

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
September 15, 2020
Part of
Public Record

Finance Docket No. 35692

**EASTSIDE COMMUNITY RAIL, LLC-ACQUISITION AND
OPERATION EXEMPTION - GNP RLY, INC
(Woodinville Subdivision, MP 23.8 to MP 38.25)**

Finance Docket No. 35730

**BALLARD TERMINAL RAILROAD COMPANY, LLC - LEASE
EXEMPTION -
EASTSIDE COMMUNITY RAIL, LLC
(Woodinville Subdivision, MP 23.8 to MP 38.25)**

**VERIFIED STATEMENT OF BRANDON BUCHANAN
IN SUPPORT OF THE CITY OF WOODINVILLE,
WASHINGTON'S REPLY TO CWallA COMMENTS ON NOTICE
OF RECENT DEVELOPMENT (EMBARGO NOTICE)**

I, Brandon Buchanan, do swear and affirm to the following to the best of my personal knowledge:

1. I am the City Manager of Woodinville, Washington ("the City"), and have served in that position since March 1, 2016. At all times during my service with the City, my responsibilities have included supervision of the City's relationship with Ballard Terminal Railroad Co. ("Ballard") and Eastside Community Rail ("ECR").
2. On November 5, 2015 the Port of Seattle ("the Port") conveyed to the City the real property and physical assets of a 2.58 mile line of railroad ("the Woodinville Segment"),

located between mileposts 23.8 and 26.38 of BNSF Railway Company's former Woodinville Subdivision.

3. On November 6, 2015 the City and the Port executed a Partial Assignment and Assumption of Operations and Maintenance Agreement, Exhibit A to this Statement, pursuant to which the City assumed all of the Port's rights under the 2009 Operations and Maintenance Agreement between the Port of Seattle and GNP Rly, Inc. ("the O&M Agreement") that apply to the Woodinville Segment. The O&M Agreement is Exhibit B to this Statement.
4. Exhibit C is a Lease Agreement of April 26, 2013 between Ballard and ECR. Paragraph 2 of the Lease Agreement recites that Ballard agrees to be bound by and comply with ECR's obligations under the O&M Agreement.
5. The route of the Woodinville Segment rail line traverses downtown Woodinville, and crosses arterials that support heavy motor vehicle traffic. At various times, and as recently as September 10, 2020, City residents have endured regular traffic jams caused by crossing signal malfunctions on the rail line.
6. The City relied on the O&M Agreement to shield the City from liability for Ballard's operation of freight trains on City property. Section 8 of the O&M Agreement required Ballard to carry liability insurance that covered the City against the risks of railroad operations. Ballard never provided the City with evidence of coverage that fully satisfied the requirements of the O&M Agreement.
7. By letter of June 6, 2018, Exhibit D to this Statement, I wrote to Ballard owner Paul Nerdrum to request assurances on the railroad's plans to maintain the line, and to demand

enhancements to Ballard's liability insurance coverage to meet the minimum requirements of the O&M Agreement.

8. Ballard attorney Joshua Brower responded by letter of June 19, 2018, Exhibit E to this statement. In this letter Ballard through its attorney took the position that the City cannot enforce the O&M Agreement against Ballard because the City lacks "contractual privity" with Ballard.
9. By letter of October 17, 2019, Exhibit F to this statement, City Attorney Jeffrey Ganson, acting at my direction, wrote to Ballard attorney Josh Brower to propose that the City and Ballard negotiate an extension of the O&M Agreement prior to its expiration on December 18, 2019. Ballard never substantively responded to this letter.
10. On July 29, 2020 Ballard embargoed service on the line, effective July 31. On August 15 Ballard removed its rolling stock (a small locomotive and a caboose) from the line. On or about August 20 the City and Snohomish County learned that Ballard intended to terminate its service account with Puget Sound Energy, effective August 31. Woodinville made hasty arrangements with the utility to maintain electric service to the signals, so that they would not lose power and block passage on several busy City streets.
11. Exhibit G to this Statement is an email that Ballard attorney Josh Brower sent to counsel for the City and for Snohomish County on August 28, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2020.

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'BB'.

Brandon Buchanan

CERTIFICATE OF SERVICE

I certify that on September 16, 2020 I served by email an e-filed copy of the foregoing document upon all parties of record in this proceeding as listed below per the STB service list.

Richard Welsh
227 Bellevue Way NE
PMB 719
Bellevue, WA 98004

Email: dick156@earthlink.net

*National Association of Reversionary Property
Owners*

Jami K. Elison
98 NE Gilman Blvd., Suite 201
Issaquah, WA 98027

Email: jami@tclg-law.com

Attorney for Eastside Community Rail, LLC

Myles L Tobin
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875

Email: Mtobin@Fletcher-Sippel.Com

Attorney for Eastside Community Rail, LLC

James H. M. Savage
22 Rockingham Ct.
Germantown, MD 20874

Email: jsavagelaw@aim.com

*Attorney for GNP RLY, LLC NW Signal
Maintenance, LLC and Kevin Kucera*

Joshua Brower
506 2nd Ave., Suite 1400
Seattle, WA 98104

Email: josh@browerlawps.com

Attorney for Ballard Terminal Railroad

Charles A. Spitulnik
Allison I. Fultz
W. Eric Pilsk
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1634 I Street, N.W.
Washington, D.C. 20006

Emails:
cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
epilsk@kaplankirsch.com
calexander@kaplankirsch.com

Attorneys for King County, Washington

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Emails: c.montange@frontier.com

Attorney for Snohomish County, Washington

Thomas W. Wilcox
1055 Thomas Jefferson Street
Suite #500
Washington, DC, DC 20007

Email: twilcox@gkglaw.com

Attorney for CWalla Building Materials Co.

DATED: September 16, 2020

/s/Sharman D. Loomis
Sharman D. Loomis, Practice Assistant
STOEL RIVES LLP

107984756.1 0064892-00001

EXHIBIT A

PARTIAL ASSIGNMENT AND ASSUMPTION OF OPERATIONS AND MAINTENANCE AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF OPERATIONS AND MAINTENANCE AGREEMENT (this "Assignment") is executed on this 6th day of November, 2015, by and between the Port of Seattle, a municipal corporation of the State of Washington ("Assignor"), and the City of Woodinville, a municipal corporation of the State of Washington ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Amended and Restated Real Estate Purchase and Sale Agreement dated as of May 1, 2015 (the "Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to buy the real property legally described in Exhibit A of this Assignment (the "Property").

B. Assignor is a party to the Operations and Maintenance Agreement Between Port of Seattle and Eastside Community Rail, successor in interest to GNP Rly, Inc., (the "O&M Agreement"), which sets forth the rights, obligations, terms and conditions for freight rail operations over the Woodinville Subdivision. Attached hereto as Schedule 1 and incorporated herein by this reference is a true and correct copy of the O&M Agreement.

C. Pursuant to the Agreement, Assignee wishes to succeed Assignor to all right, title and interest in and to the O&M Agreement so far as it applies to the Property, and Assignor wishes to retain all right, title and interest in and to the O&M Agreement so far as it applies to the portion of the Woodinville Subdivision owned by Assignor and located in Snohomish County.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and conditions contained in this Assignment, the parties agree as follows:

1. **Partial Assignment of O&M Agreement.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the O&M Agreement to the extent that the O&M Agreement affects and applies to rail operations over the Property. The Assignor shall retain all right, title and interest in the O&M Agreement to the extent it affects and applies to other real property and improvements owned by Assignor and located outside the Property.

2. **Partial Assumption of O&M Agreement.** To the extent assigned as set forth above, Assignee hereby assumes all of Assignor's duties and obligations under the O&M Agreement arising and accruing from and after the date of this Assignment, and Assignee further succeeds to the interests of Assignor under the O&M Agreement.

3. **Indemnification.**

3.1 **Indemnification by Assignor.** Assignor agrees to fully, completely and unconditionally indemnify and hold Assignee harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignee, or which Assignee may incur or suffer and that arise under the O&M Agreement (i) prior to the date of closing of the transaction contemplated in the Agreement, or (ii) to the extent the O&M Agreement affects and applies to real property and improvements owned by Assignor and located outside the Property.

3.2 **Indemnification by Assignee.** Assignee agrees to fully, completely and unconditionally indemnify and hold Assignor harmless from and against all claims, losses, expenses, liabilities, damages, including without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, that may be asserted against Assignor, or which Assignor may incur or suffer and that arise under the O&M Agreement (i) after the date of closing of the transaction contemplated in the Agreement, and (ii) to the extent the O&M Agreement affects and applies to the Property.

4. **Binding Effect.** This Assignment shall be binding on and inure to the benefit of the Assignor, Assignee and their respective successors in interest and assigns.

5. **Governing Law.** This Assignment shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action regarding this Assignment shall be the Superior Court in and for Snohomish County.

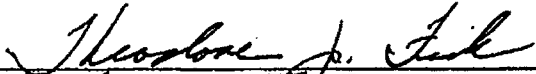
6. **Execution by Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

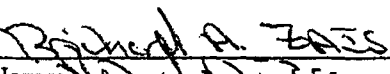
ASSIGNOR:

Port of Seattle, a municipal corporation of the State
of Washington

By 
Name: Theodore P. Erik
Title: Chief Executive Officer

ASSIGNEE:

City of Woodinville, a municipal corporation of the State
of Washington

By 
Name: Richard A. Zais
Title: Woodinville City Manager

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

Port of Seattle, a municipal corporation of the State
of Washington

By Theodore J. Fick
Name: Theodore J. Fick
Title: Chief Executive Officer

ASSIGNEE:

City of Woodinville, a municipal corporation of the State
of Washington

By _____
Name: _____
Title: _____

[The remainder of this page is intentionally left blank.]

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 5th day of November, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Theodore J. Pick, to me known to be the person who signed as Chief Executive Officer of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



A handwritten signature in dark ink, appearing to read "Victor Kravcenko".

(Signature of Notary)

Victor Kravcenko

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Renton
My appointment expires: 6-30-19

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 5th day of November, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Theodore J. Pick, to me known to be the person who signed as Chief Executive Officer of the PORT OF SEATTLE, a municipal corporation of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



A handwritten signature in dark ink, appearing to read "Victor Kravcenko".

(Signature of Notary)

Victor Kravcenko

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Renton
My appointment expires: 6-30-19

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 12th day of November, 2015, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard A. Zais, to me known to be the person who signed as City Manager of the CITY OF WOODINVILLE, the municipal corporation of the State of Washington that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Jennifer L. Kuhn
(Signature of Notary)

Jennifer L. Kuhn
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Woodinville, WA 98072
My appointment expires: May 18, 2018

Exhibit A
Legal Description of the Property

[See attached.]

