After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

MASTER UTILITIES EASEMENT AGREEMENT

Reference No.	P2022-137/A3324
Grantor:	Rainer Rail, LLC
Grantee:	City of Tacoma
Abbr. Legal Description:	Portion of the SW, S27, T20N, R3E; NW, SW, SE, S34, T20N, R3E; NE, SE, S03, T19N, R3E; NE, SE, S10, T19N, R3E; NW, SW, S11, T19N, R3E; NW, SW, SE, S14, T19N, R3E; NE, S23, T19N, R3E; NW, SW, S24, T19N, R3E; NE, NW, SE, S25, T19N, R3E; NE, NW, SW, S36, T19N, R3E; SE, S35, T19N, R3E; NE, NW, SW, S2, T18N, R3E; NW, S11, T18N, R3E; NE, NW, S10, T18N, R3E; NE, NW, S9, T18N, R3E; ALL, S8, T18N, R3E; SE, S7, T18N, R3E; NE, NW, SW, S18, T18N, R3E; SE, S13, T18N, R2E; ALL, S24, T18N, R2E; NW, S25, T18N, R2E; NE, SW, SE, S26, T18N, R2E; NW, S35, T18N, R2E; NE, SW, SE, S34, T18N, R2E; NW, SW, S03, T17N, R2E; NW, S10, T17N, R2E; NE, SE, S09, T17N, R2E; NE, SE, S16, T17N, R2E; SW, SE, S21, T17N, R2E; NE, SE, S31, T19N, R4E; NE, NW, SE, S06, T18N, R4E; SW, S05, T18N, R4E; NE, NW, SE, S08, T18N, R4E; SW, S09, T18N, R4E; NE, NW, S16, T18N, R4E; NE, NW, S15, T18N, R4E; NE, NW, SE, S14, T18N, R4E; NE, S23, T18N, R4E; NW, SW, S24, T18N, R4E; SW, S25, T18N, R4E; NE, NW, SE, S36, T18N, R4E; SW, S31, T18N, R5E; NW, SW, S06, T17N, R5E; NW, SW, S07, T17N, R5E; NW, S18, T17N, R5E; NE, SE, S13, T17N, R4E; NE, NW, SW, S24, T17N, R4E; SE, S23, T17N, R4E; NE, SE, S26, T17N, R4E; NE, SE, S35, T17N, R4E; NW, SW, S36, T17N, R4E; NE, NW, SW, S02, T16N, R4E; NE, NW, S11, T16N, R4E, W.M.

Tax Parcel Numbers: All unparcelized railroad ROW within the herein described property, 032027-308-8, 041713-400-8, 041723-400-9, 041724-100-8, 041736-200-2, 041816-207-0, 041825-203-6, 041931-206-4, 041931-302-2, 051707-300-9, 580500-084-2, 775000-043-1 and Portion of 041735-400-4

County: Pierce

This Master Utilities Easement Agreement ("**Master Easement Agreement**") is entered into to be effective as of the ____ day of _____, 2023 ("**Effective Date**") by and between the City of Tacoma, a political subdivision of the State of Washington, operating as a first class city ("**City**"), and Rainier Rail, LLC, a Washington limited liability company (together with its affiliates, "**Owner**"). The City and Owner may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS:

A. The City has installed and constructed and maintains, repairs and operates various electric lines, communication lines, sewer and water lines, and related facilities, (individually "**Utility Facility**" and collectively "**Utility Facilities**") over, under and across certain portions of the Owner's real property as described in the herein attached **Exhibit "A"** ("**Rail Corridor or Property**"). The Utility Facilities were installed subject to previously provided written or unwritten authorizations, approvals, easements, licenses, permits or other written or unwritten authorizations governing such use of the Rail Corridor or Property ("**Previous Authorizations**"). that have been identified by the City as of the Effective Date, and are depicted on **Exhibit "B"**. Previous Authorizations that have not been identified by the City as of the Effective Date are hereinafter referred to as "**Unidentified Authorizations**" until such time as the Easement Area is identified and documented as provided at Section 1.2 herein.

B. Owner and City desire to enter into this Master Easement Agreement contemporaneous with, and as a condition of conveyance of the Rail Corridor or Property pursuant to the governing purchase and sale agreement, to amend and restate in their entirety each and every Previous Authorization, with easement rights extending 5 feet from all horizontal sides of the Utility Facilities (with no vertical limitations) as now located and to provide complete easement terms to cover Previous Authorizations, and to provide procedures for establishing complete easement terms for all future Utility Facilities directly owned and operated by City, over, under or across the Property ("**Future Easements**").

C. The Previous Authorizations and Future Easements are collectively referred to herein as "**Easements**" and are sometimes referred to individually herein as an "**Easement**". Each Easement is or shall be for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and removing Utility Facilities over the applicable Easement Area. The applicable purpose is referred to herein as the "**Easement Purpose**" for the applicable Easement.

NOW, THEREFORE, for and in consideration of the premises, mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner agree as follows:

ARTICLE 1

Establishment of Easements; Fees

1.1 Previous Authorizations.

1.1.1 The prior terms and conditions governing all Previous Authorizations are hereby superseded in their entirety, so that all rights and obligations of City and Owner with respect to each such Easement Area shall be determined and controlled, as of the Effective Date, by the terms of this Master Easement Agreement. Plans and Specifications for the Utility Facilities for Previous Authorizations are hereby deemed approved as set forth in Section 3.2.

1.1.2 No additional fee or other compensation is owed to Owner for the granting and/or continuation of such Previous Authorizations.

1.2 Unidentified Authorizations.

1.2.1 All rights and obligations of City and Owner with respect to each Easement Area covered by any Unidentified Authorization shall be determined and controlled by the terms of this Master Easement Agreement upon execution by City and Owner of a confirmation of easement with respect thereto, in the form of **Exhibit "C"** attached hereto and made a part hereof ("**Confirmation of Easement**"). A Confirmation of Easement will be executed by City and Owner for each Unidentified Authorization that is identified after the Effective Date and may be recorded on title at the cost and expense of the City.

1.2.2 No additional fee or other compensation is owed to Owner for the granting or continuation of such Easement.

1.3 Future Easement.

1.3.1 When in the future City desires to install or construct new Utility Facilities to be covered by Future Easement, City shall submit to Owner for its review and approval detailed information concerning the location of each proposed Future Easement, its Easement Purpose, the components of the Utility Facilities constituting such proposed Future Easement and the Plans and Specifications for the Utility Facilities constituting such proposed Future Easement. Upon Owner's approval, which approval shall not be unreasonably withheld or delayed, of the location of a proposed Future Easement, its Easement Purpose, and the components of the applicable Utility Facilities constituting such proposed Future Easement and the Plans and Specifications for the Utility Facilities constituting such proposed Future Easement as set forth in Section 3.4, the Parties shall execute a Confirmation of Easement with respect thereto, in substantially the form as attached hereto as **Exhibit "C"** and made a part hereof, whereupon all rights and obligations of City and Owner with respect to such Future Easement shall be determined and controlled thereafter by the terms of this Master Easement Agreement.

1.3.2 For each Future Easement, City shall pay to Owner, upon its execution of the applicable Confirmation of Easement, a one-time payment fee ("**Fee**"). The Fee for each Future Easement that will be located over, under, along or across Owner's Rail Corridor or Property shall be $1,500.00 as an administrative fee for engineering review and contract preparation, plus a one-time charge equal to the schedule of rates as provided in this Master Easement Agreement's Exhibit "D", attached hereto and made a part hereof, for a strip of land over, under, along or across Owner's Rail Corridor or Property, extending 5 feet from all horizontal sides of the Utility Facilities (with no vertical limitations) or alternative distances when mutually acceptable for the Parties. If a Future Easement is a crossing that originates from a longitudinal, each crossing will have one-time charges separate from the longitudinal as provided in Exhibit "D". A longitudinal will be defined as a facility that occupies the Owner's Rail Corridor or Property and is parallel to the tracks.

ARTICLE 2

General Easement Terms

2.1 Easement Grant. For each Easement established under Article 1, Owner hereby grants (or grants upon the full execution of the Confirmation of Easement) to City a non-exclusive easement, subject to all rights, interests and estates of third-parties in and near the Easement Area, including, without limitation, any leases, licenses, easements, liens, ownership interests or encumbrances in existence as of the date of this grant, and upon the terms and conditions set forth in this Master Easement Agreement, to enter upon the Easement Area for the applicable Easement Purpose.

2.2 Certain Reserved Rights. Subject to the provisions of Article 6, Owner excepts and reserves from the grant of each Easement, the right, to be exercised by Owner, its contractors and/or any other party who has acquired an ownership right in Owner's Rail Corridor or Property from Owner, or who has obtained written permission or authority from Owner to exercise such right (the Owner, its contractors and/or any other party who has acquired an ownership right in Owner's Rail Corridor or Property from Owner, or who has obtained written permission or authority from Owner to exercise such right, being collectively referred to as the "Owner Parties"):

(a) to construct, maintain, renew, use, operate, change, modify, relocate and/or remove any or all existing pipe, power, communication lines and appurtenances and other facilities or structures of Owner Parties upon, under or across any Easement Area; provided, however, Owner Parties shall give prior notice to City when any such construction, maintenance, renewal, use, operation, change, modification, relocation and/or removal by Owner is likely to affect City's use of the Utility Facilities as granted hereunder;

(b) to construct, maintain, renew, use, operate, change, modify, relocate and/or remove its current and any future tracks and rail facilities on or adjacent to any Easement Area and to conduct its other activities; provided, however, Owner Parties shall give prior notice to City when any such construction, maintenance, renewal, use, operation, change, modification, relocation and/or removal by Owner Parties is likely to affect City's use of the Utility Facilities as granted hereunder; and

(c) to use any Easement Area in any manner as Owner in its sole discretion deems appropriate.

