, misuse, operator error, derailment damage, theft, destruction or any repairs resulting from the use of a Unit in a manner for which the Unit was not designed.

**Lessee responsibilities include (but are not limited to) the following:**

1. Repair defects and replace failed components at Lessee's expense.
2. Perform scheduled maintenance at 92-day intervals. (Includes adjusting brakes, topping off fluids, changing filters, etc.)
3. Wheel maintenance: Measure wheels, rotate truck assemblies as needed, and re-profile or replace wheel sets as required.
4. Unit will be maintained to **FRA standards**. Air brake valves will be replaced as needed

during the term of the Lease.

5. All fluids and lubricants
6. All lube oil and filters
7. Carbody air filters
8. Air compressor oil, oil filter, and air filters
9. Fuel and fuel filters
10. Engine air filters
11. Engine coolant water treatment or antifreeze
12. Cab interior light bulbs
13. Engine room light bulbs, step lights, instrument lights and ground light bulbs.
14. Engine governor oil
15. MU air hoses and glad hand seals
16. Fuses
17. Wiper blades
18. Brake shoes and adjustment
19. Flange lube sticks
20. Wheel truing and/or replacement as a result of abuse or neglect. Neglect or abuse includes the following:
  - a. Damage to tread and flanges due to defective rail or derailments.
  - b. Flat spots due to sliding wheels.
  - c. Failure to maintain flange lube stick lubrication
21. Other consumable/repair/maintenance items not identified.

**Rent Abatement/Out of Service:** There will be no "out of service" or rent abatement available to Lessee during term of Lease.

**Term:** The "Term" for this Schedule No. 1 with respect to each Unit shall begin on the Delivery Date of such Unit and shall terminate 60 months from the Acceptance Date of the last Unit (the "Termination Date").

**Return Point and Condition:** Upon termination of this Schedule No. 1, at its sole expense, Lessee will return the Unit to the Progress Rail Services Corporation facility in Tacoma, WA, or such other location as mutually agreed by Lessor and Lessee (the "Return Point"). Lessee will bear the risk of loss and all freight charges associated with returning the Units to the Return Point.

**Assignment of Warranty:** Lessor hereby assigns to Lessee the manufacturer's warranty described in **Exhibit A** attached hereto and, to the extent legally assignable, agrees to assign all other manufacturer's or third party warranties relating to the Units and any component parts therein or replacement parts therefor. Lessee agrees to settle all warranty claims directly with the applicable manufacturer or supplier thereof. **THE FOREGOING ASSIGNMENT SHALL NOT BE DEEMED A REPRESENTATION OR WARRANTY BY LESSOR OF ANY KIND WHATSOEVER WITH RESPECT TO THE UNIT AND LESSEE EXPRESSLY ACKNOWLEDGES THAT SECTION 23 OF THE LEASE REMAINS FULLY APPLICABLE WITH RESPECT TO LESSOR.**

**Purchase Option:** Lessee shall have the option to purchase all (but not less than all) of the Units at the end of the Term. Lessee may exercise this option by providing written notice to Lessor of its election to purchase the Units at least sixty (60) days prior to the end of the Term. Lessee's election to exercise its option shall be irrevocable. If Lessee gives Lessor such notice of its election to purchase the Units, then, on the next business day following the end of the Term (or such other date as the parties may mutually agree), Lessee shall purchase such Unit and shall pay to Lessor, in immediately available funds to a location designated by Lessor, One Million Eight Hundred Fifty Thousand and No/100 Dollars (\$1,850,000) per Unit (the "Purchase Price"), plus (i) all Taxes arising from such sale and (ii) all accrued but unpaid amounts due with respect to the Units and/or this Schedule No. 1.