EXHIBIT A

All that portion of the BNSF Railway Company's (formerly Northern Pacific Railway Company) Snohomish to Woodinville, Washington Branch Line right-of-way, varying in width on each side of said Railway Company's Main Track centerline, as now located, and as conveyed by deed recorded under Recording No. 20091218001536, King County, Washington, being a portion of Sections 3, 9 and 10, Township 26 North, Range 5 East, W.M., more particularly described as follows, to-wit:

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across the Lots 2, 3, the S $\frac{1}{2}$ N $\frac{1}{2}$, and the E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 3, the NW $\frac{1}{4}$ Section 10, all in Township 26 North, Range 5 East, W.M., bounded on the North by the North line of said Section 3, said line also being the North line of King County, Washington, and bounded on the West by the West line of said NW $\frac{1}{4}$ Section 10, **EXCEPTING THEREFROM**, that portion lying Easterly of a line parallel with and distant 20 feet Easterly from, measured at right angles to said Railway Company's Main Track centerline as now located and constructed, bounded on the North by the South line of 8th Street, according to the recorded plat of Bear Creek Addition to Day City, Washington, and bounded on the South by a line perpendicular to said Railway Company's Main Track centerline distant 450.0 feet Southerly from the North line of said E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 3, as measured along said Main Track centerline; also,

A 100 foot wide strip of land being that portion of that certain 100.0 foot wide strip of land described in deed dated June 8, 1887 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded June 14, 1887 in Book 42 of Deeds, Page 410, under recording number 13894, records of King County, Washington, that portion of that certain 100.0 foot wide strip of land described in deed dated July 26, 1890 from Ira Woodin and Susan Woodin to Seattle and West Coast Railway, recorded November 10, 1890 in Book 112 of Deeds, Page 556, under recording number 66520, records of King County, Washington, and that certain 100.0 foot wide strip of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Book 41 of Deeds, Page 385, under recording number 13895, records of King County, Washington, lying in Section 9, and bounded on the West by a line drawn radially to said Railway Company's Main Track centerline, distant 1867.0 feet Easterly of the West line of said Section 9, also being the Easterly boundary of that certain Tract VIII described in deed dated December 19, 1985 from Burlington Northern Railroad Company to King County, recorded in the records of King County, Washington as Instrument No. 8512191094, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated June 29, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 2000 as Document No. 20000522001158, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that portion of that certain tract of land described in deed dated November 17, 1998 from The Burlington Northern and Santa Fe Railway

Company to Tjossem Properties IV, LLC and Tjossem Properties V, LLC, recorded December 23, 1998 as Instrument No. 9812240021, which lies within said 100.0 foot strip of land; also,

That certain approximately 0.32 acre tract of land described in deed dated July 24, 1903 from Frank A. Woodin and Anna Woodin to Northern Pacific Railway Company recorded July 30, 1903 in Book 370 of Deeds, Page 89, under recording number 2698S6, records of King County, Washington, said 0.32 acre tract being described in said deed for reference as follows:

"All that portion of the Southeast quarter of the Northeast quarter (SE/4 of NE/4) of Section Nine (9), Township Twenty-six (26) North, Range Five (S) East, W.M., described by metes and bounds as follows: Beginning at the point where the southeasterly line of the present right of way of the Northern Pacific Railway intersects the south line of the said Southeast quarter of the Northeast quarter (SE/4 of NE/4) and running thence east along the south line of said Southeast quarter of the Northeast quarter (SE/4 of NE/4) a distance of 190 feet, more or less, to a point which is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway as the same is now located, staked out and to be constructed over and across said Government subdivision; thence running northeasterly and parallel with and 50 feet distant from said center line of the Seattle Belt Line Branch distant 400 feet, more or less, to a point in the southeasterly line of the present right of way of Northern Pacific Railway, thence southwesterly along said right of way line to point of beginning; EXCEPT that portion of said southeast quarter of the northeast quarter lying southeasterly of the southeasterly line of the 100-foot wide Sumas Branch right-of-way and northwesterly of the northwesterly line of the 100-foot wide Seattle Belt Line right-of-way; containing 0.32 acres, more or less."; also,

That portion of that certain 100 foot wide strip of land lying in the N/2 of the SE/4 of Section 9, Township 26 North, Range S East, W.M., being that certain 1.91 acre tract of land described in deed dated May 19, 1903 from Mary B. Hansen and Anders Hansen to Northern Pacific Railway Company recorded May 28, 1903 in Volume 361 of Deeds, Page 48, under recording number 264622, records of King County, Washington and that certain 0.92 acre tract of land described in deed dated July 1, 1903 from A. J. Milton and Anna Milton to Northern Pacific Railway Company recorded July 10, 1903 in Volume 363 of Deeds, Page 211, under recording number 268209, records of King County, Washington, said 100 foot wide strip being described as follows:

"A 100 foot wide strip of land being 50.0 feet on each side of said Railway Company's Seattle Belt Line Main Track centerline as originally located and constructed, upon, over and across said N/2 of the SE/4 of Section 9, bounded Northerly and Southerly by the North and South lines of said N/2 of the SE/4 of Section 9.";

EXCEPTING THEREFROM, that portion lying Southerly of the Northeasterly boundary of that certain 100 foot wide tract of land described in deed dated May 4, 1887 from Mary B.

Jaderholm to Seattle Lake Shore and Eastern Railway Company, recorded May 5, 1887 in volume 40 of Deeds, Page 288, records of said County; also,

That certain approximately 0.03 acre triangular tract of land described in deed dated June 4, 1923 from Mary B. Hansen and A. Hansen to Northern Pacific Railway Company recorded June 8, 1923 in Volume 1192 of Deeds, Page 539, under recording number 1746823, records of King County, Washington, said approximately 0.03 acre tract being described in said deed for reference as follows:

"That certain triangular portion of the northeast quarter of southeast quarter (NE¼ of SE¼) of section nine (9) in township twenty-six (26) north of range five (5) east of the Willamette Meridian, lying easterly of and between the rights of way of the Northern Pacific Railway Company for its Snoqualmie Branch and its Lake Washington Belt Line and westerly of a line parallel with and distant twenty-five (25) feet easterly, measured at right angles from the center line of the proposed wye track connection between said branch lines as the same is now located, staked out and to be constructed over and across said premises, containing three hundredths (0.03) acres, more or less."; also,

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as originally located and constructed, upon, over and across that portion the N½SE¼ of Section 9, Township 26 North, Range 5 East, W.M., King County, Washington, lying Northerly of the Southwesterly boundary of that certain 100 foot wide tract of land described in deed dated June 14, 1887 from Mary B. Jaderholm to Seattle and West Coast Railway, recorded June 14, 1887 in Volume 41 of Deeds, Page 385, under recording number 13895, records of said County.

Containing an area of 30.394 acres more or less

Schedule 1
to
Partial Assignment and Assumption of Operations and Maintenance Agreement
Operations and Maintenance Agreement Between Port of Seattle and GNP Rly, Inc.

[See attached.]

EXHIBIT B

**OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.**

TABLE OF CONTENTS

SECTION 1. Definitions	2
SECTION 2. Rail Service	4
SECTION 3. Maintenance, Repair and Replacement Obligations	6
SECTION 4. Construction of Additions and Alterations	7
SECTION 5. Operations	7
SECTION 6. Access	8
SECTION 7. Liability	9
SECTION 8. Insurance	13
SECTION 9. Compensation and Billing	17
SECTION 10. Coordination Committee	18
SECTION 11. Binding Arbitration	19
SECTION 12. Term and Termination	20
SIGNATURES	25
 EXHIBITS	
Exhibit A	27

**OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.**

This Operations and Maintenance Agreement (the "Agreement") is entered into as of the 18 day of DECEMBER, 2009 ("Execution Date"), between the PORT OF SEATTLE, a Washington Municipal Corporation ("Port"), and GNP RLY. INC., a Washington corporation ("TPO").

Recitals

A. Pursuant to the Purchase and Sale Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), dated May 12, 2008, as amended; Port acquired certain rights-of-way from BNSF ("Port Property") and BNSF reserved for itself certain freight easement rights under the Quitclaim Deed ("Deed") to the Port; and

B. BNSF has conveyed its freight easement rights to TPO by quit claim deed dated of even date herewith ("Easement"). The Easement gives TPO the right to operate on a portion of the Port Property (as defined in Section 1.4 below, the "Corridor"), and

C. TPO intends to use the Corridor to provide Freight Rail Service and Excursion Rail Service (defined below); and

D. Pursuant to a Railroad Right-of-Way License Agreement ("License") between Port dated of even date herewith, attached hereto and incorporated herein as **Exhibit A**, TPO intends to use the Excursion Spur (as defined in the License) to provide Excursion Rail Service on the Excursion Spur, which is "railbanked" as set forth more fully in Recital D of the License.

E. The parties desire to set forth in this Agreement their respective rights and obligations with respect to TPO's use of the Corridor and adjacent Port Property for Freight Rail Service and related activities.

F. The TPO has been qualified by the Surface Transportation Board ("STB") and is willing to provide railroad freight transportation service to the public upon the terms and conditions contained herein.

G. The TPO intends to work in partnership with local governments, economic development authorities, shippers and Class 1 railroads to develop innovative and efficient operating and shipping methods and improvements in order to provide competitive rail service for the region's rail shippers.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. Definitions.

1.1 “Additions and Alterations” means any improvements constructed by or on behalf of either party on the Corridor after the Execution Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 “Automatic Warning Devices” means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 “BNSF” is defined in Recital A.

1.4 “Corridor” means the portion of rail line to which TPO acquired certain rights pursuant to the Easement, located between milepost 23.8 in Woodinville, King County, Washington to milepost 38.25 in Snohomish, Snohomish County, Washington.

1.5 “Deed” is defined in Recital A.

1.6 “Easement” is defined in Recital A.

1.7 “Environmental Laws” means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, licenses, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Corridor, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendments or regulations promulgated thereunder.

1.8 “Excluded Conduct” is defined in Section 7.4.

1.9 "Excursion Rail Service" means the deployment and operation of trains using the facilities for excursion passenger service and not for commuter rail passenger service or any other service.

1.10 "Execution Date" means the date on which this Agreement is executed and becomes effective.

1.11 "Facilities" means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), Additions and Alterations, drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, buildings and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.12 "FRA" means the Federal Railroad Administration.

1.13 "Freight Rail Service" means only (a) the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor and (b) the head and tail operations associated therewith and conducted on the Excursion Spur in accordance with the License, and no other freight service.

1.14 "Hazardous Materials" means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Corridor and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Corridor causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.15 "Invoice" is defined in Section 9.1.

1.16 "Loss" or "Losses" means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death of or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Freight Rail Service or Excursion Rail Service on the Corridor.

1.17 "Port" is defined in the preamble.

1.18 "Port Property" means the rights-of-way acquired by Port from BNSF under the Deed that are subject to TPO's rights under this Agreement; provided, that if Port transfers individual parcel(s) to third parties not affiliated with Port, and the transferred parcel(s) do not remain subject to this Agreement as provided in Section 12.12, such individual parcel(s) shall not be deemed "Port Property."

1.19 "Track" means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Corridor.

1.20 "TPO" is defined in the preamble.

SECTION 2. Rail Service.