2.3 Term. The grant of each Easement under this Master Easement Agreement shall be perpetual, except that any such Easement shall terminate at the time when all Utility Facilities for such Easement have been removed from the applicable Easement Area.

2.4 Easement Purpose. City shall use each Easement Area solely for the applicable Easement Purpose in accordance with this Master Easement Agreement and the applicable Plans and Specifications.

2.5 No Warranty of Any Conditions of Easement Area. City acknowledges that Owner has made no representation whatsoever to City concerning the state or condition of any Easement Area, or any personal property located thereon, or the nature or extent of Owner's ownership interest in any Easement Area. City has not relied on any statement or declaration of Owner, oral or in writing, as an inducement to entering into this Master Easement Agreement, other than as set forth herein. Owner HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY EASEMENT AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. Owner SHALL NOT BE RESPONSIBLE TO CITY OR ANY OF CITY'S CONTRACTORS (AS HEREINAFTER DEFINED) FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING ANY EASEMENT AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. CITY ACCEPTS ALL RIGHTS GRANTED UNDER THIS MASTER EASEMENT AGREEMENT IN ALL EASEMENT AREA "AS IS, WHERE IS' AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON OWNER'S RIGHTS, INTERESTS AND TITLE TO ALL EASEMENT AREA. OWNER DOES NOT WARRANT ITS TITLE TO ANY EASEMENT AREA NOR UNDERTAKE TO DEFEND CITY IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. City has inspected or will inspect each applicable Easement Area, and enters upon Owner's Rail Corridor and Property with knowledge of its physical condition and the danger inherent in Owner's rail operations on or near any Easement Area. City acknowledges that this Master Easement Agreement does not contain any implied warranties that City or City's Contractors can successfully construct or operate the Utility Facilities. In case of eviction of City or City's Contractors by anyone owning or claiming title to, or any interest in the Easement Area, or the abandonment by Owner of the affected rail corridor, Owner shall not be liable to City or City's Contractors for any costs, losses or damages of any other party.

ARTICLE 3

Plans and Specifications

3.1 General. All Utility Facilities shall be installed, constructed, reconstructed (or renovated, if required in order to eliminate a safety hazard or interference, to meet the standard set forth in this Section), located and configured in strict accordance with the plans and specifications approved in writing by Owner ("**Plans and Specifications**").

3.2 Plans and Specifications for Previous Authorizations. Owner hereby confirms its approval of the Plans and Specifications for the Utility Facilities, as they exist on the Effective Date, pertaining to Previous Authorizations as applicable, prior to the Effective Date.

3.3 Plans and Specifications for Unidentified Authorization. In the case of Unidentified Authorization, as such Unidentified Authorization are identified in the ordinary course of City business, City promptly shall submit to Owner, for its approval, Plans and Specifications for all Utility Facilities as they currently exist pertaining to such Unidentified Authorizations, or if such Plans and Specifications cannot be located, a narrative description of the Utility Facilities together with a drawing depicting the location of the Utility Facilities based upon the best available information (collectively the "**Best Available Information**"). Owner shall approve such Plans and Specifications, or in the alternative Best Available Information, except where the applicable Utility Facilities create, or threaten to create, a safety hazard or interference with the activities of, or under the authority of, Owner on the rail corridor, in which case such approval shall not be given until City has taken all measures to Owner's satisfaction to eliminate such hazard or interference, including, as applicable, the rebuilding, repair and/or relocation of the Utility Facilities. Following any disapproval, City shall have the right to modify either the location or the other aspects of the Utility Facilities and to resubmit such modified information to Owner for its further review and approval. Where Owner disapproves the location of any Utility Facility because it creates or threatens to create a safety hazard or interference, Owner shall use commercially reasonable efforts to designate an alternative location for such Utility Facilities.

City shall have no rights to enter upon Owner's Rail Corridor or Property to install, construct or reconstruct any Utility Facility whose location and other aspects of the Plans and Specifications or Best Available Information have not been approved by Owner as set forth in this Section. As part of the review of an Unidentified Authorization Utility Facility and to provide notice to Owner, the City's contractor(s) may be required to enter into a right-of-entry (ROE) Agreement acknowledging the scope of work for the rebuilding, repair and/or relocation of the Utility Facility, to ensure proper insurance has been provided by City's contractors, and Owner agrees to provide notification instructions to City's contractor(s) for Owner's operations department. Any such ROE will have administration fees as provided in Exhibit "D" and consent to such ROE will not be unreasonable withheld. City's contractor will not be required to enter into the ROE if they will only be visually surveying or inspecting an Unidentified Authorization Utility Facility. Notwithstanding anything in this Section, City may perform maintenance or emergency repair on a previously unidentified Utility Facility in accordance with Article 4 before Owner approval of the Plans and Specifications or Best Available Information if City determines such maintenance or repair must be performed prior to the time Owner's approval can be obtained. "Emergency" shall mean a condition or occurrence which requires immediate action to eliminate the risk of harm to persons or property or interruption of utility service.

In each case where the location or other aspects of the Plans and Specifications or Best Available Information for an Unidentified Authorization are not approved by Owner because it creates or threatens to create a safety hazard or interference, City shall have one hundred and eighty (180) days either to remove all Utility Facilities for that Easement from the Easement Area, or to modify the Utility Facilities so that they are approved by Owner.

3.4 Plans and Specifications for Future Easement. In concurrence with the review of a Confirmation of Easement, as part of the review for a Future Easement, and to provide notice to Owner, the City's contractor(s) will be required to enter into a right-of-entry (ROE) Agreement acknowledging the scope of work for the rebuilding, repair, upgrade, and relocation of the Utility Facility, and to ensure proper insurance has been provided by City's contractors. Owner agrees to provide notification instructions to the City's contractor(s) for Owner's operations department. Any such ROE will have administration fees as provided in Exhibit "D" and consent to such ROE will not be unreasonably withheld. When in the future City desires to install or construct new Utility Facilities to become a Future Easement, City shall submit to Owner for its review and approval detailed information concerning the location of each proposed Future Easement, the Easement Purpose, and Plans and Specification for the proposed Utility Facilities. As soon as reasonably practicable after Owner's receipt of the applicable Plans and Specifications and other information required by Owner about the proposed location of the Utility Facilities, but in no event later than ninety (90) days after such receipt, Owner will notify City in writing whether Owner has approved, or disapproved the location, the Easement Purpose, or the Plans and Specifications, and shall include one or more reasons for any disapproval. Following any disapproval, City shall have the right to modify either the location, the Easement Purpose, or the Plans and Specifications of the proposed Utility Facilities and to resubmit such modified information to Owner for its further review and approval. Where Owner disapproves the location of any proposed Utility Facility, Owner shall use commercially reasonable efforts to designate an alternative location for such Utility Facilities.

ARTICLE 4

Construction and Maintenance of Utility Facilities

4.1 Utility Facilities Construction and Maintenance. City, and City's Contractors, at City's sole cost, shall install, construct, reconstruct, maintain, repair, operate, relocate and remove the Utility Facilities in a good and workmanlike manner and of such material that no component of the Utility Facilities at any time will be a source of danger to, or interference with, any activity, rail operation or property of Owner, or anyone or anything present on the Rail Corridor or Property. Owner may direct one of its field engineers to observe or inspect the installation, construction, reconstruction, maintenance, operation, repair or removal of the Utility Facilities, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Utility Facilities comply with the applicable Plans and Specifications. If City, or any of City's Contractors, is ordered at any time to halt any activity on the applicable Easement Area, then the City, or any of City's Contractors conducting that activity immediately shall cease such activity and leave the applicable Easement Area, if the order was issued by Owner's personnel to promote safety, such noninterference with other activities or property, or because the applicable Utility Facilities were not in compliance with the applicable Plans and Specifications associated with the subject easement. Notwithstanding the foregoing right of Owner, Owner has no duty or obligation to observe or inspect, or to halt work on, the applicable Utility Facilities, it being solely City's responsibility to ensure that the Utility Facilities are installed, constructed, reconstructed, maintained, operated, repaired, relocated, and removed in strict accordance with Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Owner to exercise any right set forth in this Section shall alter the liability allocation set forth in this Master Easement Agreement. City shall use its best efforts to cause record drawings of all Utility Facilities to be electronically accessible to Owner.