Upon payment in full of these amounts, and if no Event of Default has occurred and is continuing under the Lease, Lessor shall transfer title to the Units to Lessee "AS-IS, WHERE-IS" with all faults and **WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER BY LESSOR, EXPRESS OR IMPLIED**, except that the title to such Units is free of any lien or encumbrance (except as arising by or through Lessee). Upon consummation of such sale and transfer of title (the "Closing"), Lessee, at its sole cost and expense, shall promptly (but in any event prior to any movement of the Unit from its location at Closing) remove the Lessor's reporting marks and AEI tags from the Units. The Units shall not be moved from their location at Closing with any of Lessor's reporting marks or other identifying markings present on the Units, and Lessee shall notify Lessor of the completion date of such reporting marks and AEI tags.

**Scheduled Termination Date:** The "Scheduled Termination Date" of this Schedule No. 1 with respect to a Unit shall be the later of (a), (b), or (c):

- (a) The end of the Term.
- (b) The Termination Date.
- (c) The termination of any "holding over" as described in Section 20.

**Expiration Date:** The "Expiration Date" of this Schedule No. 1 with respect to each Unit shall be the earlier to occur of (a), (b), (c), or (d) as follows:

- (a) Any early termination or cancellation of the Lease pursuant to its terms and conditions.
- (b) The date the Lessor receives the Casualty Payment in accordance with Section 17.
- (c) The later of (i) the Scheduled Termination Date, or (ii) the day after such Unit is delivered to the Return Point in the condition described in Section 18(b).
- (d) Lessee purchasing the Unit in accordance with the terms found in this Schedule.

**Rent:** Lessee will pay the following amounts to Lessor as rent for each Unit starting on the Acceptance of such Unit and terminating on the Expiration Date ("Rent"). Rent will be payable in advance on the Delivery Date and thereafter on the first day of each succeeding month.

| Description           | Mark | Number | Rent               |
|-----------------------|------|--------|--------------------|
| SD70Ace-P4 Locomotive | EMDX | 1211   | \$27,375 per month |
| SD70Ace-P4 Locomotive | EMDX | 1212   | \$27,375 per month |

**Holdover Amount:**

| Description           | Mark | Number | Holdover Amount    |
|-----------------------|------|--------|--------------------|
| SD70Ace-P4 Locomotive | EMDX | 1211   | \$41,063 per month |
| SD70Ace-P4 Locomotive | EMDX | 1212   | \$41,063 per month |

**Casualty Value:**

| Description           | Mark | Number | Casualty Value |
|-----------------------|------|--------|----------------|
| SD70Ace-P4 Locomotive | EMDX | 1211   | \$2,500,000    |
| SD70Ace-P4 Locomotive | EMDX | 1212   | \$2,500,000    |

**Address for Payments to Lessor:**

Progress Rail Leasing Corporation  
25083 Network Place  
Chicago, IL 60673-1250

**Addresses for Notices:**

If to Lessor: Progress Rail Leasing Corporation  
1600 Progress Drive  
P.O. Box 1037  
Albertville, AL 35950  
Attn: General Counsel

If to Lessee: Tacoma Rail  
2601 SR-509 N. Frontage Road  
Tacoma, WA 98421  
Attn: Dale King, Superintendent

**Insurance Requirements**

A: Lessee will name Lessor as a "Loss Payee" and maintain, at Lessee's sole expense, throughout the term of this Lease, property damage insurance in sufficient amounts to cover the Casualty Value of the Unit.

B: Lessee will maintain comprehensive general liability insurance coverage in occurrence form, including coverage for personal injury, death, property damage, and contractual liability, with limits of coverage of no less than \$10 million per occurrence and \$10 million aggregate in respect of the Unit. Lessor shall be named an Additional Insured with respect to such coverage by the terms of such policy or through a policy endorsement.

C: Prior to the delivery of any Unit hereunder, Lessee shall provide Lessor with a certificate(s) of insurance evidencing the coverage required in A and B and such certificate(s) of insurance shall contain a waiver of subrogation with respect to Lessor and Lessor's insurance carriers. Lessee will provide at least 30 days prior written notice to Lessor before any cancellation or material change in Lessee's insurance coverage that would render that coverage non-compliant with the requirements in this Schedule. Lessee's insurance policies, through policy endorsement, must include wording which states that the policies shall be primary and non-contributing with respect to any insurance carried by Lessor, and Lessee's certificate of insurance must state that such terms apply.