2.1 TPO's Rights and Obligations.

TPO shall have the exclusive right and obligation (subject to TPO's unfettered right to abandon or discontinue Freight Rail Service) to provide, by itself and/or by or through any entity designated by TPO and approved by the Port, Freight Rail Service and/or Excursion Rail Service on and over the Corridor. TPO, and/or its designee, shall also have the right to:

a) Modify, construct, maintain, replace, remove and operate the Tracks upon and across the Corridor in order to fulfill common carrier obligations to existing and prospective shippers and receivers of freight, at the expense of entities other than Port.

b) Perform any work prescribed by any FRA inspector.

c) Use existing Tracks in the Corridor for switching cars to or from industries served by industry tracks, which use includes setting out or picking up cars ; provided, that TPO shall not transport or store on the Corridor or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs").

d) In the event that construction of any Tracks or TPO's operations requires the construction of new Port Facilities, or modifications to, or relocations of Port's existing Facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Port.

e) The design, construction, modification or removal of any Tracks and any new, modified or relocated Port Facilities necessitated thereby, shall be subject to Port's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

f) Use existing Tracks in the Corridor for performing Excursion Rail Service described in Sections 1.9 and 5.1. TPO or its designee shall commence Excursion Rail Service on the Corridor no later than six (6) months after the Execution Date, unless TPO and the Port agree, in writing, to a later date.

g) The parties acknowledge that TPO intends to designate Ballard Terminal Railroad Company, LLC. ("Ballard Shortlines") as the entity that will conduct the

Freight Rail Service authorized under this Agreement. Prior to commencement of Freight Rail Service by Ballard Shortlines on the Corridor, TPO shall provide for the Port's approval a copy of the signed agreement between TPO and Ballard Shortlines for such operations. The agreement between TPO and Ballard Shortlines shall incorporate and be subject to all of the terms and provisions of this Agreement.

h) TPO acknowledges and agrees that, consistent with Section 2.2, Port may enter into agreements with one or more third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, that are not inconsistent with TPO's rights under this Agreement and do not materially interfere with TPO's right and obligation to operate Freight Rail Service on the Corridor. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Corridor.

2.2 Port's Rights and Obligations.

a) Port expressly declines to assume any obligation to provide common carrier freight rail service on the Corridor. Neither Port nor any person or entity other than TPO (or its permitted successors or assigns) shall be permitted to provide any type of freight rail service on the Corridor.

b) Port, at Port's election, may perform a semi-annual joint inspection of the Corridor by representatives of the Port upon reasonable advance notice for the first two (2) years, and annual joint inspections thereafter. Appropriate representatives from both Port and the TPO shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Corridor, at its election, at any time during the term of the Agreement so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 6.1 e); (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Corridor; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Corridor; (4) TPO will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with TPO to minimize any interference with TPO's operations on the Corridor. The Port may request, at its sole discretion, that the inspections be performed by an authorized FRA inspector, whose findings shall be binding on the Port and the TPO.

c) In the event the TPO fails to or is unable to perform any work it is required to perform under this Agreement, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, (as approved by Port under Section 2.1 above, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section .

d) Port shall have the right to contract with third parties for certain non-freight, passenger transportation uses on the Corridor (e.g., commuter rail service) during the term of this Agreement, and to grant easements, licenses or permits affecting the Corridor as long as such use, easements, licenses or permits do not interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Corridor under the terms of this Agreement.

SECTION 3. Maintenance, Repair and Replacement Obligations.

3.1 General Maintenance, Repair and Replacement Obligations.

a) Except as otherwise provided in this Agreement, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all Tracks and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Corridor, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Corridor.

b) Notwithstanding the provisions of Section 3.1 above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

c) The TPO shall allow the Port to conduct inspections of the Corridor as provided in Section 2.2 b).

3.2 Remedies.

a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this Agreement, and such failure results in an imminent and substantial danger to human health or safety or to property, Port shall promptly notify TPO and the FRA. If TPO fails to perform its maintenance obligations, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below. Port shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.

b) In the event that TPO or Port discovers, or receive notice of, any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Duty Officer Telephone No.: _____

TPO Duty Officer Telephone No.: _____

3.3 Grade Crossing Reconstruction.

The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between the tracks used by TPO and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

SECTION 4. Construction of Additions and Alterations.

4.1 Design and Construction Standards.

The design and construction of any Additions and Alterations on the Corridor shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow its customary safety procedures and shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to materially interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

4.2 Design Review.

In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to . Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

4.3 Grade Separation Projects.

In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

SECTION 5. Operations.

5.1 TPO's Operations.

TPO shall have exclusive authority to manage, direct and control all activities on the Corridor to provide Freight Rail Service, and Excursion Rail Service, including, without limitation, the operations of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Corridor.

SECTION 6. Access.

6.1 Reciprocal Access and Notice Rights.

Subject to the procedures set forth below, and to be in compliance with all applicable rules and regulations of the FRA, the parties shall have the following reciprocal access rights:

- a) Port may enter upon the Corridor for the purposes set forth in Sections 2.2 and 3.2.
- b) In the event the Port becomes aware of or is notified of an emergency of any kind, Port shall provide immediate notice of such events to TPO's duty officer at the contact number set forth in Section 3.2.
- c) Security personnel of either party in pursuit of a criminal suspect may enter upon the Corridor for the purposes of apprehending the suspect.
- d) TPO may enter upon the Port Property for the purposes set forth in this Agreement.
- e) Except for emergencies when reasonable notice under the circumstances shall be given, Port shall give TPO at least forty-eight (48) hours' prior telephonic notice of any entry onto the Corridor, and shall not enter upon the Corridor until a valid work permit is issued by TPO. If flagging is necessary, no entry shall be made until TPO has made arrangements for flagging.
- f) Any entry by Port (or its contractors, invitees or licensees) on any portion of the Corridor within twenty feet (20') of the track center of the Corridor shall be subject to the notice and flagging requirements under subparagraph above, unless the parties agree to an alternative procedure.
- g) Hazardous Materials may be brought by TPO onto the Corridor only to the extent necessary for the purposes for which entry is allowed under Section 7.1, and in all events in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, TPO shall not transport, bring onto, or store on the Corridor or Port Property any THIs or PHIs.
- h) In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion), TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate Port's property to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Corridor. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The

provisions of this Section 6.1 h) are in addition to and not in limitation of the provisions of hereof, and shall survive the termination of this Agreement.

SECTION 7. Liability.

7.1 Hazardous Materials and Environmental Liability.

a) If the performance of this Agreement creates any solid or Hazardous Materials (e.g., the removal of any materials from the trains that require disposal), said Hazardous Materials shall be properly disposed of in accordance with federal, state and local laws, at the expense of the TPO. In no event shall the Port be identified as the generator of the Hazardous Materials. The TPO shall notify the Port of any such Hazardous Materials and the Port shall receive a copy of the results of any tests conducted on the wastes. The TPO shall hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or other penalties arising from the disposal of any Hazardous Materials created by the performance of this Agreement, regardless of the absence of negligence or other malfeasance by TPO. This provision shall survive the termination or expiration of this Agreement.

b) At no time during the term of this Agreement shall the TPO or its designee, without first obtaining the written consent of the Port, maintain, treat, dispose of, store or have on the Corridor and/or Port Property, or permit any other party to have, maintain, treat, dispose of, or store on the Corridor and/or Port Property, anything which is classified by federal, state or local laws as Hazardous Materials or which requires a permit for the storage, treatment, disposal, handling or maintenance of it from any government authority. This excludes (1) transport or storage of materials by or on rail as long as said transport or storage complies with all Environmental Laws, including the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, and Sections 2.1 c) and 6.1 g) of this Agreement, and (2) petroleum products, lubricants, antifreeze and such other materials that may be normally consumed in the daily operations of a railroad. Any permits required in compliance with this provision and all federal, state or local laws shall be obtained at TPO's sole cost.

c) The TPO further agrees to indemnify and hold Port harmless from all costs, expenses, liabilities, demands, claims, causes of action at law or in equity whatsoever arising from its, or any of its contractors, agents or invitees', treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property during the term of this Agreement, including, but not limited to, the cost of clean-up, environmental damage assessments, defense and reasonable attorney's fees. The Port agrees to cooperate in the prosecution and collection of all costs, expenses, liabilities, demands, and claims, associated with any treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Corridor and/or Port Property, including, but not limited to, the cost of clean-up, environmental assessments, defense and reasonable attorney's fees, prior to occupancy by the TPO, against any identified responsible party.

d) The provisions of Sections 7.2 through 7.6 shall in no way limit or reduce the application, enforceability or effect of this Section 7.1.

7.2 Assumption of Responsibility.

a) Except as otherwise expressly provided in this , TPO will assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Corridor or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.

b) The allocation of responsibility for Losses under this applies only to Losses proximately caused by incidents occurring on or adjacent to the Corridor or Port Property, and arising out of TPO's presence on the Corridor, or on Port Property.

c) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this , including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

7.3 Allocation of Responsibilities.

a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in Section 7.3 a) i and Section 7.4. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Corridor (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

i. If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.

b) Persons Other Than Invitees. Except as provided in Section 7.4, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

c) Unenforceability. If any of the provisions of this Section 7.3 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of a Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 7.3, those provisions shall be deemed to

exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 7.3, if both parties were negligent.

7.4 Excluded Conduct.

"Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, where such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

7.5 Scope of Indemnification.

a) In any case where a party is required under the provisions of this to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto.

b) TPO hereby waives any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

c) TPO shall indemnify, hold harmless and defend Port from any and all Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Corridor and the Port Property.

7.6 Procedure.

a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this , the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the

indemnifying party from any liability which it may have to the indemnified party under this except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed.

b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this Agreement, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

c) Subject to the provisions of Section 7.6 a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this , the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to of this Agreement.

7.7 Compliance with Laws.

Both parties shall comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Corridor results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

7.8 Delay/Interruption of Service.

Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 7.3 i.

7.9 No Limitation on Risk Allocation.

The provisions of this Section 7 shall apply notwithstanding the provisions of Section 8. In no event shall the indemnification provisions of this Section 7 be limited to the insurance coverage required under Section 8.

7.10 Statutory Defenses.

All statutory defenses and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this Agreement.

7.11 Survival.

The provisions of this Section 7 shall survive the termination or expiration of this Agreement.

SECTION 8. Insurance.

8.1 Freight Rail Service Coverage.

TPO shall obtain and maintain freight service general liability insurance written on an "occurrence" basis, with minimum limits of Five Million Dollars (\$5,000,000) per occurrence. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed One Million Dollars (\$1,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of the Port.

a) The policy required under this Section 8.1 shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service along with any related operation, maintenance, and construction on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Five Million Dollars (\$ 5,000,000) in the aggregate.

b) The policy required under this Section 8.1 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate.

c) The policy limits required under this Section 8.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

8.2 Excursion Rail Service Coverage.

TPO shall obtain and maintain general liability insurance with an excursion/passenger endorsement, and written on an "occurrence" basis, with minimum limits of Twenty-five Million Dollars (\$25,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count is 50 or less; and Fifty Million Dollars (\$50,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count exceeds 50. The Port shall be listed as an additional insured for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of Port.

a) The policy required under this Section 8.2 shall include general liability property damage and bodily injury coverage for operation of Excursion Rail Service along with any related operation, maintenance, and construction, on or about the Corridor and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Corridor and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Six Million Dollars (\$ 6,000,000) in the aggregate.

b) The policy required under this Section 8.2 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Six Million Dollars (\$6,000,000) in the aggregate.

c) The policy limits required under this Section 8.2 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

8.3 Automobile Coverage.

TPO shall maintain general automobile liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage shall extend to all owned, non-owned, hired, leased, rented, or borrowed vehicles. The policy shall contain a waiver of subrogation in favor of the Port.