4.2 No Interference. During the installation, construction, reconstruction and relocation of, and any subsequent maintenance or repairs performed on, operation of, or removal of, all or any portion of the Utility Facilities, City, and City's Contractors, shall perform such work in a manner to preclude injury to persons or damage to the property of Owner, or any other party on or with property on Owner's Rail Corridor or Property, and shall ensure that there is no interference with the railroad operations or other activities of Owner, or anyone present on Owner's Rail Corridor or Property with the authority or permission of Owner, unless City has obtained prior written consent from Owner. City shall not disturb any improvements of Owner or Owner's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements, without prior written consent of Owner. The installation, construction, reconstruction, relocation or modification of the Utility Facilities within a particular Easement Area shall be completed by City and City's Contractors within a reasonable period of time after the Owner approves the Plans and Specifications for such Utility Facilities as evidenced by the execution of a Confirmation of Easement. Upon completion of installation, construction, reconstruction, relocation, subsequent maintenance or repair thereon, or removal of all or any portion of any Utility Facilities from the applicable Easement Area, City and City's Contractors, at City's sole cost, shall restore the Easement Area in a reasonably neat and clean manner.

4.3 No Alterations. Except as may be shown in the Plans and Specifications or Best Available Information approved by Owner for an Easement, or as may be necessary to respond to an Emergency, City, and City's Contractors, may not make any alterations to the applicable Easement Area, or permanently affix anything to the applicable Easement Area, without Owner's prior written consent. If City desires to change the location of any Utility Facilities or expand the use of the Easement Area, City shall submit such change to Owner in writing for its approval under this Section 4.3. City shall have no right to commence any such change until after City has received Owner's approval of such change in writing.

4.4 Compliance with Laws and Safety Rules. Prior to entering any Easement Area, and at all times during the term of the applicable Easement, City shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Easement Area or entering the Easement Area on behalf of City (collectively, "**City's Contractors**'), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders ("**Laws**"), and all of Owner's applicable safety rules and regulations. Any City Contractors on the applicable Easement Area shall be deemed to be servants and agents of City, with no relationship to Owner, with respect to such City's Contractors' activities on and near the applicable Easement Area.

4.5 Emergency or Safety Hazard. In the event that any condition on or resulting from the Easement Area presents an emergency or safety hazard, City or City's Contractors shall immediately commence and diligently pursue a remedy to such condition. City shall complete such remedy as soon as possible after City became aware or should have become aware of such condition.

4.6 Notice and Location of Entry. Prior to any entry onto any Easement Area for any purpose, City shall notify the Person designated by Owner. Such notice shall be given at least five (5) business days prior to any entry upon the applicable Easement Area (except in emergencies, when such notice must be given as far in advance of any entry as is practicable)

and shall specify both the location of entry and the nature of activities planned to be performed on the applicable Easement Area.

4.7 Flagging. City agrees to reimburse Owner (within thirty (30) days after receipt of bills therefore) for all costs and expenses incurred by Owner for the furnishing of Owner's Flagman in connection with City's use of the Easement Area or the installation, construction, reconstruction, relocation, repair and maintenance of the Utility Facilities. The cost of flagger services provided to the City, when deemed necessary by the Owner's representative, will be borne by the City. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph. Owner may require derails be placed and an operations "shutdown" in lieu of flagging with the same or comparable flagging costs.

4.8 Compliance with Environmental Laws.

4.8.1 City shall strictly comply with all federal, state and Environmental Laws related to the installation, construction, reconstruction, maintenance, repair, operation and removal of the Utility Facilities. City shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Easement Area. City shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Easement Area. City shall not use or store on any Easement Area "hazardous waste" or "hazardous substances", as may now or in the future be defined by any Environmental Laws.

4.8.2 City shall give Owner immediate notice of any release of hazardous substances on or from any applicable Easement Area, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of the applicable Easement Area. City shall use the best efforts to promptly respond to any release on or from any applicable Easement Area. City also shall give Owner immediate notice of all measures undertaken on behalf of City to investigate, remediate, respond to or otherwise cure such release or violation.

4.8.3 Except as may be otherwise provided at Section 4.8 (5) & (6) herein, in the event that Owner has notice from City or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Utility Facilities which occurred or may occur during the term of any Easement, Owner may require City, at City's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the applicable Easement Area or Owner's Rail Corridor or Property.

4.8.4 City shall promptly report to Owner in writing any conditions or activities upon any applicable Easement Area known to City which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that City's reporting to Owner shall not relieve City of any obligation whatsoever imposed on it by this Master Easement Agreement. City shall promptly respond to Owner's request for information regarding said conditions or activities.

4.8.5 In the event that the activities of the City upon a Easement Area results in the discovery of the presence of Hazardous Substances ("Discovered Matters") in, on, or upon a Easement Area excavated or otherwise opened or exposed by City within any Easement Area

(the "Excavated Areas"), the City shall immediately notify the Owner, as required pursuant to Section 4.8.2 herein, and take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an Environmental Authority orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or Owner, or City decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, City agrees to indemnify, defend, and hold the Owner harmless from and against the cost of all Remedial Actions which are required by the Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, as between City and Owner, subject to the provisions of Subsection 4.8.6 below, Owner shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Owner Rail Corridor (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

4.8.6 In the event City's activity on the Easement Area within an Excavated Area results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by City are released beyond the Excavated Areas, or if the release is caused in whole or in part by the City, then the City shall indemnify, defend and hold the Owner harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of City's share of the liability for the release. City's liability for the release may be determined by City's admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by City and the Environmental Authority.

4.8.7 Ownership of Utilities. Notwithstanding anything herein to the contrary, ownership of all Utility Facilities within the Easement Area shall remain with the City, and the Owner is not taking any interest in the Utility Facilities nor assuming any responsibility for past, present or future discharges from the Utility Facilities.

4.8.9 This Agreement uses the terms "**Remedy**", "**Remediate**" and "**Remedial Action**" as they are defined under the Model Toxics Control Act (Chapter 70A.305 RCW) and its implementing regulations at Chapter 173-340 WAC. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("**CERCLA**"), the Toxic Substances Control Act, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive, or infectious substance, material or waste as defined, listed, or regulated under any Environmental Law, and includes, without limitation, petroleum oil and any of its fractions.

4.8.10 Each of the Party's obligations under this Section 4.8 shall survive termination of Master Easement Agreement.

ARTICLE 5

Insurance and Waiver

5.1 Insurance. City's contractors employed to perform construction work within the Owner's Rail Corridor or Property, shall have, prior to commencing such work, delivered to and secured Owner's approval of the required insurance.

5.2 Railroad Protective Insurance. If City (including its contractors and agents) performs any work within Owner's Rail Corridor or Property related to maintenance or to installation of Utility Facilities when such work is (i) vertically within 23'-3 ½" above the top of the rail, or (ii) with heavy tools, material, equipment or machinery over the top of the rail or within 25'-0" of the centerline of the nearest track, then the City's contractor must procure and maintain the following insurance coverage for such work:

Railroad Protective Liability insurance naming only the ***Railroad*** as the Insured with coverage of at least $2,000,000 per occurrence and $4,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railroad*** prior to performing any work or services under this Master Easement Agreement

5.3 Personal Property Waiver. ALL PERSONAL PROPERTY OF CITY, INCLUDING, BUT NOT LIMITED TO, ALL FIXTURES, EQUIPMENT OR RELATED MATERIALS, AND FACILITIES, THAT ARE PRESENT UPON OR ADJACENT TO ANY EASEMENT AREA WILL BE AT THE RISK OF CITY, AND ANY OF CITY'S CONTRACTORS, ONLY, AND OWNER SHALL NOT BE LIABLE FOR ANY DAMAGES THERETO OR THEFT THEREOF, WHETHER OR NOT SUCH IS DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF OWNER; PROVIDED THAT, SUCH WAVIER SHALL NOT APPLY TO UTILITY FACILITIES THAT ARE BUILT AND MAINTAINED IN COMPLIANCE WITH PLANS AND SPECIFICATIONS OR BEST AVAILABLE INFORMATION APPROVED BY OWNER.

5.4 Self-Insurance. Notwithstanding anything to the contrary, the City may self-insure as is customary under the City's risk management program. The self-insured retentions are in keeping with the net worth and cash flows and are consistent with that of municipalities of similar operations and size. Adequate reserves are maintained for claims within the retentions.

ARTICLE 6

Material Interference/Relocation

6.1 Owner, in the performance of any work by or for Owner within twenty-five (25) feet of City's Utility Facilities within the Easement Area, shall make good faith efforts to avoid material interference with City's Utility Facilities and use and operation of the Utility Facilities as authorized hereunder.

6.2 Where it is practicable to do so, Owner shall provide to City at least one hundred twenty (120) days prior written notice of Owner work within the Easement Area that may materially interfere with City Utility Facilities or use or operation of its Utility Facilities. In circumstances where such notice is not practicable, Owner shall provide to City as much notice as it reasonably can, and in no case, except in an emergency situation, less than twenty (20) days prior written notice.

6.3 The Parties agree that in the event that the performance of work by Owner in the Easement Area will materially Interfere with City's Utility Facilities or use or operation of its Utility Facilities, the Parties will work cooperatively in good faith, to identify and develop a reasonable and practicable accommodation in order that the proposed project for which the work is being done can be accomplished. Due consideration shall be given to cost, the relative benefits and burdens of and upon the Parties, and any operational or scheduling impacts. The Parties further acknowledge that, in some instances, one hundred twenty (120) days prior written notice Utility Facilities will not need to be moved or removed from the applicable Easement Area, but can be protected in place.

