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

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

RECITALS

- A. The Port and Tacoma Rail entered into that Port of Tacoma/City of Tacoma Department of Public Utilities Operating Agreement dated July 1, 2013, ("Operating Agreement") which set forth the Parties' rights and obligations in relation to the 1990 Beltline Agreement and the 1993 Agreement, as those terms are defined in the Operating Agreement, in order to maximize the performance of the Port and the rail system and enhance the level of coordination between their respective organizations, and to facilitate the handling of increased rail traffic volumes.
- B. As described in the recitals of the Operating Agreement, on August 30, 1984, the Parties entered into a Lease ("TACSIM Lease") whereby the City of Tacoma Department of Public Utilities leased certain property to the Port for use as a rail intermodal yard.
- C. The Northwest Seaport Alliance (NWSA) is a marine cargo port development authority operating alliance formed in 2015 under RCW 53.57 and Federal Maritime Commission authorization and is governed by the Commissions of the Ports of Tacoma and Seattle pursuant to which the NWSA has the responsibility and authority to manage and operate certain properties owned and leased by each of the Ports, pursuant to the License Agreements entered into between each of the Ports and the NWSA, which includes the property and subject matter that is subject to the Operating Agreement.
- D. Per Lease Amendment No. 3 to said TACSIM Lease ("Amendment No. 3), the Parties have agreed to two rent options for the remaining five year term of the TACSIM Lease. The selection of either rent option depends upon the yearly decision of Lessee under the TACSIM Lease to extend or not to extend the term of the Operating Agreement by an additional year.
- E. In order to effectuate the terms of TACSIM Lease Amendment No. 3, the Parties have agreed to amend the Operating Agreement to provide an option to extend its term in one year increments.

AGREEMENT

- **1.** The following is added as Section 6.1.1. to the Operating Agreement:
 - 6.1.1. <u>Term Extension</u>. As further described in TACSIM Lease Amendment No. 3, starting in 2020, Lessee under the TACSIM Lease has the option in each year of the

remaining five years of the TACSIM Lease to extend this Operating Agreement by one year. The option shall be deemed exercised for each year of the remaining term of the TACSIM Lease from September 1, 2020 through August 31, 2025 (5 years), unless the NWSA or Port gives written notice to Tacoma Rail on or before July 15th of any year that for the following Lease year (September 1 through August 31) Lessee elects not to extend the Operating Agreement by one year. In no event will this term extension option allow the NWSA or Port to extend the Operating Agreement term beyond 25 years from the Effective Date of the Operating Agreement.

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

- **2. Savings Clause.** Except to the extent expressly modified by the provisions of this Amendment, the provisions of the Operating Agreement shall remain unchanged and in full force and effect according to its terms and are hereby affirmed and ratified by the Parties.
- **3. Counterparts.** This Amendment may be executed in counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same agreement.

	CITY OF TACOMA,
	DEPARTMENT OF PUBLIC UTILITIES
	Rv:
	By:
	Title: Date:
State of Washington))ss County of Pierce)	
I certify that I know or have person who appeared before me instrument, on oath stated that acknowledged it as the	we satisfactory evidence that is the e, and said person acknowledged that he/she signed this he/she was authorized to execute the instrument and of the CITY OF TACOMA, DEPARTMENT OF and voluntary act of such party for the uses and purposes
Dated:	<u> </u>
	Printed Name of Notary:
	Notary Public in and for the State of Washington My commission expires on

THE PORT OF TACOMA

	Ву:
	Title:
	Date:
State of Washington	
County of Pierce) ss)
person who appeared instrument, on oath acknowledged it as the	know or have satisfactory evidence that is the ed before me, and said person acknowledged that he/she signed this stated that he/she was authorized to execute the instrument and of the PORT OF TACOMA to be the free and 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

THE NORTHWEST SEAPORT ALLIANCE as licensee/agent of the Port of Tacoma

	By:	
	Title:	
	Date:	
State of Washington)) ss County of Pierce)		
person who appeared before me, instrument, on oath stated that acknowledged it as the	e satisfactory evidence that and said person acknowledged that he/she he/she was authorized to execute the ins of THE NORTHWEST SEAPOR coma, to be the free and voluntary act of such e instrument.	e signed this strument and T ALLIANCE,
Dated:	_	
	Printed Name of Notary:	
	Notary Public in and for the State of	
	My commission expires on	