

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 9A
Meeting Date: October 1, 2024

DATE: September 20, 2024

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Don Esterbrook, Deputy CEO NWSA
Project Manager: Curt Stoner, Sr. Manager Real Estate NWSA

SUBJECT: Third Amendment to the Amended and Restated Operating Contract with Pacific Rail Services, Inc.

A. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the CEO or his delegate to execute the Third Amendment to the Amended and Restated Operating Contract with Pacific Rail Services, Inc.

B. SYNOPSIS

During their recent ILWU contract negotiations, Pacific Rail Services (PRS) agreed to significantly higher labor rates and benefits than they had forecast when the original November 9, 2020 Amended and Restated Operating Contract was finalized with the Northwest Seaport Alliance. During these negotiations, PRS made NWSA staff aware that if they declined to accept the contract terms requested by the ILWU it was highly likely that a major labor disruption would occur to the South Intermodal Yard (SIM) operations. PRS further advised NWSA staff that if they agreed to the ILWU contract terms it would make their financial model unviable without NWSA providing some financial relief to PRS. NWSA staff advised PRS to accept the ILWU's terms and subsequently negotiated the Terms of the Third Amendment to the Amended and Restated Operating Contract with PRS providing financial relief to

PRS. PRS has advised their ILWU labor and benefits costs have increased 12.7% as a result of this new contract.

C. BACKGROUND

Under the Terms of the Third Amendment NWSA will increase the amount PRS is allowed to invoice the NWSA for each rail lift by \$1.00 from November 1, 2024 to August 31, 2025. In addition, NWSA recognizes that Operator has previously charged NWSA a lesser amount than the above based on the Second Amendment to the Contract. NWSA agrees to pay Operator \$1 per lift for the rail lift volumes charged to our customers for the period 1/1/2024 to 10/31/2024 period to compensate Operator for their unexpected higher ILWU labor costs during this 1/1/2024 to 10/30/2024. This one-time payment is estimated to be approximately \$90,000.

Current contract rates:

Period	Tier 1 Lifts 1 - 6,000/mo.	Tier 2 Lifts 6,001 - 8,000/mo.	Tier 3 Lift over 8,000/mo.
01/01/24 - 12/31/24	\$60.11	\$51.87	\$32.00
01/01/25 - 08/31/25	\$61.11	\$52.87	\$33.00

Amended contract rates:

Period	Tier 1 Lifts 1 - 6,000/mo.	Tier 2 Lifts 6,001 - 8,000/mo.	Tier 3 Lift over 8,000/mo.
11/01/24 - 12/31/24	\$61.11	\$52.87	\$33.00
01/01/25 - 08/31/25	\$62.11	\$53.87	\$34.00

FINANCIAL IMPLICATIONS

Pacific Rail Services provides the domestic intermodal business at the SIM to both the Union Pacific and BNSF. The combined 2024 operating revenue of both customers is approximately \$16.4 million. The increase in lift rate fee from PRS will decrease the 2024 annual income for the NWSA by approximately \$110,000.

D. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

NWSA staff considered not agreeing to the Terms of the Third Amendment to the Amended and Restated Operating Contract with PRS and determined that it was in

the NWSA's best interest to avoid a significant labor disruption at the South Intermodal Yard by agreeing to the Terms as requested by PRS.

E. ATTACHMENTS TO THIS REQUEST

- Third Amendment to the Amended and Restated Operating Contract with PRS.

F. PREVIOUS ACTIONS OR BRIEFINGS

- NONE

THIRD AMENDMENT
TO AMENDED AND RESTATED OPERATING CONTRACT

THIS THIRD AMENDMENT is made by and between THE NORTHWEST SEAPORT ALLIANCE, a Washington port development authority (“NWSA”), as licensee/agent of the PORT OF TACOMA, a Washington municipal corporation, and PACIFIC RAIL SERVICES LLC, a Delaware limited liability company (“PRS”).

WHEREAS, NWSA and PRS are parties to an Amended and Restated Operating Contract dated November 9, 2020, as amended, (the “Contract”); and

WHEREAS, NWSA and PRS desire to make the following change to the Agreement, such change to be effective as of October 2, 2024;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Effective November 1, 2024, Section 7.1 of the Amended and Restated Operating Contract dated November 9, 2020 is deleted in its entirety and replaced with the following:

7.1 Operator shall charge NWSA for container/trailer lifts according to the following rates, based on total lifts by Operator per month:

<u>Period</u>	<u>Tier 1</u> <u>Lifts 1-6000/mo.</u>	<u>Tier 2</u> <u>Lifts 6001 – 8000/mo.</u>	<u>Tier 3</u> <u>Lifts Over 8000/mo.</u>
08/01/22 – 12/31/22	\$58.11	\$49.87	\$30.00
01/01/23 – 12/31/23	\$59.11	\$50.87	\$31.00
01/01/24 – 12/31/24	\$61.11	\$52.87	\$33.00
01/01/25 – 12/31/25	\$62.11	\$53.87	\$34.00

A “lift” is defined as the placing of a container/trailer or chassis on or off a railcar. The above rates are based on operations between 6:00 am and 6:00 pm, Monday through Saturday, and Sunday 6:00 am - 12:00 pm. If additional hours or shifts are requested then the above rates will be subject to adjustment subject to mutual agreement of the parties.