6.4 Except as may be agreed to in writing by the Parties, Owner shall bear the actual cost and expense of any work and/or agreed upon accommodation necessary to ensure that, in the performance of any work by or for Owner within twenty-five (25) feet of City's Utility Facilities within the Easement Area, such work performed by or for Owner, does not materially interfere with City's Utility Facilities or use and operation of its Utility Facilities, or materially interferes in a manner that is agreed upon by the Parties pursuant to Section 6.3 herein. Such costs and expenses shall include, without limitation, the cost and expense to modify, remove, relocate, or protect in place City Utility Facilities.

ARTICLE 7

Default and Remedies

7.1 Owner Performance Rights. If at any time City, or City's Contractors, or any of City's Assignees fails to properly perform its obligations under this Master Easement Agreement, Owner, in its sole discretion may (i) seek specific performance of the unperformed obligations, or (ii) at the responsible Party's sole cost, may arrange for the performance of such work as Owner deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any Interference with the activities or property of Owner, or anyone or anything present on the Rail Corridor or Property with the authority or permission of Owner. City promptly shall reimburse Owner for all costs of work performed on City's behalf, upon receipt of an invoice for the same. Owner's failure to perform any obligations of City, or City's Contractors, shall not alter the liability allocation set forth in this Master Easement Agreement.

7.2 City Performance Rights. If at any time Owner, or Owner's Contractors, fails to properly perform its obligations under this Master Easement Agreement, City, in its sole discretion may, in addition to all other rights or remedies it may have under law or in equity or under this Master Utilities Easement Agreement, (i) seek specific performance of the unperformed obligations, or (ii) injunctive relief as City deems necessary for the safety of its Utility Facilities or activities, or to avoid or remove any Interference with the activities or Utility Facilities of City. City's failure to perform any obligations of Owner, or Owner's Contractors, shall not alter the liability allocation set forth in this Master Easement Agreement.

7.3 Wavier of Proof. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Master Easement Agreement without any requirement to prove or establish that such Party does not have an adequate remedy at law. The City and Owner hereby waive the requirement of any such proof of an adequate remedy at law and acknowledges that the City and Owner would not have an adequate remedy at law for material default hereunder. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of a breach of this Master Easement Agreement and to obtain a judgment or order specifically prohibiting a violation or breach of this Master Easement Agreement without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. City and Owner hereby waive the requirement of any such proof and acknowledges that City and Owner would not have an adequate remedy at law for commission material default hereunder.

7.4 Rights cumulative. The Party's rights under this Article 7 are cumulative, non-exclusive and in addition to any other rights or remedies each may have under this Master Easement Agreement, at law or in equity, including the right to seek specific performance.

7.5 Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative and non-exclusive, and the exercise or failure to exercise one or more of such rights or remedies by either Party, including the right of specific performance and seeking injunctive relief, shall not preclude the exercise by either Party, at the same time or different times, of any right or remedy for the same default or any other default by the other Party.

ARTICLE 8

Miscellaneous Provisions

8.1 Controlling Law. Any disputes concerning the application or interpretation of any of the provisions of this Master Easement Agreement shall be governed by the laws of the State of Washington.

8.2 Venue. Owner and City hereby consent that venue of any action brought under this Master Easement Agreement shall be in Pierce County, Washington, provided, however, that venue of such action is legally proper.

8.3 Definition of Costs. For the purpose of this Master Easement Agreement, "cost" or "costs" includes, but is not limited to, in-house labor, equipment and material costs including all assignable additives, and material and supply costs at their current value where they are used.

8.4 Liens. City shall promptly pay and discharge any and all liens arising out of any installation, construction, reconstruction, relocation, alterations or repairs done, suffered or permitted to be done by City on any Easement Area. Owner is hereby authorized to post any notices or take any other action upon or with respect to any Easement Area that is or may be permitted by law to prevent the attachment of any such liens to any Easement Area; provided, however, that failure of Owner to take any such action shall not relieve City of any obligation or liability under this Section 8.4 or any other Section of this Master Easement Agreement.

8.5 Interest on Amounts Owed. All invoices are due forty-five (45) days after the date of invoice, or sooner if required by law. In the event that a Party shall fail to pay any monies to another Party as and when due hereunder, then such Party shall pay interest on such unpaid sum from forty-five (45) days after the date due at an annual rate equal to twelve percent (12%) per annum, or (ii) the maximum rate permitted by law, whichever is less. Invoices shall be directed to the addresses identified at Section 8.13 herein.

8.6 Assignment. City may assign this Master Easement Agreement to another party with respect to one or more Easements, but no assignment shall be effective except after prior written notice to Owner and assignee's written commitment, which may include entering into a separate agreement, delivered to Owner, that assignees shall thereafter be responsible for all obligations under the Master Easement Agreement with respect to the Easement that is assigned. Such an assignment shall relieve the City of any further obligations under the Easement that is assigned, including any obligations not fulfilled by City's assignee; provided that, the assignment shall not in any respect relieve the City, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the assignment. City may not assign this easement or any of its rights or obligations under this easement to any entity that is not a political subdivision of the State of Washington; provided that, City may assign this easement to a non-governmental third party who can, to the reasonable satisfaction of Owner, establish it has the legal, financial and technical qualifications to maintain and operate the licensed facilities that are assigned.

8.7 Waiver. No waiver by either Party of any provision of this Master Easement Agreement shall in any way impair the right of such Party to enforce that provision for any subsequent breach, or such Party's right to enforce all other provisions of this Master Easement Agreement.

8.8 Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Master Easement Agreement, the prevailing Party or Parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party or Parties may be entitled.

8.9 Recordation. It is understood and agreed that neither this Master Easement Agreement may be recorded and shall be binding upon successors and assigns of Owner.

8.10 Amendment. This Master Easement Agreement may be amended only by a written contract signed by authorized representatives of Owner and City.

8.11 Severability. If any provision of this Master Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Master Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in

full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Master Easement Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

8.12 Joint and Several Liability. City acknowledges that, in any case in which City and City's Contractors are responsible under the terms of this Master Easement Agreement, such responsibility is joint and several as between City and any such City's Contractors; provided that, the City is not prohibited from allocating such liability as a matter of contract.

8.13 Notices. Any notice contemplated, required, or permitted to be given under this Master Easement Agreement shall be sufficient if it is in writing and is sent either by: (a) registered or certified mail, return receipt requested; or (b) a nationally recognized overnight mail delivery service, to the Party and at the address specified below, except as such Party and address may be changed by providing notice to the other Party no less than thirty (30) days' advance written notice of such change in address.

Rainier Rail, LLC
1104 Dell Ave
Walla Walla, Washington 99362-1053
Attn: Paul Didelius

City of Tacoma
Real Property Services Division
747 Market Street, Room 737
Tacoma, WA. 98402-3701

8.14 Dispute Resolution.

8.14.1 Dispute Avoidance. The Parties are fully committed to working with each other throughout the term of this Master Easement Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a question or controversy. If a question or controversy arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained herein or the rights or obligations of either Party under this Master Easement Agreement (a "Dispute"), the Parties each commit to resolving such Dispute in an amicable, professional and expeditious manner. The Parties further agree that in the event a Dispute arises, they will first attempt to resolve any such Disputes through discussions between representatives of each Party. If a dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

If, within thirty (30) days after the meeting, the Parties have not despite their best efforts negotiated a resolution or mutually extended the period of negotiation, either Party may, if the amount in Dispute is less than the amount set forth below ("Dispute Amount"), without consent of the other Party, or if the amount that is in dispute is equal to or greater than the amount set

forth below, upon mutual agreement of the Parties, seek binding arbitration as provided at section 8.14.2 herein. The Dispute Amount shall be $100,000 as of the Effective Date and shall adjusted upward on each annual anniversary of the Effective Date by 2% of the total Dispute Amount for the prior year.

8.14.2 Arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 8.14 shall be governed by the rules and procedures set forth in this Section 8.14.2.

8.14.2.1 The Party calling for arbitration ("Initiating Party") shall give written notice the other Party setting forth: (a) a statement of the issue(s) to be arbitrated; (b) a statement of the claim showing that in Initiating Party is entitled to relief; and (c) a statement of the relief provided for in this Master Easement Agreement to which the Initiating Party claims to be entitled. Within twenty (20) days from the receipt of such notice, the other Party ("Receiving Party") may submit its written response and give notice in the same manner required above of additional issues to be arbitrated. The Initiating Party shall have ten (10) days from receipt of said response to respond to any issues submitted for arbitration by the Receiving Party.

8.14.2.2 If, within sixty (60) days of the date of the Initiating Party's written notice requesting arbitration, the Parties are able to agree upon a single arbitrator, then the dispute shall be submitted to and settled by that single arbitrator. In the event the Parties cannot agree upon such a single arbitrator, each Party shall designate a competent and disinterested person to act as that Party's designated arbitrator, with the two (2) persons designated selecting a third neutral arbitrator within thirty (30) days of their designation. Should the Receiving Party fail within 80 days after receipt of the notice of arbitration to name its arbitrator, the arbitrator of the Initiating Party shall select an arbitrator for the Receiving Party so failing, and if the arbitrator for the Initiating Party and the Receiving Party cannot agree on that selection, said arbitrator shall be appointed by the American Arbitration Association (“AAA”) in compliance with the Rule of Appointment of Neutral Arbitrator upon written notice to all other Parties. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any Party, be appointed by the AAA rules pursuant to the Rule for Appointment of Neutral Arbitrator. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) who chose that arbitrator, or the AAA, as appropriate, shall appoint another to act in such arbitrator’s place. Any arbitrator appointed by AAA under this Article 8.14.2.2 shall possess knowledge or experience of the particular matters at issue in arbitration.