### **Split Schedules**

Lessor has the right at any time to divide this Schedule No. 1 (a "Split") by issuing and executing two or more Schedules (each, a "Split Schedule"). Following a Split, each Split Schedule shall supersede this Schedule No. 1, and shall constitute a separate lease (each incorporating by reference the terms of the Lease) with respect to the Unit subject thereto. The Split Schedules will be on the same terms and condition as this Schedule No. 1, except that provisions applying to a specific Unit will be included only in the Split Schedule covering that Unit. In addition, Lessor may elect to remove cross default provisions applicable to the Schedules. Each Split Schedule will be effective as of the date set forth in the Split Schedule.

[Signature Page Follows]

**IN WITNESS WHEREOF**, Lessor and Lessee have duly executed this Schedule No. 1 as of the day and year first above written.

**LESSOR:**  
**PROGRESS RAIL LEASING CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**  
**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION** DOING BUSINESS AS  
**TACOMA RAIL**

By: \_\_\_\_\_

Name: Dale W. King

Title: Superintendent/COO

## Exhibit A

### Manufacturer's Warranty

For purposes of this Exhibit A, the following definitions apply:

"Buyer" means Progress Rail Leasing Corporation

"EMD" means Electro-Motive Diesel, Inc.

(a) Subject to the exceptions set forth on attached [Attachment 1 to this Exhibit A], EMD warrants to Buyer that each Locomotive will conform to the Specifications in all material respects and will be free from defects in material and workmanship under normal use and service. This warranty (the "Commercial Warranty") will be in effect for each Locomotive for a period beginning on the date of the Certificate of Acceptance and ending on the first to occur of (a) two (2) years after the date of the Certificate of Acceptance, (b) operation of the Locomotive for 250,000 miles, or (c) operation of the Locomotive for 9,000 megawatt hours.

(b) EMD warrants to Buyer, and to each subsequent purchaser or owner of the Locomotive, that each Locomotive is designed, built, and equipped so as to conform at the time of sale by EMD with applicable regulations under Section 213 of the United States Clean Air Act (the "Emission Regulations"), and is free from defects in materials and workmanship that would cause the Locomotive to fail to conform with the Emission Regulations. This warranty (the "Emissions Warranty") will be in effect for each Locomotive for a period beginning on the date of the Certificate of Acceptance of such Locomotive and ending on the first to occur of (a) three years and four months from the date of the Certificate of Acceptance or (b) operation of the Locomotive for 2.5 megawatt-hours per rated locomotive traction horsepower as measured by the Locomotive control computer; provided, that, in the event the Commercial Warranty for the Locomotive has not yet expired, then such Emissions Warranty shall end upon the expiration of the Commercial Warranty, and, provided, further that the Locomotive is maintained in accordance with EMD's emissions-related maintenance instructions appropriate to the Locomotive using replacement parts as necessary according to the configuration described in EMD's U.S. Environmental Protection Agency Application for Certification.

(c) If Buyer gives EMD written notice of a breach of the Commercial Warranty or the Emissions Warranty prior to expiration of such warranty, EMD will correct such breach by repair or replacement at EMD's option (EXW factory or repair facility as designated by EMD) of such parts or components that are defective, based on EMD's examination of such parts or components. Replacement parts may be new or unit exchange ("UTEX"). If, following return of the part or component according to the procedures outlined in this Agreement, and upon analysis by EMD, Buyer is found to be responsible for the failure or defect, or if the original part is found to be free of the reported defect, Buyer will promptly reimburse EMD for all charges for replacement parts and freight costs incurred by EMD with respect to any replacement parts or components supplied to Buyer. Such corrective action will constitute fulfillment of all of EMD's obligations and liability with respect to any defective part or component, or any defective workmanship, on the Locomotive covered under either warranty. Administration of warranty claims and EMD's performance of its warranty obligations under this Agreement will be in accordance with EMD's warranty procedure handbook, as EMD may modify such handbook from time to time. EMD will provide Buyer a copy of such handbook upon request. In the event of a conflict between this Agreement and such handbook, this Agreement will govern.