8.4 Evidence of Insurance.

Prior to the Execution Date, and annually thereafter, TPO shall forward evidence of insurance as required in this Section including evidence of the Port's status as an additional insured for the Freight Rail Service and Excursion Rail Service policies; and a written copy of the waiver of subrogation for the automobile liability policy. Upon request from the Port, TPO shall forward certified copies, within 30 days of the request from the Port, of any binders, policies, and declarations of insurance that is required by this Agreement.

8.5 No Port Deductible.

No policies obtained by TPO for this Agreement shall contain a deductible obligation for the Port. If the policy is issued with a deductible option, the TPO shall be liable for all deductibles, as well as any applicable allocated loss adjustment expenses if applicable. All costs incurred by a program of self-insurance, including self-insurance as identified in Sections 8.1 and 8.2 are to be borne by TPO.

8.6 Additional Documentation – Self Insurance.

If self-insurance is utilized for a portion of the coverage permitted in Sections 8.1 and 8.2, evidence must be provided to the Port of the TPO's net worth, a copy of the most recent audited financials, and a written description of the self-insurance program. This must be submitted with the other documentation required in Section 8.4.

8.7 Applicability of Workers' Compensation.

TPO is fully responsible for ascertaining the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, as well as any federal laws that pertain to workers compensation coverage for railroad employees and operators, such as the Federal Employers' Liability Act (FELA). TPO shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self insurer. In the event FELA is the applicable coverage under this Agreement, TPO shall provide the Port with evidence of coverage. An insurance certificate shall be additionally required to show evidence of other applicable worker compensation coverage.

a) In the event Title 51 of the Revised Code of Washington applies to this Agreement, TPO shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of TPO worker compensation account prior to the Execution Date of this Agreement. TPO shall list here their UBI Number 602-672-764 and their State Worker Compensation Account Number

TPO shall also provide the Port with Washington State Stop Gap employers' liability insurance. This shall be in an amount of One Million Dollars (\$1,000,000) per accident and One Million Dollars (\$1,000,000) per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary general liability policies identified in Sections 8.1 and 8.2. To the extent applicable, there shall be no exclusions relative to railroad workers or workers covered under the Federal Employers' Liability Act.

8.8 Primary Insurance.

TPO's insurance shall be primary with respect to its obligations under this Agreement and non-contributory with respect to any coverage the Port may have.

8.9 Maintaining Insurance Requirements.

TPO's insurance requirements shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured, including the Port.

8.10 Statutory Defenses.

All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than the Port, and none are intended to be waived by TPO with respect to parties other than the Port by the acquisition of insurance by TPO or under this Agreement.

8.11 Failure to Maintain Insurance.

A failure of TPO to maintain the insurance required by this Section 8 shall not relieve TPO of any of its liabilities or obligations under this Agreement.

8.12 Waiver of Subrogation.

Every policy of insurance required under this Agreement to be held by TPO shall include a waiver of all rights of subrogation against the Port.

8.13 Other Insurance.

TPO shall require that all of its contractors and sub-subcontractors carry a railroad protective liability policy with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and with an aggregate policy limit of no less than Six Million Dollars (\$6,000,000). Said policy shall name the Port as an additional insured.

SECTION 9. Compensation and Billing.

9.1 Invoices.

Any Invoice or Invoices submitted to the parties under this Agreement ("Invoice" or "Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

9.2 Audit.

So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

9.3 Supporting Documentation.

Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

9.4 Fees.

9.4 Fees. TPO shall pay the Port:

a) A fee of Ten Thousand Dollars (\$10,000.00) payable on the closing of the transaction between the Port and BNSF referenced in Recital A; and

b) A quarterly fee based on the TPO's traffic volume calculated as follows:

\$10.00 per loaded freight car; and

\$.10 per excursion passenger carried. For purposes of this Section 9.4, the term "excursion passengers" shall include passengers carried by another operator pursuant to a contract with TPO; and

5% of gross miscellaneous revenue, including but not limited to, car storage revenue.

c) Additional Fee: TPO represents and warrants that its written application for RRIF financing, which it has heretofor submitted to the FRA, expressly anticipates using a portion of the RRIF funds to pay the Additional Fee described herein, and that 45 USC §822(b)(1), provides that "RRIF funds may be used to (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; (B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or (C) develop or establish new intermodal or railroad facilities." Upon TPO receiving documentation from the FRA acknowledging receipt of any required credit risk premium payment by TPO and approving the disbursement of RRIF loan financing to TPO for the Additional Fee, an additional fee of Nine Hundred Ninety Thousand Dollars (\$990,000.00) shall be payable to the Port within thirty (30) days of said disbursement; This fee shall be in addition to the fees and payments required under Section 9.4 b):

d) All fees payable by TPO under Sections 9.4 b) shall be payable at the end of the quarter following the quarter during which the fees accrued. For example, fees for Quarter 1 (January-March) shall be payable at the end of Quarter 2 (April-June), or on June 30th. Notwithstanding the foregoing, any fees owed at the termination or expiration of the Agreement shall be paid to the Port within 30 days of said expiration or termination.

e) When submitting payments to the Port under Sections 9.4 b), TPO shall include a statement of its traffic and passenger volumes, including all car counts and tonnages in support of the amount of the fees.

f) All fees referenced in this Section 9.4 are the same and are not in addition to the fees payable under Section 10.4 of the License.

SECTION 10. Coordination.

10.1 Coordination Committee.

Port and TPO shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this Agreement. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

SECTION 11. Binding Arbitration.

11.1 Controversies Subject to Arbitration.

Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this Agreement that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11.2 Selection of Arbitrator.

In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

11.3 Expedited Arbitration Schedule.

a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 11.2, an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five (5) day period, each party shall within two (2) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. Otherwise, the two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 11.1 and 11.2 and; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

11.4 Pending Resolution.

During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

11.5 Cost of Arbitration.

Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

SECTION 12. Term and Termination.

12.1 Term.

The initial term of this Agreement shall expire on the 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this Agreement, TPO may elect to continue this Agreement for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. *Notwithstanding* the foregoing, this Agreement shall terminate 60 days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this Agreement, which default has not been cured on or prior to such 60th day.

12.2 Termination for Abandonment.

In the event that TPO, or a permitted successor or assign, lawfully abandons, discontinues or otherwise lawfully ceases to provide Freight Rail Service on the Corridor by obtaining any necessary authority or exemption from the Surface Transportation Board ("STB"), Port may choose to (1) terminate this Agreement upon ninety (90) days written notice to TPO; or

(2) terminate all the rights of TPO, or that of a permitted successor or assign, to provide Freight Rail Service over the Corridor under this Agreement. Notwithstanding the previous sentence, after the termination of this Agreement under this Section, TPO may, with Port's approval, continue to provide Excursion Rail Service over the Corridor. In all events, TPO shall remain liable for all accrued or continuing obligations under this Agreement, and all obligations required upon termination and surrender of the Corridor.

12.3 Offers of Financial Assistance ("OFA").

In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if TPO receives an OFA with respect thereto, TPO shall promptly notify Port, Port (or its designee) shall submit its own OFA and TPO shall accept the OFA submitted by Port (or its designee) for the offer amount of \$1.

12.4 Railbanking.

In the event TPO, or a permitted successor or assign, seeks STB authority (or an exemption therefrom) to abandon any portion or segment of the Corridor, if Port, King County ("County"), or the designee of either of them timely files with the STB a Statement of Willingness to Assume Financial Responsibility ("SWAFR") meeting the requirements of the STB's regulations, TPO shall file with the STB: (i) an expression of willingness to enter into a railbanking/trail use agreement; (ii) a statement that TPO and Port, or TPO and County, or TPO and such designee, have entered into such an agreement; and (iii) a request that the STB issue a Notice of Interim Trail Use ("NITU") or a Certificate of Interim Trail Use ("CITU") (as appropriate). Upon the effective date of each such NITU or CITU, TPO shall transfer to Port (or Port's designee) TPO's right to restart freight rail service on the portion of the Corridor that is the subject of the SWAFR.

12.5 Binding Successors; Assignment.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this Agreement without the prior written consent of Port, which consent may not be unreasonably denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this Agreement freely.

12.6 Notices.

Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or (b) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Port: Port of Seattle
P. O. Box 1209
Real Estate Division
Seattle, WA 98111
Telephone No. 206-728-3722

If delivered:
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

TPO: GNP Rly. Inc.
403 Garfield Street #20
Tacoma, WA 98444
Attention: Thomas Payne
Telephone No. 253-459-9702

12.7 Headings.

The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

12.8 Integration, Amendment, and Waiver.

This Agreement controls all the rights and obligations of TPO and Port as to the operation of Freight Rail Service and Excursion Rail Service on the Corridor. (The License controls all the rights and obligations of TPO and Port as to the operation of Excursion Rail Service on the Excursion Spur and Extended Excursion Spur, if applicable). This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.9 Counterparts.

This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

12.10 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of Washington State and/or federal law, where applicable.

12.11 Time of Essence.

Time is of the essence of each and every provision of this Agreement.

12.12 Agreement Runs with Land; Recordation.

This Agreement is made for the benefit of the Corridor and shall run with the land, except that any parcel transferred by the Port to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in connection with the rail operations intended by this Agreement shall be deemed removed from the Corridor or Port Property as applicable. This Agreement shall bind and inure to the benefit of the parties' respective successors in interest in the Corridor to the extent stated in the prior sentence. This Agreement shall be recorded, and each party, upon request of the other party, agrees to execute a document in recordable form evidencing the removal of any parcel from the Corridor or the Port Property.

12.13 Not for the Benefit of Others.

This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party, except that the provisions related to railbanking in Section 12.4 are for the benefit of the County. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto, except for the rights of the County under Section 12.4.

12.14 Attorneys' Fees.

If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.15 Regulatory Requirements.

If any governmental agency imposes any requirement on either or both of Port and TPO which Port can reasonably demonstrate would not have been imposed but for TPO's use of the Corridor for TPO's Freight Rail Service or Excursion Rail Service, the entire cost of compliance shall be borne solely by TPO, including, without limitation, costs and expenses for construction and maintenance of improvements, relocation of Facilities, implementation of safety procedures, and the filing of or participation in regulatory proceedings. Both parties shall reasonably cooperate to ensure compliance with all such governmental requirements. Notwithstanding the foregoing sentence, TPO's cooperation shall not include any modification to, or restriction of, its operations in the Corridor; provided, however, that TPO's cooperation may include modifications to the Facilities to the extent such modifications do not restrict TPO's operations, and subject to TPO's obligation to bear all costs and expenses thereof.