8.14.2.3 Upon selection of the arbitrator(s), said arbitrator(s) shall determine the questions raised in said notice of demand for arbitration within 30 days, unless a different period of time is otherwise agreed upon by the Parties. Said arbitrator(s) shall then give all Parties reasonable notice of the time (which time shall be within 30 days of the arbitrator(s)’ determination of the questions raised, unless a different period of time is otherwise agree upon by the Parties), and place (of which the arbitrator(s) shall be the judge in the event that the Parties are unable to mutually agree upon a location) of hearing evidence and argument; take such evidence as is admissible under the Washington State Rules of Civil Procedure Rules 26 through 37 and the Washington State Rules of Evidence Rules 103 through 1103 with witnesses required to be sworn; and hear arguments of counsel or others.

8.14.2.4 After considering all evidence, testimony and arguments, said single arbitrator or a majority of the board of arbitrators shall, within 30 days of completion of the hearing provided, promptly state such decision or award in writing. Said decision or award shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them, except as provided in Article 8.14.2.7. A judgment on the award entered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for the arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

8.14.2.5 Each Party to the arbitration shall pay the compensation, costs and expense of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by both Parties to the arbitration.

8.14.2.6 The books and papers of all Parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s). The arbitration shall be governed by the Washington State Rules of Civil Procedure Rules 26 through 37 and the Washington State Rules of Evidence Rules 103 through 1103. The arbitrator(s) shall have the authority to enter awards of equitable remedies consistent with the obligations of the Owner and the City under this Agreement, other than with regard to the allocation of costs and fees as provided for under Section 8.14.2.5 herein, except as provided in Article 8.14.2.7. The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement.

8.14.2.7 The arbitrator(s) shall not have the authority to enter any award, the satisfaction of which by the Party to be bound, would be impermissible under any law, regulation, or funding agreement to which the bound Party is subject or which would constitute punitive or exemplary damages against the other Party. The determination of any such impermissibility shall be made by a state or federal court of competent jurisdiction within the state of Washington and under the laws of the state of Washington. Any such determination shall be appealable.

8.15 Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of God, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage.

8.16 Subsequent Action. In the event that after this Master Easement Agreement becomes effective, (a) there is a change in the law which requires the City or the Owner to perform any act or cease performing any act which is inconsistent with this Master Easement Agreement; (b) there is a change in the law which broadens the authority of the City or the Owner with respect to any act permitted or authorized under this Master Easement Agreement; or (c) the City or the Owner believe that amendments to this Master Easement Agreement are necessary or appropriate, then the City and the Owner agree to enter into good faith negotiations to amend this Master Easement Agreement so as to enable the Parties to address, in a manner reasonably acceptable to all Parties, such change or other development which formed the basis for the negotiations. The

Parties recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with law, the scope and purpose of this Master Easement Agreement.

8.17 Entire Agreement. This Master Easement Agreement is the full and complete agreement of City and Owner with respect to all matters covered herein and all matters related to the use of Owner's Rail Corridor or Property by City and City's Contractors, and this Master Easement Agreement supersedes any and all other agreements of the Parties hereto with respect to all such matters, including, without limitation, all agreements evidencing the Previous Authorizations; provided that, it is not the intent of the Parties that this Master Easement Agreement shall replace or supersede or take precedence over any easements granted now or in the future to the City with respect to the Owner's rail corridor nor is it the intent of the Parties that this Master Easement Agreement shall replace or supersede any agreements in place now or in the future governing Owner activities within the public rights of way of the City of Tacoma.

(Remainder of this page left intentionally blank, signature page to follow)

IN WITNESS WHEREOF, authorized representatives of City and Owner hereby execute this Master Easement Agreement as of the Effective Date.

CITY OF TACOMA, A MUNICIPAL CORPORATION	RAINIER RAIL, LLC, A WASHINGTON LIMITED LIABILITY COMPANY
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Approved as to Form:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Rail Corridor and Property

That portion of the former Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Chehalis Western Railroad Company by Quit Claim Deed recorded under Auditor's File No. 9012240111 and acquired from Weyerhaeuser Company by Quit Claim Deed recorded under Auditor's File No. 9508180647, records of Pierce County, Washington.

Except any portion thereof lying within the currently incorporated limit of the City of Tacoma, more specifically described as:

Any portion thereof lying Northerly and Northwesterly of the Easterly right of way line of McKinley Avenue in the Northwest Quarter of the Southwest Quarter of Section 27, Township 20 North, Range 3 East, W.M., (approx. Mile Post 5.6 or Railroad Engineering Station 194+64), in Pierce County, Washington.

Also, except any portion thereof lying Southeasterly of the Northerly line of the South Half of the North Half of Section 11, Township 16 North, Range 4 East, W.M. (approx. Mile Post 32 or Railroad Engineering Station 1630+68), in Pierce County, Washington.

Also, except that portion conveyed to Pierce County by Quit Claim Deed recorded under Auditor's File No. 201105060441, which supersedes and replaces Quit Claim Deed recorded under Auditor's File No. 201103030242, records of Pierce County, Washington.

Also, except that portion conveyed to WRL, LLC by Quit Claim Deed recorded under Auditor's File No. 201909090221, records of Pierce County, Washington.

EXHIBIT "B"

Depictions of Utility Facilities
(Previous Authorizations)

After Recording Mail To:

TACOMA PUBLIC UTILITIES
ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Attn: Real Property Services

Confirmation of Easement

Reference No.
Grantor: Rainer Rail, LLC
Grantee: City of Tacoma
Abbr. Legal Description:
Tax Parcel Numbers:
County: Pierce

This Confirmation of Easement ("**Confirmation of Easement**") is executed to evidence the creation or existence of a specific Easement under that certain Master Utilities Easement Agreement dated _____, 20____ ("**Master Easement Agreement**") between Owner, a _____ corporation ("**Owner**") and the City of Tacoma, a political subdivision of the State of Washington ("**City**"). All terms and provisions of the Master Easement Agreement are incorporated herein by reference. Capitalized terms used in this Confirmation of Easement have the same meaning as such terms in the Master Easement Agreement unless otherwise indicated. The Parties agree that the following described Easement shall exist and be governed by the terms and conditions of the Master Easement Agreement, as of the execution date set forth below.

1. The type of Easement is as follows (check one):

- ☐ Communication Easement
- ☐ Electric Easement
- ☐ Sewer or Water Easement
- ☐ Other _____

2. This Easement is (check one):

☐ An Unidentified Authorization as of the Effective Date of the Master Easement Agreement.

☐ A Future Easement approved after the Effective Date of the Master Easement Agreement.

3. The Easement Area is located across or along the rail corridor of Owner at or near the station of _____ County of _____, State of Washington, Line Segment _____, Mile Post _____ as shown on the attached Drawing No. _____, dated _____, attached hereto as **Exhibit "1"** and made a part hereof.

4. The approved Plans and Specifications for the Utility Facilities and the location thereof within the Easement Area are shown on **Exhibit "2"** attached hereto.

5. City shall pay Owner the following fee for the Easement upon execution of this Confirmation of Easement:

☐ No fee (existing Unidentified Authorization).

☐ $1,500 engineering review and administrative fee plus a one-time charge of $_____ (as provided in the attached Exhibit "D"). The one-time charge is the agreed fair market value, with no enhancement factor, of an easement to a strip of land over, under or across Owner's Rail Corridor or Property, the width of which is five feet on either side of the outer edge of the Utility Facilities.

7. Special provisions: _____
_____
_____.

IN WITNESS WHEREOF, City and Owner have executed this Confirmation of Easement as of _____, 2___.

City:	**Owner:**
CITY OF TACOMA, a political subdivision in the State of Washington	RAINIER RAIL, LLC, a Washington limited liability company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit 1 – Drawing of Location of Easement Area
Exhibit 2 – Plans and Specifications