(d) THE COMMERCIAL WARRANTY AND THE EMISSIONS WARRANTY ARE

PROVIDED IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY NON-CONTRACTUAL LIABILITIES, WITHOUT LIMITATION, INCLUDING PRODUCT LIABILITIES BASED UPON NEGLIGENCE OR STRICT LIABILITY, and EMD neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of the Locomotives.

(e) The provisions of this warranty will not apply to any Locomotive or component of such Locomotive to the extent that such Locomotive or component (a) has been used for the purposes for which it is not designed or intended (such as use for freight purposes when such Locomotive is designed for passenger purposes, or vice versa); (b) has been repaired or altered without EMD's prior written consent; (c) has been subject to misuse, negligence, accident, improper installation, or improper operation; (d) has not been maintained according to EMD's maintenance instructions applicable to such Locomotive or components or other maintenance advices provided to Buyer; (e) based on EMD's examination, discloses other non-conformance to the conditions of this warranty; (f) has been damaged as a result of the application of non-EMD parts or components; (g) has failed or been damaged as a result of the operation of the Locomotive using infrastructure (including, but not limited to, trackage) not maintained in accordance with AAR conditions; (h) has failed or been damaged as a result of any other component with respect to which any of clauses (a) through (g) of this [Exhibit A] applies; or (i) EMD's examination discloses to be not defective.

Attachment 1 to Exhibit A: Warranty Coverage

Attachment 2 to Exhibit A: Specifications

Attachment 3 to Exhibit A: EMD Warranty Procedure Handbook



Attachment 1 to Exhibit A

**WARRANTY COVERAGE**

**I. Included Components: The following components are covered by EMD's Warranty**

- A. Engines, Turbos, Traction Motors, Traction Inverters, Main and Aux. Generators, Trucks, EM2000 Modules, Grids, Radiators, Aftercoolers, Cooling Fans, EMDEC
- B. Fuel/Oil Pumps, Fans/Blowers, Starter, Relays, Contactors, Controllers, Preheater, Shutters, Fuel Injectors/EFI System.
- C. Air Compressor
- D. Parking Brake (excluding brake rigging)
- E. EMD "Gen3 FIRE" Cab Electronics
- F. MELCO HVAC System

**II. One (1) Year EMD Warranty: The following components and equipment are warranted by EMD for one (1) year subject to the other terms and conditions of the Commercial Warranty. In addition, EMD will use commercially reasonable efforts to assign the applicable standard vendor warranties to Buyer.**

- A. Train Control, Distributed Power computer & radio,
- B. Batteries, Refrigerator, Cab Seats, HOTD, Radios & Speakers (if supplied), Radio Download Module, Toilet, Antennas
- C. Air Dryer, Coalescent Filters, Drain Valves, MU Cable, Sunvisors, Mirrors, Fire Extinguisher, Horn and Bell, Yaw Dampers, Auxiliary Lights, Headlights
- E. Electronic Fuel Gauge or Indicator, Event Recorder
- F. Video Recording System
- G. Positive Train Control Equipment (if supplied)
- H. Dayton Phoenix HVAC System
- I. Microprocessor Air Brake Components

**III. Components and Equipment Excluded From the Warranty**

- A. Consumable parts and components. Consumables include without limitation: Filters, light bulbs, brake shoes, wiper blades, tool box components, contactor tips and other items changed out during normal scheduled maintenance during the warranty period.
- B. Items specified by Buyer for installation on the Tier 3 Locomotives where such items are (a)

provided, supplied, and/or consigned by Buyer, or (b) not of EMD's design (or design integration) and not in the applicable Specifications, including, but not limited to, the following: Wi-Tronix equipment, Ancillary Card Cage (ACC) equipment.

C. Wheels

Attachment 2 to Exhibit A

Specifications

Attached

Attachment 3 to Exhibit A

Warranty Procedures Handbook

Attached