12.16 TPO Operating Data.

In the event of termination of TPO's operations, TPO shall, at the Port's request and expense, provide to the Port or the Port's designee all data associated with TPO's operations on the Corridor, including, but not limited to, car tracing, shipper identification and rates, and accounting records. Provided, that in the event TPO's operations terminate as a result of TPO transferring its rights to another operator, with the Port's consent, such operating data shall be transferred by TPO to its successor at TPO's cost or that of TPO's successor.

12.17 Removal of TPO's Property.

Upon termination of this Agreement, TPO shall have ninety days from the date of termination to remove all of TPO's personal property and trade fixtures, so long as such removal does not damage the Corridor or Port Property. If damage results to the Corridor or to Port Property as a result of TPO's activities under this Section 12.17, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Corridor or Port Property to as good condition as they were prior to TPO's removal activities, normal wear and tear excepted. If TPO fails to remove any of the personal property and trade fixtures within the time authorized under this Section, the Port may remove TPO's property at TPO's expense, subject to offset by any net proceeds received by the Port from the sale of TPO's property. TPO's obligation to (i) restore the Port for any damage to the Corridor or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this Agreement. All other property or improvements placed on the Corridor or Port Property by TPO during the term of the Agreement that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this Agreement.

12.18 Encumbrances.

TPO may pledge or otherwise encumber its rights under this Agreement to secure its obligations under any loan agreement or similar or related document; provided, however, that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Execution Date.

PORT OF SEATTLE,
a Washington municipal corporation

By: [Signature]
Name: _____
Title: _____

GNP RLY. INC.,
a Washington corporation

By: [Signature]
Name: Thomas Payne
Title: Chairman & C.O.O.

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On Dec. 17, 2008, before me, a Notary Public in and for said County and State, personally appeared Jay Yoshitani, of the Port of Seattle, a Washington municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

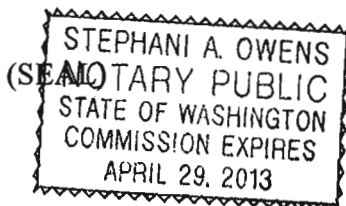


Julie Kathryn Thomas
Printed Name
Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of
Washington, residing at Bothell, Wa
My commission expires 1-22-11

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On 12-18, 2009, before me, a Notary Public in and for said County and State, personally appeared Thomas Pague, of GNP Rly. Inc., a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Stephani A. Owens
Printed Name
Stephani A. Owens
NOTARY PUBLIC in and for the State of
Washington, residing at Everett
My commission expires 4-29-2013

EXHIBIT C

LEASE AGREEMENT

This Lease Agreement (as it may be amended and in effect from time to time, (the “Agreement”) is made and entered into this 26th day of April, 2013 by and between Ballard Terminal Railroad Company, LLC (hereinafter “Ballard”) and Eastside Community Rail, LLC, (“ECRR”).

WHEREAS, ECRR has acquired an exclusive freight operating easement on a line of railroad extending from approximately milepost 23.8 in Woodinville to approximately milepost 38.25 in Snohomish, in King and Snohomish Counties, Washington (the “Line”); and

WHEREAS, subject to the terms of this Agreement, Ballard desires to lease the Line and ECRR is agreeable to the same; and

NOW, THEREFORE, the parties hereby agree as follows:

Definitions. As used herein, the following terms shall have the meanings indicated:

“AAR” shall mean the American Association of Railroads.

“Applicable Laws” shall mean all applicable federal, State of Washington and local laws, regulations and rules relating to the provision of the Services and the activities of Ballard relating to or conducted on the Line (including, without limitation, the Federal Locomotive Inspection Act, as amended, and the Federal Safety Appliance Act, as amended, the Federal Railroad Safety Act, as amended, all rules and regulations promulgated by the Federal Railroad Administration and the Surface Transportation Board, the Railroad Retirement Act, as amended, the Federal Employer’s Liability Act, as amended, the ICC Termination Act of 1995, as amended, and all rules promulgated by the AAR), as such laws, regulations and rules may be amended and in effect from time to time.

“FRA” shall mean the United States Federal Railroad Administration.

“Hazardous Materials” shall mean any of the following: asbestos; urea formaldehyde; petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products); ethanol; tetrachloroethylene; polychlorinated benzyls; polychlorinated biphenyls; biological hazards; nuclear fuel or materials; chemical, biological or medical wastes; radioactive materials; explosives; known carcinogens; and all dangerous, toxic or hazardous substances defined as hazardous or as pollutant or contaminant in, or the release or disposal of which is regulated by, any Applicable Laws.

“Maintenance Services” shall mean track and right of way maintenance services for the Line, to the extent required by, and in accordance with, this Agreement.

“Operational Agreements” shall mean all easements, crossing agreements, running rights agreements, interchange agreements, trackage agreements and other agreements and contracts affecting the use, occupancy or possession of the Line under which ECRR enjoys any rights or privileges which are pertinent to the Line or to Train Services and/or Maintenance Services in respect of the Line, as the same may be amended or modified and in effect from time to time.

“Person” shall mean any corporation, limited liability company, general or limited partnership, trust, government or governmental entity or political subdivision of any government, unincorporated association, individual or other entity.

“Lease Commencement Date” shall mean the date upon which this Agreement becomes effective pursuant to Section 10(a) hereof.

“Lease Termination Date” shall mean the earliest to occur of (a) the first (1st) anniversary of the Lease Commencement Date, subject to any renewals thereof, or (b) the date of termination of this Agreement pursuant to Sections 10(c) through Section 10(e).

“Services” shall mean the Train Services and Maintenance Services to be provided by Ballard on the Line pursuant to this Agreement.

“STB” shall mean the U.S. Surface Transportation Board.

“Term” shall mean the period commencing on and including the Lease Commencement Date and ending on and including the Lease Termination Date.

“Train Services” shall mean moving railroad cars on the Line pursuant to this Agreement.

1. Lease of Line. ECRR hereby leases to Ballard the Line upon the terms, covenants and conditions contained herein; provided, however, said Line shall be used by Ballard exclusively for railroad purposes and for no other purpose without the expressed written consent of ECRR. This lease shall be exclusive.

Ballard shall not permit or admit any third party to the use of all or any portion of the Line, nor under the guise of doing its own business, contract or make any agreement to handle as its own equipment over or upon the Line, or any portion thereof, the equipment of any such third party under a haulage or other similar arrangement, without the express written consent of ECRR; provided, however, that the foregoing shall not prevent Ballard, pursuant to run-through agreement with any railroad, from using the locomotives of another railroad as its own under this Agreement.

2. Port of Seattle Operations and Maintenance Agreement. The terms of that certain Operations and Maintenance Agreement, dated December 18, 2009, between the Port of Seattle and ECRR as successor in interest to GNP RLY, Inc. (“O&M Agreement”) is hereby incorporated herein by reference. Ballard agrees to be bound by and comply with ECRR’s

obligations under the terms of the O&M Agreement. In the event of a conflict between the terms of the O&M Agreement and the terms of this Agreement, the terms of the O&M Agreement shall govern.

3. **Services.** On and subject to the terms of this Agreement and in partial consideration for ECRR's lease of the Line to Ballard, Ballard agrees that during the Term it will provide at its sole expense:

(A) Train Services to all current or future shippers on the Line and all common carrier responsibilities on the Line; and

(B) All necessary equipment and manpower to provide two-day per week service (at least one switch per day) to all shippers/receivers on the Line. No passenger operations will be permitted on the Line without the mutual consent of both parties; and

(C) All clerical and administrative functions associated with Services on the Line, including, but not limited to, publication of Ballard rules and tariffs (Ballard shall set freight rates for its operations on the Line, billing and accounting services, car hire accounting, AAR and FRA reporting, waybill issuance, dispatching, and all other clerical and administrative functions normally associated with rail operations); and

(D) All equipment repair services normally associated with Handling Line responsibility; and

(E) All car supply, as may be necessary, as a supplement to those cars supplied by BNSF and the shippers/receivers; and

(F) Maintenance Services for the Line sufficient to maintain the track at FRA Excepted Class conditions at all times and notice to the FRA regarding said Maintenance Service responsibilities. All materials, improvements, and labor expended by Ballard in the performance of the Maintenance Services shall become a part of the Line. In the event that ECRR proposes to improve the condition of some or all of the line above FRA Excepted Class standards, then from and after the date of completing such improvements the Maintenance Services required of Line shall be sufficient to maintain such improved track at the improved level of condition. Ballard shall assume and be responsible for the inspection and maintenance of the tracks, track structure and roadbed of the Line, including rails, ballast, subgrade, ties, road crossings and crossing signals, bridges, culverts, overhead structures and retaining walls, under the following guidelines:

- (i) Ballard shall provide all necessary Routine Maintenance which shall be performed in a manner sufficient to maintain the Line to FRA Excepted Class track conditions. Routine Maintenance shall include those items identified in Schedule A. All materials and labor expended by Ballard in the performance of Routine Maintenance shall become a part of the Line. Should the Line be upgraded above FRA Excepted Class track standards, then Ballard shall perform Routine Maintenance to the upgraded standards. All

materials and labor expended by Ballard in the performance of Routine Maintenance to the upgraded standards shall become a part of the Line; and

- (ii) Ballard shall provide all necessary Heavy Maintenance (defined as maintenance in excess of the Routine Maintenance identified in Schedule A) and Capital Improvements necessary to maintain the line at FRA Excepted Class standards. Certain of the Heavy Maintenance and Capital Improvements will include non-removable items including, but not limited to, ties, ballast, switches, rail, bridge timber, power poles, signals, utility services or other items removal of which would impact the safety or continued operation of the Line. All materials and labor expended by Ballard in the performance of Heavy Maintenance and Capital Improvements, including, but not limited to, the non-removable items, shall become a part of the Line.
- (iii) Ballard shall be responsible for the cost and expense of clearing wrecks or otherwise clearing disabled equipment and rerailling equipment and the associated cost of repair and/or renewal of damaged trackage or adjacent properties resulting in connection with derailments on the Line.
- (iv) Ballard shall contract for and obtain any and all utility services required for operations on the Line, and shall be responsible for the continued maintenance and operation of those utility services.

4. Lease Compensation.

(A) Ballard will collect the entire interline (Handling Line) rate factor from BNSF (including, but not limited to, fuel surcharges) or the rate due and owing to Ballard by the shippers/receivers, as applicable; and

(B) Ballard shall pay to ECRR a lease payment of Ten Dollars (\$10.00) per loaded car; and

(C) Ballard shall pay to the Port of Seattle the fees required to be paid by ECRR to the Port of Seattle as set forth in sections 9.4(B), (C) and (D) of the O&M Agreement.

(D) Ballard shall be responsible for all car hire associated with rail movements on the Line and shall be entitled to establish reasonable, non-discriminatory demurrage and storage charges for shippers/receivers on the Line; provided, however, such charges shall be in accordance with Applicable Laws.