This agreement was updated on February 21, 2023

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISION
REAL ESTATE PURCHASE AND SALE AGREEMENT
AGREEMENT NO. 3323

Reference No.: P2022-137
Seller: City of Tacoma, Department of Public Works, Tacoma Rail Mountain Division
Buyer: Rainier Rail, LLC
Abbreviated Legal Description: Portion of the SW, S27, T20N, R3E; NW, SW, SE, S34, T20N, R3E; NE, SE, S03, T19N, R3E; NE, SE, S10, T19N, R3E; NW, SW, S11, T19N, R3E; NW, SW, SE, S14, T19N, R3E; NE, S23, T19N, R3E; NW, SW, S24, T19N, R3E; NE, NW, SE, S25, T19N, R3E; NE, NW, SW, S36, T19N, R3E; SE, S35, T19N, R3E; NE, NW, SW, S2, T18N, R3E; NW, S11, T18N, R3E; NE, NW, S10, T18N, R3E; NE, NW, S9, T18N, R3E; ALL, S8, T18N, R3E; SE, S7, T18N, R3E; NE, NW, SW, S18, T18N, R3E; SE, S13, T18N, R2E; ALL, S24, T18N, R2E; NW, S25, T18N, R2E; NE, SW, SE, S26, T18N, R2E; NW, S35, T18N, R2E; NE, SW, SE, S34, T18N, R2E; NW, SW, S03, T17N, R2E; NW, S10, T17N, R2E; NE, SE, S09, T17N, R2E; NE, SE, S16, T17N, R2E; SW, SE, S21, T17N, R2E; NE, SE, S31, T19N, R4E; NE, NW, SE, S06, T18N, R4E; SW, S05, T18N, R4E; NE, NW, SE, S08, T18N, R4E; SW, S09, T18N, R4E; NE, NW, S16, T18N, R4E; NE, NW, S15, T18N, R4E; NE, NW, SE, S14, T18N, R4E; NE, S23, T18N, R4E; NW, SW, S24, T18N, R4E; SW, S25, T18N, R4E; NE, NW, SE, S36, T18N, R4E; SW, S31, T18N, R5E; NW, SW, S06, T17N, R5E; NW, SW, S07, T17N, R5E; NW, S18, T17N, R5E; NE, SE, S13, T17N, R4E; NE, NW, SW, S24, T17N, R4E; SE, S23, T17N, R4E; NE, SE, S26, T17N, R4E; NE, SE, S35, T17N, R4E; NW, SW, S36, T17N, R4E; NE, NW, SW, S02, T16N, R4E; NE, NW, S11, T16N, R4E, W.M.
County: Pierce
Tax Parcel No.: All unparcelized railroad ROW within the herein described property, 032027-308-8, 041713-400-8, 041723-400-9, 041724-100-8, 041736-200-2, 041816-207-0, 041825-203-6, 041931-206-4, 041931-302-2, 051707-300-9, 580500-084-2, 775000-043-1 and Portion of 041735-400-4

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of _____, 2023 between the **CITY OF TACOMA,** a first class municipal corporation ("Seller"), by and through its DEPARTMENT OF PUBLIC WORKS, TACOMA RAIL MOUNTAIN DIVISON and **Rainier Rail LLC, a Washington limited liability company,** ("Buyer"). The Seller and Buyer may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Seller is the owner of certain real property, as more particularly described in Section 1.1.1 below.

WHEREAS, Seller is the owner of certain personal property, as more particularly described in Section 1.1.3 below, on the real property.

WHEREAS, Seller, owns, operates, and maintains various public utilities on the real property, and in order for the Seller to continue to use, occupy and/or expand said public utilities on the real property the Seller has requested and Buyer will grant at closing a Master Utilities License Agreement to Seller encumbering the real property.

WHEREAS, Seller desires to sell, convey, assign transfer and deliver to Buyer and Buyer desires to purchase, assume and accept from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's right, title, obligations and interest in and to the personal property and real property, as more particularly described in Sections 1.1.1 and 1.1.2 below.

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

AGREEMENT

1.1 Property to be Sold. Seller agrees to sell, convey, assign transfer and deliver to Buyer and Buyer agrees to purchase, assume and accept from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's right, title, obligations and interest in and to the following assets and real property (the "Purchased Assets"),

1.1.1 Real Property. The real property ("Real Property") located in the county of Pierce in the state of Washington, more particularly described as follows:

{See attached legal description **Exhibit "A"**}

1.1.2 Property Interests. All of Seller's tenements, hereditaments, easements and rights appurtenant to the Real Property and all leases, licenses, government approvals and permits affecting the Real Property.

1.1.3 Personal Property. All rail, ties, spikes, tie plates, rail anchors, bridges, trestles, culverts, signaling equipment, and other supporting structures, ballast, track materials and supplies (excluding any vehicles, maintenance equipment on wheels, radios, computer equipment, or office furnishings or supplies) that, on the date of the Closing are present on the Real Property ("Personal Property"); provided, however, Seller does not purport to own any interest in signaling or grade crossing equipment or property to the extent that it may be owned by a third party or any other governmental authority or municipality. Seller conveys and transfers whatever rights and obligations it may have to possess or use such signaling or grade crossing equipment. All personal property owned by Seller or any third parties located on the Real Property and not expressly conveyed herein may be removed by Seller prior to Closing. Except as may be expressly provided otherwise herein, any and all personal property of Seller remaining on the Premises as of Closing and not reserved herein or used in Seller's daily operations shall pass to Buyer. Buyer acknowledges and affirms that Buyer's assumption of the rail freight transportation services in no way entitles Buyer to any right, title, interest or use in, to and of any Tacoma Rail trademark, service mark or other intellectual property.

1.2 Common Carrier Transportation Obligation. Upon and after Closing, Buyer agrees to operate as a rail carrier within the meaning of 49 U.S. §§ 10101 et. seq. and provide common carrier transportation for compensation on reasonable request. The obligations set forth in this subsection shall survive closing.

1.3 Contingent Interest Obligations. Upon and after Closing, Buyer agrees to accept the transfer or assignment of any and all contingent interest agreements (collectively Contingent Interest Agreements) issued by any governmental agency to the Seller and encumbering or otherwise applicable to the Property, subject to the contingent interests of the governmental agencies and all residual duties and obligations set forth therein, which contingent interest agreements include by way of example and not limitation, the following:

Date	Amount	Granting Agency	Grant Number	Description	TRMW line segment	Agreement on file Y/N	Obligation to repay: sale, conveyance, transfer to private	Term
4/14/2004	$ 2,153,879.00	WA St. Dept. of Transp. Freight Rail (Section 117?) RR-00318	RR-00318	Frederickson McPip, Morton, Eatonvile trestle		Y	Upon abandonment	5/31/2045
8/16/2005	$ 1,240,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (Section 117) RR-00332 (WA-133)	WA 133/RR-00332 DTFR-05-G-00309	Pierce County track upgrades	MP 26.5 - 31.5M	Y	Upon sale or abandonment prior to 10/31/2016	10/31/2046
8/16/2005	$ 2,480,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (Section 117) RR-0331 (WA-132)	WA 132/RR-00331 DTFR-05-G-00313	Pierce County track upgrades	MP 14.0 - 26.5M	Y	Upon sale or abandonment prior to 10/31/2016	10/31/2046
10/24/2002	$ 320,000.00	WSDOT/FRA - CM-2027 (035)	CM-2027(035)	RR Improvements Fredrickson Wye to Eatonville Phase II MP 0-17	MP 0-17M	N	Unknown	Unknown
	$ 754,600.00	FRA thru WSDOT (WA-298)		Track improvements 15C - 31.0C	MP 15C - 31.0C	Y	Upon sale or abandonment prior to 10 years	40 year
1/1/2008	$ 1,485,000.00	FRA thru WA St. Dept. of Transp. Freight Rail (WA-278)	WA 278	Trestle Improvements	MP 10 - 34.1M	Y	10/1/2019	10/1/2049
7/3/2003	$ 846,000.00	FRA 117 - RR-0312		Frederickson to Eatonville		Y	Upon sale or abandonment	7/3/2043

Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability, penalties, losses and expenses (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any governmental entity arising from Seller's non-compliance with this paragraph 1.3 or Seller's non-compliance with any duty or obligation of a Contingent Interest Agreement assigned or transferred to Buyer. The obligations set forth in this subsection shall survive closing.

~~1.4 Interim Trail Use.~~

1.4 Interim Trail Use.

1.4.1. Notwithstanding the provisions of section 1.2 of this agreement, Buyer may seek abandonment or discontinuance of all or a portion of the rail line that is the subject of this Agreement, upon the condition that Buyer satisfies all contingent interests and other assumed obligations in accordance with Section 1.3 of this Agreement, including the duty to indemnify, defend and save Seller harmless, and Buyer complies with the provisions of Section 1.4.2.

1.4.2 In the event that Buyer intends to file an application to abandon or discontinue operations over all or any portion of the rail line that is the subject of this Agreement, Buyer agrees that a minimum of 120 days prior to filing such an application with the Surface Transportation Board, or successor agency, (the "Board"), Buyer shall exercise diligent good faith efforts to seek and identify a state (or state agency), political subdivision or qualified private organization, that is interested in acquiring or using right-of-way of the rail line for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d). In the event that a state, political subdivision, or qualified private organization files a comment, request or petition for interim trail use and rail banking and the Board determines that the Trails Act is applicable, Buyer agrees that it will timely notify the Surface Transportation Board of its intent to negotiate a trail use agreement and will exercise reasonable good faith efforts to negotiate such a trail use agreement within one year from the date that the Certificate of Interim Trail Use is issued by the Board, or any extensions that may be granted by the Board. Buyer further agrees that if an agreement is reached, Buyer will take such actions as are required to implement the agreement, including but not limited to providing timely notice and certification to the Board as required pursuant to 49 C.F.R. § 1152.29 (h).

