

**AMENDMENT NO. 1 TO JANUARY 17, 2014  
LEASE OF RAIL OPERATIONS  
AND REAL AND PERSONAL PROPERTY**

**THE CITY OF TACOMA AND  
WESTERN WASHINGTON RAILROAD, LLC**

**PROJECT NO. 2014-203  
DOCUMENT NO. L174 A1**

This Amendment No. 1 ( "Amendment") made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, ("Amendment Effective Date") by and between Tacoma Rail Mountain Division owned by the City of Tacoma ("City") – a first class City under the laws of the State of Washington – Department of Public Works, Tacoma Rail Mountain Division, hereinafter referred to as "Lessor", and Western Washington Railroad, LLC, a Washington limited liability company and hereinafter referred to as "Lessee". Each of Lessor and Lessee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS the Parties entered into a Lease of Rail Operations and Real and Personal Property beginning on January 17, 2014 and ending on January 16, 2019 ("Agreement"), and

WHEREAS the City agreed to lease its real property ("Premises") to the Lessee as described in the Agreement in return the Lessee agreed to pay certain rent, provide common carrier freight rail service, store railcars, and maintain the Premises at Lessee's cost and expense, and

WHEREAS the Parties desire to amend the Agreement and add approximately 15 track miles to the Premises, and

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties agree as follows:

1. Section 2.1 in its entirety is hereby replaced and superseded as follows:

**SECTION 2.1      Grant by Lessor.**

(a) Except to the extent expressly provided otherwise in this Agreement, Lessor shall grant to Lessee, on the Effective Date of this Agreement, subject to the terms and conditions set forth in this Agreement and to the extent of Lessor's ownership interests, if any, a lease of rail operations and all real and personal property necessary for railroad operations (including all of Lessor's

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trackage and other improvements located upon said track) in the following rail corridor:

That portion of the Tacoma Rail Mountain Division right of way acquired from the Weyerhaeuser Company by Quit Claim Deed recorded under Thurston County Auditor's File No. 9508140208 and Bargain and Sale Deed recorded under Thurston County Auditor's File No. 9508140207, records of Thurston County, Washington and by Quit Claim Deed recorded under Lewis County Auditor's File No. 9511613, records of Lewis County, Washington, lying between Mile Post Marker No. 33C Northwest Quarter of Section 2, Township 16 North, Range 1 East, W.M, in Thurston County, Washington) and the Southerly terminus of said Tacoma Rail Mountain Division right of way located at the Westerly line of the BNSF Railway right of way within the Southeast Quarter of Section 31, Township 14 North, Range 2 West, W.M, in Lewis County, Washington.

Together with those tracts of land acquired by Deeds recorded under Thurston County Auditor's File No. 4190043, records of Thurston County, Washington and Lewis County Auditor's File No. 3364589, records of Lewis County Washington.

Except those tracts of land conveyed by Deeds recorded under Thurston County Auditor's File No. 4190041 records of Thurston County, Washington and Lewis County Auditor's File Nos. 3346701, 3377947 and 3377948, records of Lewis County, Washington.

Also except any portion thereof in Sections 33 and 34, Township 17 North, Range 1 West, W.M., in Thurston County, Washington, lying Northerly of the 100 foot wide main track railroad right of way of Tacoma Rail Mountain Division (commonly known as Western Junction).

Situated in the, Counties of Thurston and Lewis, State of Washington; and as further shown in Exhibit "A" attached hereto and by this reference incorporated herein.

The foregoing shall be referred to as the "Premises".

**2.** Section 2.6 (a) in its entirety is hereby replaced and superseded as follows:

- (a) Lessor shall retain trackage rights over and across that portion of the Premises from Mile Post 33C to the southerly most portion of Blakeslee Junction, North of Centralia, Washington, for the purpose of interchange with the Lessee, the Burlington Northern Santa Fe Railway, the Puget Sound and Pacific Railroad, the Union Pacific Railroad, and their successors and/or assigns.

3. Within one hundred sixty-six (166) days of the Amendment Effective Date, Lessor and Lessee will perform joint inspection of the track and the real and personal property added to the Premises. It will be agreed that mutual findings of inspection will be memorialized as Attachment hereto, and shall be basis for assessment of condition at termination or expiration as outlined in Section 3.4(c) of the Agreement.

4. Lessee shall have no rights or responsibilities under the Agreement related to the Western Junction property excepted under Section 2.1 beyond what is required under the Agreement to provide common carrier services to the tenant occupying Western Junction.

5. Exhibit "A" attached to the Agreement is hereby replaced with Exhibit "A", attached to this Amendment.

6. Except as specifically modified herein, all terms and conditions of the Agreement shall remain the same and in full force and effect.

**IN WITNESS WHEREOF** the parties hereto have executed this document as of the Amendment Effective Date written above.

CITY OF TACOMA

WESTERN WASHINGTON RAILROAD, LLC

By: \_\_\_\_\_  
Marilyn Strickland  
Mayor

By: \_\_\_\_\_  
Toby Van Altvorst, Member  
Managing Member

By: \_\_\_\_\_  
Kurtis D. Kingsolver, P.E.  
Public Works Director/City Engineer

Attest:

By: \_\_\_\_\_  
Doris Sorum  
City Clerk

Approved By:

By: \_\_\_\_\_  
Dale W. King  
Tacoma Rail Superintendent/COO

By: \_\_\_\_\_  
Andrew Cherullo  
Finance Director

By: \_\_\_\_\_  
Saada Gegoux  
Risk Manager

LEGAL DESCRIPTION APPROVED:

By: \_\_\_\_\_  
Leonard J. Webster, P.L.S.  
Chief Surveyor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
William Fosbre  
Chief Deputy City Attorney

**LESSOR ACKNOWLEDGMENT**

STATE OF WASHINGTON )  
 ) ss.  
County of Pierce )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Marilyn Strickland, to me known to be the Mayor of the City of Tacoma, a municipal corporation operating under the laws of the State of Washington, who executed the within and foregoing instrument, and acknowledged said instrument to be his free and voluntary act for the uses and purposes therein mentioned and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**LESSEE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Toby Van Altvorst to me known to be the Managing Member of Western Washington Railroad, LLC a Washington limited liability company, the entity that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said person for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

EXHIBIT A