(E) Ballard shall not charge ECRR for Routine Maintenance, Heavy Maintenance, Capital Improvements, clerical and administrative services, equipment and derailment repairs, or any of the other Services identified in Section 3. The cost for those Services is deemed to be a part of Ballard's lease payment to ECRR as set forth in Sections 4(A)-(D); and

(F) Ballard shall pay ECRR for the charges set forth in Section 4 on a quarterly basis. Charges shall be due and payable within ninety (90) days of the applicable car movement; and

5. Indemnification. Ballard shall indemnify, protect, defend and save harmless ECRR, and its respective officers, directors, affiliates, agents, and employees (each an "ECRR Indemnitee") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, and attorneys' fees (collectively, the "Indemnified Liabilities"), incurred by the ECRR Indemnitees or any of them as a result of, or arising out of, or relating to:

(A) Services set forth in this Agreement, whether provided to ECRR or any shippers/receivers on the Line, by Ballard or any of its officers, directors, affiliates, agents or employees; and

(B) Acts or omissions arising out of and/or related to Ballard's lease of the Line, Ballard's performance of Train Services on the Line, whether negligent or otherwise, by Ballard or any of its officers, directors, affiliates, agents, or employees; and

(C) The use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Materials by Ballard or any of its officers, directors, affiliates, agents or employees; and

(D) Any violation of any Applicable Law by Ballard or any of its officers, directors, affiliates, agents or employees; and

(E) The breach of this Agreement or any failure by Ballard to perform any of its obligations pursuant to this Agreement in accordance with the requirements hereof;

except for any such Indemnified Liabilities arising on account of the applicable ECRR Indemnitee's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Ballard hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under Applicable Law.

6. Insurance. During the Term, Ballard shall, at its own cost and expense, obtain and maintain in force insurance covering its obligations under this Agreement as follows:

(a) Ballard shall provide all of the insurance coverage in the amounts and with the requirements set forth in Section 6 of the O&M Agreement.

- (b) Other Requirements.
 - (i) All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
 - (ii) Ballard waives and releases any right of recovery against ECRR for loss or damage to property of Ballard, its employees, licensees and invitees, resulting from any cause which would be coverable by “all risk” property insurance, whether or not such insurance is actually in effect, and whether or not the loss or damage is caused by the negligence of ECRR, its agents, employees or contractors. This waiver shall be binding on all insurers and other parties claiming by, through or under Ballard.
 - (iii) Ballard’s insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by ECRR and the Port of Seattle.
 - (iv) All policies required above shall include a severability of interest endorsement and shall name ECRR as an additional insured with respect to work performed under this Agreement and the Port of Seattle.

Ballard shall furnish ECRR with satisfactory evidence of such insurance, and with an endorsement from the issuer of the applicable insurance policies stating that the issuer shall furnish not less than thirty (30) days notice of any lapse or termination of, or material change in coverage under, such insurance. This requirement shall not, however, be deemed to make ECRR liable for payment of premiums or other charges in respect of any insurance which Ballard is obligated to obtain and keep in effect. The complete or partial failure or refusal of an insurance carrier, for any reason whatsoever, to protect and indemnify ECRR, or the inadequacy of the insurance coverage obtained by Ballard, shall not affect the obligation of Ballard to indemnify ECRR as provided in this Agreement.

7. Taxes. ECRR shall be responsible for all property taxes and similar assessments, attributable to the ownership of the Line. Ballard shall be responsible for all property taxes and similar assessments associated with the ownership of equipment used on the Line.

8. Financial Reporting. During the term of this Agreement, if so requested by ECRR, Ballard shall provide ECRR with a confidential copy of the Ballard federal income tax return within thirty (30) days of filing of such return. The purpose of providing such income tax return to ECRR shall be limited to determining that Ballard remains solvent and Ballard may elect to provide additional material in support of such a determination. ECRR agrees to keep such income tax return and any other financial material provided by Ballard, or its parent company, confidential and shall share it only with those professional persons that may have a legitimate need to view it, with the consideration that such professional persons shall also be bound by the same requirement of confidentiality.

9. IRS Tax Credit. ECRR shall be exclusively entitled to all credits available under the Qualified Railroad Track Maintenance Credit (Tax Credit), or successor credit programs, for all Routine Maintenance and Heavy Maintenance performed under this Agreement unless otherwise specified.

10. Term/Termination.

(A) This Agreement shall become effective on April 30, 2013, or one day after the STB has approved this Lease, whichever is later, or such other date as is mutually agreeable to the parties ("Lease Commencement Date") so long as prior thereto the STB has approved this Lease, pursuant to a Notice of Exemption, on terms acceptable to ECRR.

(B) Upon becoming effective under Section 10(A) above, this Agreement shall continue in full force and effect for a period of one (1) year from the Lease Commencement Date, except as otherwise provided in this Section 10. Unless earlier terminated pursuant to Sections 10 or 11, the term hereof shall extend from year to year (each year a "Renewal Term") unless either party has provided a notice of termination at least sixty days (60) prior to the end of the Initial Term or any Renewal Term.

(C) In the event of any substantial failure on the part of either party hereto to perform any of its obligations under this Agreement and its continuance in default for a period of fifteen (15) days after written notice of the default is given to such party by the other party in accordance with the notice provisions of this Agreement, the non-defaulting party shall have the right, at its option, to terminate this Agreement upon notice to the other party. Any such termination shall be without prejudice to the legal and equitable rights of the non-defaulting party in respect of such default by the other party.

(D) If there shall be filed by or against either party, in any court of competent jurisdiction, a petition in appointment of a receiver or trustee of all or a portion of a party's property, or if either party shall make an assignment for the benefit of creditors, and if execution shall be issued against a party, this Agreement, at the option of the other party, may be canceled and terminated without penalty, in which event neither party by virtue of any statute or of any order of any court shall treat this Agreement as an asset of the other party.

11. Right of First Refusal. In the event that Byron Cole ceases to manage Ballard's day-to-day operations, ECRR shall have the right, but not the obligation, to terminate this Agreement on thirty (30) days notice to Ballard. In further consideration of this Lease, in the event that Byron Cole ceases to manage Ballard's day-to-day operations, ECRR shall have the right, but not the obligation, to acquire all of Ballard's operating and ownership rights in the Woodinville-Bellevue Line, and the assets thereon (MP 23.8-MP 12.6); ECRR shall reimburse Ballard for the monetary amounts which Ballard paid for such rights and assets. Ballard shall cooperate in the filing of all documents necessary with the STB to terminate this Agreement or to establish with the STB ECRR's rights to lease and operate the other Ballard and Meeker Southern Rail Lines, as applicable.

12. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon parties hereto and their respective successors and assigns; provided that Ballard shall not transfer or assign this Agreement or any of its rights, interests or obligations hereunder (or delegate any of its duties hereunder), to any Person without obtaining the prior written consent of ECRR. Ballard agrees, however, that ECRR may assign its rights, interests and obligations hereunder to any purchaser of the Line.

13. Force Majeure. If either party hereto shall be prevented or delayed from punctually performing any obligations or satisfying any condition under this Agreement by any strike, lockout, labor dispute, unavailability of labor or materials, act of God, unusually inclement weather, unusual governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any condition caused by the other party, and which the affected party, by exercise of reasonable diligence, shall be unable to overcome, then the time to perform such obligation to satisfy such condition shall be extended on a day-for-day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this Section 13 shall, as a condition thereto, give notice to the other party in writing within five (5) days of the incident specifying with particularity the nature thereof, the reason therefore (if known), the date and time such incident occurred and an estimate of the period that such incident will delay the fulfillment of obligations of the affected party. Failure to give such notice within the specified time shall render; such delay invalid in extending the time for performing the obligations hereunder. This Section 13 shall not apply to the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose.

14. Waiver: Amendments. No delay on the part of either party hereto in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by ECRR and Ballard, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

15. Notices. Any notice required, given or made by any one party hereto to any other party hereto shall be in writing and shall be sent by facsimile transmission, overnight commercial carrier or hand delivery to the following addresses:

If to Ballard: Attn: General Manager
Ballard Terminal Railroad Company
4507 S.W. Oregon St.
Seattle, WA 98116
Phone (206) 782-1447
Email: ByronCole@comcast.net

If to ECRR: Attn: General Manager
Eastside Community Rail, LLC
1340 Lombard Street, #606
San Francisco, CA 94109
Phone (425) 891-4223
Email: DEngle76@comcast.net

16. No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the exclusive benefit of the parties to this Agreement and not for the benefit of any third Person. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either party to this Agreement.

17. Compliance with Applicable Laws. Ballard shall operate and maintain the Line in compliance with, and shall cause its operators and crews to be qualified in accordance with, all Applicable Laws relating to the operation and maintenance of the Line and operation of trains over the Line, including but not limited to the track safety standards set forth at 49 C.F.R. Par. 213, as amended from time to time, and all Applicable Laws respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while any such trains, locomotives, cars and equipment are being operated over or on the Line (including, but not limited to any width, height, weight or other restrictions or capacities of the Line). Ballard shall promptly remove from the Line and dispose of in a lawful manner any discarded or replaced property that Ballard has removed or replaced which constitutes hazardous materials under Applicable Laws. This does not include any materials or conditions that existed on the Line prior to the execution of this Agreement.

18. Responsibility for Operation. Except as otherwise expressly provided herein, Ballard shall be solely responsible for all costs, expenses, charges, obligations and liabilities of any nature or kind relating to or arising from the operation of its trains and engines over the Line during the Term of this Agreement but Ballard shall not be responsible for costs, expenses, charges, obligations and liabilities of any nature or kind relating to or arising from the ownership of the Line during the Term of this Agreement.

19. Ballard Employees. Ballard shall indemnify ECRR for any claims by Ballard employees.

20. Third-Party Access. Ballard shall not permit any third-party to utilize the Line without the prior written consent of ECRR.

21. Use of the Line. Ballard shall not utilize the Line for any purpose unrelated to Service on the Line without the prior written consent of ECRR.

22. Record Retention/Audit. Ballard shall retain all records associated with operations the Line for a period of three (3) years. ECRR shall have the right to audit such records for the purpose of confirming compliance with the terms of this Agreement, upon

reasonable notice to Ballard. Such audit shall be performed during normal business hours at the location where the applicable records are normally kept.

23. Environmental Liability and Indemnity. Ballard shall not create or permit any condition on the Line or any real property or improvements used in connection with the Line that could present a threat to human health or to the environment. Ballard shall be responsible for and shall indemnify and hold harmless ECRR from any suit, claim or Losses growing out of any damages alleged to have been caused in whole or in part by an unhealthy, hazardous or dangerous condition caused in whole or in part by, or created during Ballard's presence on and use of the Line or Ballard's violation of any Applicable Laws pertaining to Hazardous Materials, air, water (surface or groundwater), or noise pollution, and the storage, handling, use, transportation or disposal of any such Hazardous Materials. Ballard shall bear the expense of all practices or work, preventive or remedial, which may be required because of the condition or use of the Line during the Term. ECRR shall be responsible for, and shall indemnify and hold harmless Ballard from and against any environmental conditions caused or created by ECRR prior to the Effective Date of this Agreement. Ballard shall be responsible for, and shall indemnify and hold harmless ECRR from and against any environmental conditions caused or created by Ballard prior to the Effective Date of this Agreement. Ballard and ECRR each expressly agree that the indemnification and hold harmless obligations it hereby assumes shall survive the termination or expiration of this Agreement. Ballard and ECRR each agree that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the other party discovers, or reasonably should have discovered, any such health or environmental impairment, and Ballard and ECRR each hereby knowingly and voluntarily waive the benefit of any shorter limitation period. Ballard acknowledges that ECRR has provided Ballard with full access to inspect the Line. Ballard further acknowledges that ECRR makes no representations and warranties to Ballard concerning the existence of any Hazardous Materials on or near the Line, or compliance of the Line with any Applicable Laws.