NWSA recognizes that Operator has previously charged NWSA a lesser amount than the above based on the Second Amendment to the Contract. NWSA agrees to pay Operator \$1 per lift for the rail lift volumes charged to our customers during the 1/1/2024 to 10/31/2024 period to compensate Operator for their unexpected higher ILWU labor costs during this 1/1/2024 to 10/31/2024 period.

2. Except to the extent expressly modified by the express terms of this Amendment, all other terms, conditions, and provisions of the Agreement and all exhibits and attachments thereto shall remain in full force and effect.

SIGNATURES ARE ON NEXT PAGE

IN WITNESS WHEREOF the parties hereto have signed this Third Amendment To Amended and Restated Operating Contract as of the day and year written below.

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

PACIFIC RAIL SERVICES

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this ___ day of _____ 20___, before me personally appeared _____, to me known to be the _____ of THE NORTHWEST SEAPORT ALLIANCE, the public port authority that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said public authority, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this ___ day of _____ 20___, before me personally appeared _____, to me known to be the _____ of PACIFIC RAIL SERVICES LLC, a Delaware limited liability company, the individual/entity that executed the within and foregoing instrument as Lessee, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

Item No.: 9A
Meeting Date: October 1, 2024

Third Amendment to the Amended and Restated Operating Contract with Pacific Rail Services, Inc.




**THE NORTHWEST
SEAPORT ALLIANCE**
SEATTLE + TACOMA

Presenter Name: Curt Stoner
Presenter Title: Sr. Manager Real Estate

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ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the CEO or his delegate to execute the Third Amendment to the Amended and Restated Operating Contract with Pacific Rail Services, Inc.



THE NORTHWEST
SEAPORT ALLIANCE
SEATTLE + TACOMA

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Background

During their recent ILWU contract negotiations, Pacific Rail Services (PRS) agreed to significantly higher labor rates and benefits than they had forecast when the original November 9, 2020 Amended and Restated Operating Contract was finalized with the Northwest Seaport Alliance.

PRS has advised their ILWU labor and benefits costs have increased 12.7% as a result of this new contract.

At the time of the PRS ILWU contract negotiations PRS made the NWSA aware that the cost increases were unsustainable for PRS without NWSA providing some financial relief to PRS. NWSA staff believed that had PRS not agreed to the increased ILWU labor and benefits costs a significant labor disruption would occur at the South Intermodal Yard (SIM) negatively impacting operations at this important domestic intermodal terminal.

NWSA staff subsequently negotiated the Terms of the Third Amendment to the Amended and Restated Operating Contract with PRS providing financial relief to PRS.



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Background

Under the Terms of the Third Amendment NWSA will increase the amount PRS is allowed to invoice the NWSA for each rail lift by \$1.00 from November 1, 2024 to August 31, 2025. In addition, NWSA recognizes that Operator has previously charged NWSA a lesser amount than the above based on the Second Amendment to the Contract.

NWSA agrees to pay Operator an additional \$1 per lift for the rail lift volumes charged to our customers for the period 1/1/2024 to 10/31/2024 period to compensate Operator for their unexpected higher ILWU labor costs during this 1/1/2024 to 10/30/2024. This one-time payment is estimated to be approximately \$90,000.



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Financial Implications

Pacific Rail Services provides the domestic intermodal business at the SIM to both the Union Pacific and BNSF. The combined 2024 operating revenue of both customers is approximately \$16.4 million. The increase in lift rate fee from PRS will decrease the 2024 annual income for the NWSA by approximately \$110,000.



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Alternatives Considered and Their Implications

NWSA staff considered not agreeing to the Terms of the Third Amendment to the Amended and Restated Operating Contract with PRS and determined that it was in the NWSA's best interest to avoid a significant labor disruption at the South Intermodal Yard by agreeing to the Terms as requested by PRS.



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ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the CEO or his delegate to execute the Third Amendment to the Amended and Restated Operating Contract with Pacific Rail Services, Inc.