1.4.3 The obligations set forth in this subsection 1.4 constitute partial consideration for the sale of the Purchased Assets and shall survive closing. In the event that Buyer assigns, transfers, or sells or otherwise coveys its interest in the rail line, in whole or in part, Buyer shall include the obligations of this Section 1.4 as an obligation of the assignee, transferee or buyer and the City shall be an intended third-party beneficiary of such obligations. ~~1.4.1. Notwithstanding the provisions of section 1.2 of this agreement, Buyer may seek abandonment or discontinuance of all or a portion of the rail line that is the subject of this Agreement, upon the condition that Buyer satisfies all contingent interest and other assumed obligations in accordance with Section 1.3 of this Agreement, including the duty indemnify, defend and save Seller harmless, and Buyer complies with the provisions of Section 1.4.2.~~

~~1.4.2 In the event that Buyer intends to file an application to abandon or discontinue operations over all or any portion of the rail line that is the subject of this Agreement, Buyer agrees that a minimum of 120 days prior to filing such an application with the Surface Transportation Board, or successor agency, (the "Board"), Buyer shall exercise diligent good faith efforts to seek and identify a state (or state agency), political subdivision or qualified private organization, that is interested in acquiring or using right-of-way of the rail line for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d). In the event that a state, political subdivision, or qualified private organization files a comment, request or petition for interim trail use and rail banking and the Board determines that the Trails Act is applicable, Buyer agrees that it will timely notify the Surface Transportation Board of its intent to negotiate a trail use agreement and will exercise reasonable good faith efforts to negotiate such a trail use agreement within one year from the date that the Certificate of Interim Trail Use is issued by the Board, or any extensions that may be granted by the Board. Buyer further agrees that if an agreement is reached, Buyer will take such actions as are required to implement the agreement, including but not limited to providing timely notice and certification to the Board as required pursuant to 49 C.F.R. § 1152.29 (h). The obligations set forth in this subsection 1.4 constitute partial consideration for the sale of the Purchased Assets and shall survive closing. In the event that Buyer assigns, transfers, or sells or otherwise conveys its interest in the rail line, in whole or in part, Buyer shall include the obligations of this Section 1.4 as an obligation of the assignee, transferee or buyer and the City shall be an intended third-party beneficiary of such obligations.~~

2. Deposit. Buyer shall, no less than thirty (30) days following execution of this Agreement by both Seller and Buyer, deliver to Seller a deposit in the amount of **ONE HUNDRED TWENTY THOUSAND and No/100 U.S. Dollars ($120,000.00)** (the "Deposit"), the full purchase price of the Purchased Assets. The Deposit will be held by Seller pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Seller, and if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Failure to timely deliver said deposit shall render this Agreement voidable in the sole discretion of the seller.

3. Purchase Price. The total purchase price for the Premises (the "Purchase Price") will be **TWO MILLION TWO HUNDRED TEN THOUSAND and No/100 U.S. Dollars ($2,210,000.00)**, which shall be deposited with Seller as provided in Section 2. The Purchase Price, the Deposit amount, will be paid to Seller in cash at Closing. Seller and Buyer agree that the entire Purchase Price is allocable to Real Property and that the value of the Personal Property is de minimus.

4. Title.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Real Property by duly executed and acknowledged quit claim deed (the "Deed") as substantially shown in **Exhibit "C"** attached hereto and by this reference incorporated herein. All right, title and interest of the Seller in and to the Personal Property shall pass to the Buyer at closing. Further, at Closing, Buyer shall grant to the Seller a Master Utilities Easement Agreement ("MUEA") to secure authorizations for the Seller's previously constructed public utilities on the Real Property, to create a streamlined process for obtaining new authorizations to use and occupy the Real Property with new public utilities, reduce the cost for obtaining new authorizations to use and occupy the Real Property with public utilities, clarify the requirements for notice when the Seller is working on the Real Property or when the Buyer is working proximate to Seller's public utilities. The MUEA will be substantially in the form of **Exhibit "D"** attached hereto and by this reference incorporated herein.

4.2 Preliminary Commitment and Title Policy. Buyer hereby waives receipt of a preliminary title commitment and will not seek to have issued an owner's policy of title insurance insuring Buyer's title to the Premises.

4.3 Condition of Title. Buyer hereby accepts the condition of title to be conveyed via the Deed and hereby waives the right to advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer.

5. Conditions to Closing.

5.1 Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma City Council prior to Closing. If said approvals are not obtained, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 5.1 will obligate Seller to obtain City Council approval beyond the ordinary course of City of Tacoma procedure.

5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with, or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement, except for claims caused by Seller's sole negligence.

5.3 Buyer Feasibility Study. Buyer hereby waives the right to conduct inspections or feasibility studies related to the Premises and will take title to the Premises on an as-is basis.

5.4 Non-Suitability. Buyer hereby waives the right to terminate this Agreement if, in Buyer's good faith judgment, the Premises is not suitable for Buyer's intended use. However, in the event Buyer does not complete the purchase, Buyer shall return the Premises as near as is practicable to its original condition.

6. Condition of the Purchased Assets.

6.1 "As Is". Per Section 5.3 Buyer has waived the right to conduct inspections and feasibility studies; nevertheless, Buyer acknowledges that Buyer is purchasing and shall acquire the Purchased Assets under this Agreement in the physical condition of the Purchased Assets existing at Closing, "AS-IS, "WHERE IS" AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR UNDER THE PURCHASED ASSETS, SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS. As of the date this Agreement is signed by the parties, excluding those representations and warranties expressly provided in this Agreement, Seller does not make and specifically disclaims any representations or warranties, express or implied, with respect to the Purchased Assets, including any warranty of merchantability or fitness for a particular purpose, and any warranties or representations with respect to, the structural condition of the Purchased Assets, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Purchased Assets, and the compliance or noncompliance of the Purchased Assets with

applicable federal, state, county and local laws and regulations, including, without limitation, Environmental Laws and regulations and seismic/building codes, laws and regulations.. Seller shall surrender the Purchased Assets in as good condition, except for normal wear and tear, as exists on the date of this Agreement. Seller agrees that it will not damage nor commit waste on the Purchased Assets between the date of acceptance of this Agreement and Closing. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

6.2 Release. Except with respect to Seller's representations and warranties expressly provided in this Agreement, Buyer releases Seller and its directors, officers, employees, and agents from any and all statutory, common law, and other claims, obligations, causes of action, losses, damages, liabilities, costs and expenses (including without limitation attorney fees), unknown to Seller, that Buyer may have against Seller arising from, in whole or in part, or related in any way to the physical condition of the Purchased Assets (including conditions not readily apparent and the presence of any material classified under state or federal law or regulations as hazardous).

6.3 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Premises, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Purchased Assets for Buyer's intended use.

7. Closing. This transaction will be closed outside of escrow. Closing will be held at the office of the Seller on or before ninety (90) days following approval by the Tacoma City Council as outlined in Section 5.1 above ("Closing Date"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Seller will immediately terminate the sale and forward the Deposit to Buyer, less any portion of the Deposit due Seller under Section 11 of this Agreement. When notified by Seller, Buyer will deposit with Seller without delay all instruments and monies required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to Seller, and legal title passes to Buyer, or in the event the Surface Transportation Board approvals are not obtained by said date, such alternative date as may be mutually agreed upon in writing by the parties hereto shall apply.

8. Closing Costs and Proration. Seller shall pay state of Washington real estate excise taxes, if any, applicable to the sale. Seller shall pay the cost of recording the Deed. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

9. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Purchased Assets. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Purchased Assets, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Purchased Assets to Buyer upon Closing. Seller shall remove any and all personal property not conveyed to Buyer pursuant to this Agreement from the Premises on or before Closing, unless any such items are specifically authorized to remain in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Purchased Assets, then that portion of the Deposit which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Purchased Assets, Buyer shall be entitled to immediate return of its Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: Tacoma Public Utilities – Real Property Services
ABS – 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Facsimile No.: (253) 502-8539

Buyer: Rainier Rail, LLC
709 N. 10th Ave.
Walla Walla, Washington 99362-1053
Attn: Paul Didelius

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

13. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

14. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the Closing of this transaction.

15. Professional Advice. Seller and the Buyer hereby acknowledge that it may be advisable for either or both parties to obtain independent legal, tax or other professional advice in connection with this transaction, as the terms and conditions of this Agreement affect the parties' rights and obligations. The parties agree that they have satisfied themselves that they understand the terms and conditions of this sale and have accepted full responsibility to seek such professional advice as they deem necessary.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of Closing, will be deemed to be material, and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

18. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington.

19. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. Time of the Essence. Time is of the essence in the performance of this Agreement.

21. FIRPTA. Seller will prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification. If Seller is a "foreign person" as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, Seller will withhold and pay the required amount to the Internal Revenue Service.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive the Closing of the transaction contemplated under this Agreement.

24. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.

27. Survival. Any terms, conditions, or provisions of this Agreement which by their nature should survive shall survive the Closing of the sale.

28. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Premises may constitute "Commercial Real Estate" or "Residential Real Premises" as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled "Environmental." The

Environmental section of the seller disclosure statement (the "Disclosure Statement") shall be provided to Buyer within five business days after acceptance of this Agreement. Buyer shall within three business days thereafter either deliver written notice to Seller to rescind the Agreement, else the Disclosure Statement will be deemed approved and accepted by Buyer. If Buyer rescinds this Agreement, the Deposit, less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Premises, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

30. Legal Relationship. The parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

31. Cooperation. Prior to and after closing the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

32. Kapowsin Property Hazardous Substances Indemnification Obligations

32.1 Notwithstanding provisions of Section 6 of this Agreement, and except as provided in Section 32.1.C below, the City agrees as follows:

A. The City agrees to indemnify, defend and hold harmless Buyer, its members, employees, successors in interest (including lenders), and lessees, from and against any and all costs, claims, demands, causes of action, damages, liabilities, penalties, losses and expenses, and all related defense costs, caused by or resulting from:

a. The existence of Hazardous Substances on or beneath the Kapowsin Property at the time of conveyance, including Hazardous Substances in groundwater and soils.

b. The migration in groundwater or soil of Hazardous Substances that were present on the Kapowsin Property at the time of conveyance.