24. Regulatory Approval. The parties acknowledge that the effectiveness of this Agreement is subject to Ballard acquiring approval of the lease of the Line from the STB.

26. Entire Agreement. This Agreement contains the entire understanding of the parties hereto as to the subject matter hereof and supersedes any and all oral and prior written understandings between the parties with respect to the subject matter of this Agreement.

27. Construction. All words, terms and phrases used in this Agreement which are not otherwise expressly defined herein shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the United States railroad industry. This Agreement is the result of mutual negotiations of the parties hereto, neither of which shall be considered the drafter for purposes of contract construction.

28. Governing Law Severability. This Agreement shall be a contract made under and governed by the internal laws of the State of Washington applicable to contracts made and to be performed entirely within such State. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such

provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

29. Headings. All article and section headings are inserted herein for the convenience of the parties only and are not part of the substance of this Agreement and shall not affect any construction or interpretation of this Agreement.

30. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their fully authorized representatives as of the day and year first above written.

< < The Balance of This Page is Intentionally Left Blank > >

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their fully authorized representatives as of the day and year first above written.

BALLARD TERMINAL RAILROAD
COMPANY, LLC

By: Bryan D Cole
Title: GENERAL MANAGER
Date: APRIL 26, 2013

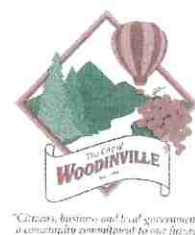
EASTSIDE COMMUNITY RAIL, LLC

By: [Signature]
Title: MANAGING DIRECTOR, ECR
Date: 26 April 2013

SCHEDULE A
ROUTINE MAINTENANCE

1. Vegetation Control, spraying the Line at least annually, clearing of vegetation obstructions at grade crossings, removal of downed trees encroaching on the track, bush-hogging of accessible areas in towns. Not included, debris removal dumped by third parties.
2. Signal Maintenance, electrical power to existing signals, replacing batteries (including proper disposal), replacing light bulbs, lenses, gates, periodic testing, repair of damage caused by third parties, replacement of insulated joints, bond wires and above ground wiring. Replacement of unusable heads, mast, cantilevers, electronic boards, bungalos, cabinets, gate mechanisms, underground wiring, or signal upgrades.
3. Grade Crossings, patching of surface with hot or cold mix, repair of broken rails, repair of crossing timbers, redriving lags, repair or replacement of cross-bucks.
4. Inspection, all FRA required track and bridge inspections, copies available for ECRR upon request.
5. Switches, inspection, lubrication and adjustment of all switches, replacement of loose or missing bolts and cotter pins, replacement of banners as required, respiking to gage, welding of points and frogs.
6. Derailments, rerailling of all derailed cars and lading, repairs to track to return it to the same FRA class as prior to the derailment, spare material from the Line may be used in the replacement if available, if not available Ballard must purchase material at its expense.
7. Joints and Broken Rails, repair all missing or failed bolts (for existing FRA class), replace broken joint bars, repair broken rails and pull-aparts (Line inventory may be used).
8. Ties and Gage Rods, respike ties to maintain FRA class, insert gage rods to hold gage.
9. Plates and Anchors, position loose plates and redrive loose anchors.
10. Surface, spot jacking and tamping to meet FRA class track.
11. Interlocking plants, inspection and repair as specified in agreements, including welding and bolts.
12. Bridges, inspection, cleaning of drift, erosion control as practical, repair and replacement of existing walkway boards and handrails, preventing ballast erosion as practical. Replacement of piles, sills, caps, bents, stringers, deck board, sideboards, headwalls or other components.
13. Rehabilitation Program Preparation, preparing and submitting an annual track and bridge rehabilitation program, coordination of program administration including contractor monitoring.

EXHIBIT D



June 6, 2018

Mr. Paul Nerdrum
Mr. James Forgette
Ballard Terminal Railroad Co., LLC
4725 Ballard Ave NW
Seattle, WA 98107

RE: Eastside Freight Railroad

Gentlemen:

By letter of March 23, 2018 Mr. Forgette provided certain information the City requested relating to Ballard Terminal Railroad's compliance with the Operation & Maintenance Agreement ("OMA") governing Ballard's operations on the Eastside Rail Corridor. The March 23 letter included a copy of Ballard's railroad liability insurance policy. It also included status reports on work Ballard commissioned to address bridge and track maintenance on the line.

I am writing to follow up on the information Mr. Forgette provided. The March 23 letter states that Ballard contracted with David Evans and Associates to prepare a Bridge Management Plan required by Federal Railroad Administration rules. On April 10 Mr. Forgette advised me that the contractor completed the inspections of three bridges in Woodinville. He promised to provide copies of the inspection reports and the completed Bridge Management Plan upon receipt. Please provide me with copies of both reports.

The March 23 letter describes a planned summer maintenance program that includes replacement of 100 ties and culvert clearing in Woodinville and weed and vegetation spraying by a contractor. Mr Forgette said that the work will begin on June 1 and be completed by Labor Day. Please provide an update on Ballard's plans for this work, including the names of the contractors that Ballard has engaged to perform the work and the schedule for work in Woodinville. We request that Ballard give City Public Works Director Rick Roberts a tour of the work in progress. Is there a date in July that meshes well with Ballard's plans for the project?

Mr. Forgette's April 10 e-mail reports that Ballard and Northwest Signal planned to meet "next week" with Progress Rail and Liberty Electric to discuss solutions to the signal malfunctions at 195th and 200th. Can you update me on Ballard's plans to address this problem?

Thank you for providing Ballard's railroad liability insurance policy. In several respects, however, the policy does not meet the minimum requirements of the OMA. For example:

- Section 8.1 of the OMA requires that railroad liability insurance be placed with a company admitted as an insurer by the Washington State Office of the Insurance Commissioner. Indian Harbor Insurance Company has not qualified to do business here. This omission is significant, because the Insurance

Commissioner sets capitalization requirements for carriers, and requires carriers to contribute to a fund that protects insureds against default by a carrier.

- Ballard's policy expressly excludes automobile coverage, required by Section 8.3 of the OMA. It also names Woodinville as an additional insured only with respect to Railroad Operations, a category of activity that does not include operation of automobiles.
- Section 8.1 of the OMA requires coverage for "operation, maintenance and construction" on or about the corridor. Ballard's policy does not provide this coverage.
- Section 8.7 of the OMA requires that Ballard carry workers compensation or federal employers liability coverage for its workers, to provide Woodinville with evidence of coverage. Those risks are not addressed in the Indian Harbor policy.
- The scope of pollution coverage provided in the Indian Harbor policy is narrower than that required by Section 8.1 of the OMA.

Please provide me with a copy of a general liability insurance policy, placed with a company admitted as an insurer by the Washington Insurance Commissioner, carrying an A.M. Best rating of "A" or better, and naming the City as an additional insured for all coverage described in Section 8 of the OMA, omitting the excursion rail coverage described in Section 8.2. Please deliver a conforming policy no later than June 30, 2018.

The City appreciates the cooperation of Ballard and its accounting firm in allowing Jeff Lounsberry and Ron Maus of MWL Advisory to inspect the books of the Eastside Freight Railroad ("EFR") on March 27. The accountants reviewed profit and loss statements for 2015 through 2017, each of which shows operating losses each year, and liabilities exceeding assets. At the conclusion of the inspection, Ballard accountant Kim Martin concurred with MWL's assessment that EFR standing alone would be insolvent.

In light of this data, the City would like to meet with you again to discuss the future of the EFR in Woodinville. As you know, the City recently has invested resources trying to ensure that EFR meets its operation and maintenance obligations, that the railroad's operations protect the safety of Woodinville residents, that school buses no longer encounter blockades caused by malfunctioning railroad signals and that Ballard operations do not expose the City to liability. This meeting is not a substitute for the specific updates outlined above, or for timely submittal of the insurance coverage required by the OMA. Rather, we would like to better understand EFR's business plan, including your efforts to secure title to the Freight Easement held by Eastside Community Rail.

Please check your calendars and advise if you could come to Woodinville on June 28 at 9 am to meet with me and with the City's lawyers, who participated in our February 27 meeting. Thanks for your consideration.

Sincerely,



Brandon Buchanan
City Manager

cc: Jeff Ganson
Matthew Cohen
Hunter Ferguson

EXHIBIT E

JOSHUA C. BROWER

Direct: 206.582.5065

Cell: 206.498.1804

josh@browerlawps.com

June 19, 2018

Via Email only (BrandonB@ci.woodinville.wa.us)

Brandon Buchanan
City Manager, City of Woodinville
17301 133rd Ave NE
Woodinville, WA 98072-8534

Re: *City of Woodinville/Ballard Terminal Railroad Co., L.L.C.*

Dear Mr. Buchanan:

I am writing to respond to the City's correspondence dated June 6, 2018 with regard to the above-referenced matter. In light of the City's decision to involve Messrs. Cohen and Ferguson of Stoel Rives, and their track record and bias, please direct all future correspondence to me and no longer communicate directly with my client. Please let me know if I should communicate directly with Mr. Ganson, who I am copying on this correspondence.

Regarding the City's request for a meeting, Mr. Forgette and I are available on June 28, 2018 but Mr. Nerdrum is not. If the City desires his attendance, he is available in late July or early August. Please let me know whether the City still wants to meet on June 28 or find a mutually convenient date when Mr. Nerdrum can attend.

Regarding the remaining issues raised in your letter, BTRR responds:

- Bridge Inspection Reports: Mr. Forgette provided copies of the reports on June 8, 2018 and will be providing the bridge management program presently.
- Summer Maintenance Program: Mr. Forgette responded via email dated June 8, 2018, and offered to tour the City's Public Works Director, Rick Roberts, in late July to discuss all issues raised in your letter related to this issue.
- Crossing Signal Malfunction: Please see Mr. Forgette's email dated June 8, 2018. In light of the apparent factual disagreement regarding the cause of the malfunctions, I suggest we let Messrs. Forgette and Roberts meet to discuss this issue in the field before conducting further discussions.
- BTRR's Liability Insurance and OMA Requirements. See discussion below.
- BTRR's General Liability Insurance Policies. See discussion below.

