

FIRST AMENDMENT TO OPERATING AGREEMENT

This First Amendment (the “**Amendment**”) to the Operating Agreement (“**Operating Agreement**”) dated September 14, 1997 is made this 17th day of October, 2023 (the “**Effective Date**”) by and amongst **Ballard Terminal Railroad Company, L.L.C.**, a Washington limited liability company (“**BTRR**”), Meeker Southern Railroad LLC, a Washington limited liability company (“**MSR**”), and the City of Seattle, a Washington Municipal subdivision acting through its Department of Transportation (the “**City**”), each a “**party**” and together the “**parties**.”

RECITALS

WHEREAS, in 1997, the Burlington Northern and Santa Fe Railway Company (“**BNSF**”) expressed its intention to abandon that part of its former Washington Branch line between BNSF Milepost 0.09 and BNSF Milepost 02.70 in the Ballard area of Seattle and the City took possession of this rail right-of-way to preserve the corridor for future rail and trail purposes; and

WHEREAS, in 1997, in ongoing support of rail-served businesses, the Seattle City Council (“**Council**”) passed Ordinance 118734, granting a franchise (the “**Franchise**”) for this segment of rail to the BTRR, which was formed to provide rail service to businesses in the Ballard industrial area; and

WHEREAS, contemporaneously with the City’s grant of the Franchise, the parties entered into the Operating Agreement; and

WHEREAS, the parties now wish to transfer the Franchise and the Operating Agreement to BTRR’s related entity, MSR, for the remainder of the 30-year term of the Franchise, which expires on September 29, 2027, subject to all conditions approved under Ordinance 118734 and all terms and conditions of the Operating Agreement except as amended as provided herein; and

WHEREAS, in exchange for the City’s approval of the assignment from BTRR to MSR, BTRR and MSR agree that the City may cover a section of the tracks under the 15th Avenue North West bridge with asphalt; and

WHEREAS, following assignment, MSR agrees that it will not seek to renew use of the section of rail to be covered by asphalt unless it first obtains insurance to operate in that area pursuant to the terms of the Franchise and the Operating Agreement; and

WHEREAS, MSR agrees that should it obtain insurance and seek to renew rail use of the portion of the rail line to be covered by asphalt, it will provide notice to the City sufficient for the City to reroute the existing multi-use path that crosses the rail line to a different location before the asphalt is removed; and

WHEREAS, MSR agrees that it may not use the rail line until it enters into this Amendment assigning the Operating Agreement consistent with Council Bill 120677 and Ordinance 118734; and

WHEREAS, MSR will obtain insurance for the portion of the rail line it seeks to use and occupy before commencing operations; and

WHEREAS, BTRR, MSR, and the City agree that this assignment shall not alter any of the legal rights or claims that the parties may have against one another; and

WHEREAS, the parties agree that, except as otherwise expressly amended as provided herein, the terms and conditions of the Franchise and the Operating Agreement shall remain in full force and effect and are hereby ratified by the parties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment of Franchise. Subject to Council passage of Council Bill 120677, and pursuant to Section 9 of Ordinance 118734, the City consents to and approves an assignment of the Franchise memorialized by Ordinance 118734 from BTRR to MSR consistent with the above Recitals and the provisions of Ordinance 118734.




2. Assignment of Operating Agreement. Subject to Council passage of Council Bill 120677, and pursuant Section 15 of the Operating Agreement, the Seattle Department of Transportation, acting through its Director, approves an assignment of the Operating Agreement from BTRR to MSR consistent with the above Recitals and the provisions of Ordinance 118734.

3. Terms In Force/Control. All terms in the Franchise and Operating Agreement not otherwise specifically amended as provided herein shall remain in full force and effect. In the event of a conflict between the the Operating Agreement and this Amendment this Amendment shall control.

4. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, and when taken together shall constitute on and the same Amendment.

(signatures to follow)

IN WITNESS WHEREOF, the parties execute this Amendment, effective as of the Effective Date.

<p>Ballard Terminal Railroad Company, L.L.C.</p> <p>By: </p> <p>Paul Nerdrum, its Managing Member</p> <p>Executed this 17th_ day of October, 2023</p>	<p>Meeker Southern Railroad LLC</p> <p>By </p> <p>Paul Nerdrum, its Managing Member</p> <p>Executed this 17th_ day of October, 2023</p>
<p>Seattle Department of Transportation</p> <p>By: </p> <p><small>Greg Spotts (Oct 17, 2023 19:13 PDT)</small></p> <p>Greg Spotts, its Director</p> <p>Executed this 17th_ day of October, 2023</p>	