B. This indemnification includes claims for or related to the clean-up, storage, treatment, handling disposal, transportation, presence of, threatened release of, or discharge of any Hazardous Substances present at, to, from or beneath the Kapowsin Property, at the time of conveyance, including Hazardous Substances in groundwater, stormwater, air, soils, and sediment, as well as any claims for resulting property or personal injury damages alleged by any party, including governmental entities, neighbors and any other party. This indemnification applies to all such claims, regardless of whether the claim is made before or after transfer of title to Buyer.

C. This indemnification does not apply to any costs, claims, demands, causes of action, damages, liabilities, penalties, losses and expenses, or related defense costs, caused by or resulting from:

a. The voluntary excavation of soil, fill, or debris on the Kapowsin Property undertaken by Buyer, its successor's or assigns, including without

limitation any subsequent disposal or treatment of excavated soil, fill, or debris, which may contain Hazardous Substances

b. Any release or threatened release of Hazardous Substances on or from the Kapowsin Property directly caused by Buyer, its successors or assigns, or a third party that occurs after the Kapowsin Property is transferred to Buyer.

D. Indemnification Process

a. The Seller will respond in writing within thirty (30) days to an indemnification claim by the Buyer. Said response shall specify whether the Seller will defend the claim(s) made against Buyer that gives rise to the Seller's obligation to indemnify and hold harmless under this Agreement.

c. If the Seller rejects the Buyer's request for indemnification, the Parties may pursue any remedies available to them.

32.2 Buyer shall indemnify, defend, and hold harmless the Seller and its elected or appointed officials, agents and employees, from and against any and all costs, claims, demands, causes of action, damages, liabilities, penalties, losses, and expenses, and all related defense costs caused by, resulting from, or related to Hazardous Substances on the Property under the circumstances in which the Seller's indemnification does not apply, which are identified in Section 32.1.C of this Agreement. If the Seller is damaged, incurs cleanup costs, or incurs liability resulting from any of these circumstances, Buyer is liable for the Seller's actual direct cleanup costs related to the Property.

32.3 The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

32.4 The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

32.5 The term "Kapowsin Property" shall mean and refer to that portion of the Real Property lying within Government Lot 11, in Section 6, Township 17 North, Range 5 East, W.M., in Pierce County, Washington, that is depicted in **Exhibit "B"** attached hereto and incorporated herein by this reference.

32.6 The provisions of this Section 32 shall survive closing. The rights, duties and obligations under this Section 32 may be assigned to the Buyer's successor's in interest, heirs and assigns upon prior written consent of the Seller and written acceptance by the successor in interest of the obligations of Buyer hereunder, in a form acceptable to the Seller's City Attorney.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER: BUYER:

CITY OF TACOMA

_____
Elizabeth A. Pauli, Date
City Manager

_____
Josh Diekmann, P.E. PTOE, Date
Interim Public Works Director/City Engineer

_____
Dale King, Date
Tacoma Rail Superintendent

RAINIER RAIL LLC

_____
Paul Didelius Date
Managing Member

Approved as to form:

_____
Christopher Bacha, Date
Chief Deputy City Attorney

City of Tacoma Review

_____
Alan Matheson Date
Asst. Tacoma Rail Superintendent

_____
Kyle Kellem, Date
Tacoma Rail Roadmaster

_____
Gary Allen, P.L.S. Date
Chief Surveyor

FINANCE:

_____
Andrew Cherullo, Date
Director of Finance

EXHBIT A
Real Property Legal Description

That portion of the Tacoma Rail Mountain Division right of way, extra width property and the improvements, track, and appurtenances located thereon, acquired from the Chehalis Western Railroad Company by Quit Claim Deed recorded under Auditor's File No. 9012240111 and acquired from Weyerhaeuser Company by Quit Claim Deed recorded under Auditor's File No. 9508180647, records of Pierce County, Washington.

Except any portion thereof lying within the currently incorporated limit of the City of Tacoma, more specifically described as
any portion thereof lying Northerly and Northwesterly of the Easterly right of way line of McKinley Avenue in the Northwest Quarter of the Southwest Quarter of Section 27, Township 20 North, Range 3 East, W.M., (approx. Mile Post 5.65 or Railroad Engineering Station 194+64), in Pierce County, Washington.

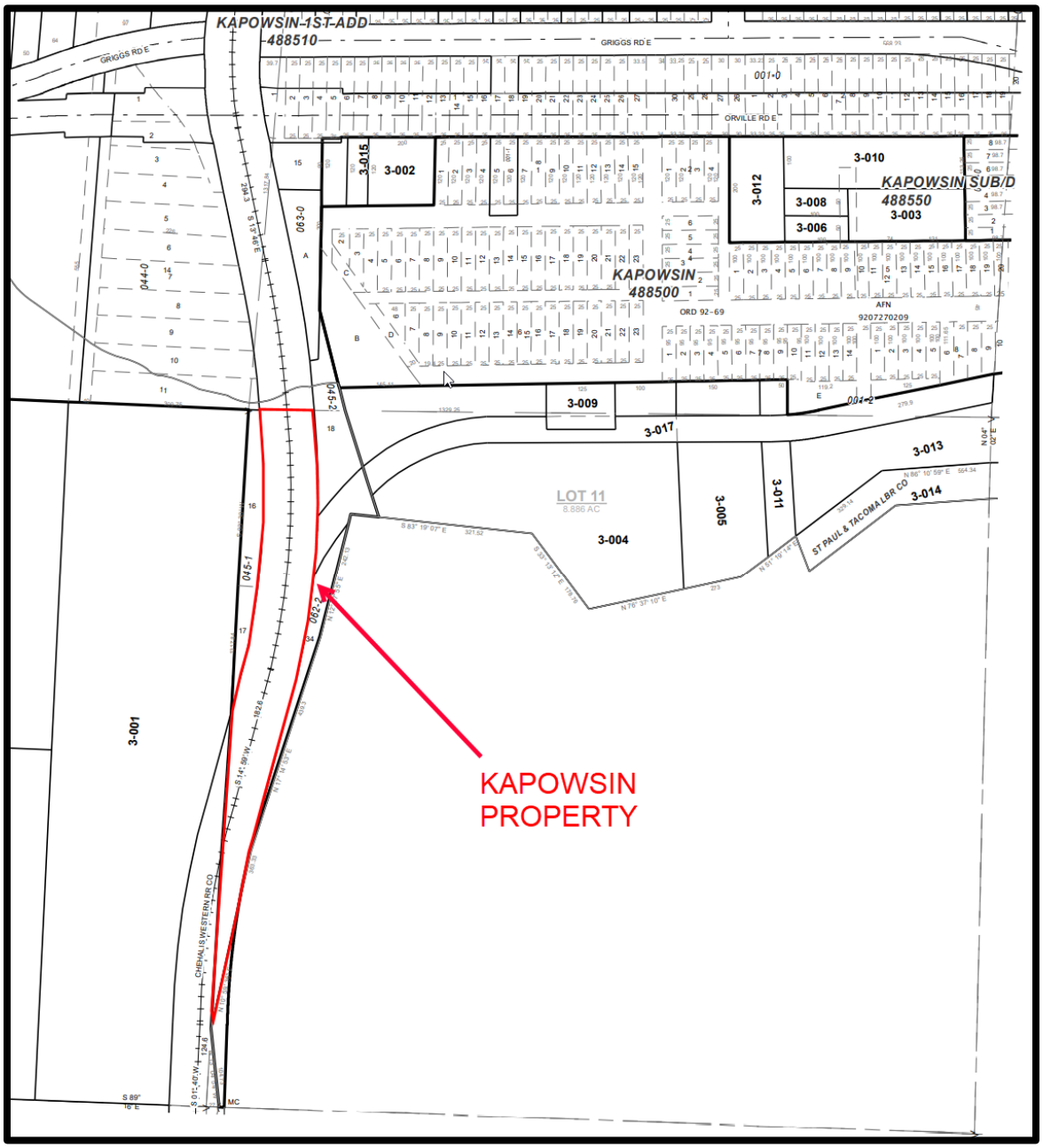
Also, except any portion thereof lying Southeasterly of the Northerly line of the South Half of the North Half of Section 11, Township 16 North, Range 4 East, W.M. (approx. Mile Post 32 or Railroad Engineering Station 1630+68), in Pierce County, Washington.

Also, except that portion conveyed to Pierce County by Quit Claim Deed recorded under Auditor's File No. 201105060441, which supersedes and replaces Quit Claim Deed recorded under Auditor's File No. 201103030242, records of Pierce County, Washington.

Also, except that portion conveyed to WRL, LLC by Quit Claim Deed recorded under Auditor's File No. 201909090221, records of Pierce County, Washington.

SUBJECT TO the rights in and to all existing roads, trails, and utilities, all outstanding assessments, easements, leases, licenses and permits, whether recorded or unrecorded, all matters which a prudent inspection of the premises would disclose, all matters of public record.

EXHBIT B
Kapowsin Property Map



EXHBIT C
Quit Claim Deed

EXHBIT D
MUEA