- City's Inspection of BTRR's Accounting Records. I cannot comment on the City's accountant's claims regarding Ms. Martin's alleged statements about BTRR's finances, other than to say the City's consultant's claims are rank hearsay at best. BTRR permitted the City to inspect its books and records only for BTRR's eastside operations, and not for any of its other operations. As you know, BTRR also owns and operates two more shortline railroads in Washington. As a whole, BTRR is financially solvent and easily meets the test for a "going concern."

In light of the City's choice of outside counsel, BTRR will not discuss those other operations with the City nor permit it to inspect those books and records. If the City wants to do so, we can discuss the terms and conditions of a non-disclosure agreement expressly prohibiting the City from sharing any information in those accounting records with Stoel Rives.

OMA Issues Raised in Your Letter

As explained in my letter to the City dated February 23, 2018, BTRR does not believe the City can directly enforce the Operations and Maintenance Agreement (OMA) against it. The City's rights to enforce the OMA obligations run against ECYR, not BTRR. Please confirm the City is taking all steps to enforce the OMA against ECYR and require strict performance from it.

While the City may or may not be choosing to waive its rights against ECYR, BTRR is not waiving any of its rights. BTRR is voluntarily cooperating with the City regarding the City's claims against ECYR under the OMA simply as a gesture of good faith. Please do not misconstrue BTRR's actions and responses as in any way waiving its rights under its Lease with ECYR or its defenses to any claim of contractual privity with the City under the OMA, all of which are expressly reserved.

To be clear, BTRR has been working with the City based on BTRR's understanding the City is not claiming privity with BTRR under the OMA nor claiming BTRR is directly liable to the City under the OMA. If that is not the case, please let me know immediately, since all further discussions will likely cease immediately until the privity issue is resolved.

Taking the City at its word as expressed in your letter, and as a continued gesture of good faith, and without waiving any defense or objection to contractual privity, BTRR responds to the City's questions regarding BTRR's insurance as follows:

1. Indian Harbor Insurance Policy. The City apparently received inaccurate information regarding Indian Harbor Insurance Company's ability to issue to the subject insurance policy to BTRR. A quick search confirms Indian Harbor can do so pursuant to RCW 48.15.040. Also, this is stated on page 1 of the Insurance Declarations page previously provided, which says (in all capitals):

THIS POLICY IS REGISTERED AND DELIVERED AS A SURPLUS LINE
COVERAGE UNDER THE INSURANCE CODE OF THE STATE OF
WASHINGTON, TITLE 48 RCW.

2. Automobile Insurance. Attached is BTRR's Certificate of Liability Insurance, showing automobile insurance in excess of OMA Section 8.3 and naming the City as an additional insured for all coverage.

3. "Operation, maintenance and construction." Again, respectfully, I believe the City is misreading BTRR's insurance policy. BTRR is insured for Railroad Operations, which, by definition, includes the items listed in your letter. Specifically, Section 34 of the Indian Harbor policy defines "Railroad Operations" to include "***ownership, operation, maintenance and use of*** 'Railroad Equipment' and 'Railroad Facilities' for the purposes of providing transportation and other related services by the 'Insured' that are customary and normal for a railroad or railway. 'Railroad Operations' also includes all operations directly related to the conduct of the 'Insured's' business as a railroad or railway." (Emphasis added). Moreover, Section 19, Policy Territory, provides coverage anywhere in North America thereby covering the entire "corridor."

4. Worker's Compensation and federal employer's liability coverage. The City is misreading the OMA by claiming it "requires Ballard carry workers compensation or federal employers liability coverage for its workers" and that "[t]hose risks are not addressed in the Indian Harbor policy." Section 8.7 of the OMA provides:

TPO is fully responsible for ascertaining the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, as well as any federal laws that pertain to workers compensation coverage for railroad employees and operators, such as the Federal Employers' Liability Act (FELA)...In the event FELA is the applicable coverage under this Agreement, TPO shall provide the Port with evidence of coverage.

- a) In the event Title 51 of the Revised Code of Washington applies to this Agreement, TPO shall submit a current employer liability certificate...[and] TPO shall also provide the Port with Washington State Stop Gap employers' liability insurance.

Pursuant RCW 51.12.080, BTRR is exempt from Title 51, Washington's Industrial Insurance Act, because it and its employees are entirely engaged in interstate or intrastate commerce. Thus, there can be no requirement under the OMA to provide any insurance or certificates related to Title 51.

BTRR is subject to FELA and the Indian Harbor policy provides coverage for "Employer's liability" under "the Federal Employer's Liability Act, U.S. Code (1970) Title 45, Chapter 2, Sections 51-60." See Section IV. Definitions, subpart 13.

5. Pollution coverage. BTRR has no idea what the City means that BTRR's pollution coverage is somehow "narrow." Sections 28 and 29 of the Indian Harbor policy provide broad pollution coverage related to all "Railroad Operations," which, by definition, includes operations and maintenance consistent with OMA Section 8.1.

I trust this letter answers and resolves the City's questions and concerns. Again, please let me know when the City wants to meet.

Mr. Buchanan, City Manager
June 19, 2018
Page 4

Sincerely,

BROWER LAW PS

/s/ Joshua Brower

JOSHUA C. BROWER

cc: Jeff Ganson via email only (jeff@pfrwa.com)

EXHIBIT F



PORTER FOSTER RORICK LLP

800 Two Union Square | 601 Union Street | Seattle, Washington 98101 | Tel (206) 622-0203 | Fax (206) 223-2003 | www.pfrwa.com

October 17, 2019

Josh Brower
Brower Law PS
506 2nd Avenue, Suite 1400
Seattle, Washington 98104-2329

Re: Ballard Terminal Railroad – City of Woodinville

Dear Josh:

The purpose of this letter to seek a timely response from your client, Ballard Terminal Railroad Company (“BTR”), regarding several matters of concern to my client, the City of Woodinville. First, as I am sure you are aware, the Operations and Maintenance Agreement (“O&M Agreement”) between our clients will expire on December 18, 2019. The O&M Agreement governs BTR’s use of the railroad corridor owned by the City and imposes upon BTR requirements with respect to, among other things, maintenance of the rail facilities defined therein; payments to the City related to BTR freight rail operations; and insurance policies protecting the City in relation to those activities. The O&M Agreement shields the City from liability for BTR’s operation of freight trains on the City’s right of way. As you are well aware from our many prior discussions, the City has previously identified material breaches by BTR of the O&M Agreement. That history of noncompliance notwithstanding, it is the City’s position that a new agreement between our clients governing BTR’s freight rail operations must be in place no later than the expiration of the current O&M Agreement.

Second, as we have also discussed—and as BTR is also well aware from Snohomish County’s filings before the Surface Transportation Board and letters to your client—there is serious doubt as to Eastside Community Rail’s, and therefore BTR’s, right to make any use of the corridor. Snohomish County’s compelling arguments apply equally to BTR’s use of the portion of the corridor owned by the City. As you know, the STB suggested that the County pursue action in state court to demonstrate ECR’s and BTR’s lack of property right to operate on the corridor. The City cannot allow a trespass on its property, particularly one that exposes the City to potential liability for accidents stemming from the operation of a poorly maintained rail service. Accordingly, the Woodinville City Council has authorized my office to pursue a quiet title action which, if successful, would (along with evidence of BTR’s prior breaches of the O&M Agreement and any lack of responsiveness with respect to execution of a successor agreement) support a

Josh Brower
October 17, 2019
Page 2

petition to the STB seeking adverse abandonment of BTR's common carrier authorization to operate on the corridor.

Third, and related, for a number of months our clients have been engaged in discussions regarding the prospects for an agreed termination of freight rail operations on and railbanking of the Woodinville segment of the corridor. As we have discussed, such an outcome presents advantages for both of our clients. As BTR has stated in its STB filings, BTR loses money every year on its operation of the Eastside Freight Railroad. At present, we are aware of but a single freight rail customer served by BTR within the City. While BTR has reduced its losses by postponing routine maintenance of the rail line, that will certainly change if the City is required to pursue aforementioned legal remedies. The City has attempted to negotiate with BTR in good faith. Following your August 9, 2019 emailed proposal, I have attempted a number of times over the succeeding two months to initiate a phone discussion to further negotiations, and have received no meaningful response.

Time is now very much of the essence. Negotiations as to railbanking of the Woodinville segment of the corridor notwithstanding, a successor to the current O&M Agreement must be in effect between our clients no later than the expiration of the current O&M Agreement. Further, the City will file a quiet title action if our clients have not reached agreement by December 18 on terms for termination of rail service in Woodinville, and for railbanking of the Woodinville segment. Please respond at your earliest convenience.

Sincerely,

PORTER FOSTER RORICK LLP

A handwritten signature in blue ink, appearing to read "Jeffrey Ganson", is written over the printed name.

Jeffrey Ganson

JG:cn
cc: Brandon Buchanan
Matt Cohen

g:\wvill\002\wf\191017.jb.ltr.docx

EXHIBIT G

From: Josh Brower <josh@browerlawps.com>
Sent: Friday, August 28, 2020 12:29 PM
To: C. Montange
Cc: Cohen, Matthew; Jeff Ganson
Subject: Re: BTRC crossing signalization

Mr. Montange, again, *ad nauseum*, BTRC is not “occupying” the Line. BTRC removed its rolling stock on August 15, 2020.

You are trying to create a legal fiction to impose liability on a party you consider a trespasser and who has *no physical contact* with the Line, *nor any contractual right* to have any physical contact with your clients’ property.

To be legally and factually correct, **ECR** has a Common Carrier obligation imposed by the STB. The STB permitted BTRC to perform ECR’s Common Carrier obligations as an authorized operator. BTRC lawfully suspended that operating authority pursuant to a properly filed embargo.

ECR’s Common Carrier obligation does not exist in a vacuum and can only be performed in conjunction with a contract providing direct physical access and rights to use and occupy the Line—in this case a valid O&M Agreement between the owners of the Line and ECR. Your clients had an O&M Agreement with ECR, but let it expire.

BTRC was never a party to the O&M Agreement so your clients have no rights against BTRC under it.

Moreover, BTRC is not ECR so please stop conflating the two. Your fight is with ECR. BTRC will no longer be part of it.

Additionally, you and Mr. Ganson have made abundantly and repeatedly clear, BTRC has no right at state law to use and occupy your clients’ property.

BTRC has given you and your clients ample notice and time to fix its own problems.

Instead of doing so, your clients have squandered that time arguing with BTRC when they should have spent it obtaining utility service or physically dismantling their own property to ensure public safety. Again, fail at your own peril.

It is unfathomable that the UTC would stop your clients, as the owners of the Line and the Signals, from taking the necessary steps to ensure public safety unless somebody provided it with incorrect/incomplete information. It appears to BTRC that someone reached out to the UTC because out of the blue the UTC contacted BTRC regarding this issue. Regardless, whomever did so did so in vain as explained above. As the owners of the Line and Signals, your clients can easily comply with the UTC requirements; BTRC has no contractual right to do so; and will not impede your clients efforts.

Again, good day gentlemen,

Josh

Joshua Brower
Brower Law PS
1111 Third Ave, Suite 3000
Seattle, WA 98101
206.498.1804