

INTERLOCAL AGREEMENT – OPTION TO PURCHASE

THIS AGREEMENT is made and entered into this _____ day of _____, 2013, by and between **LEWIS COUNTY, WASHINGTON**, a municipal corporation (hereinafter “County”), the **CITY OF TACOMA**, a municipal corporation (hereinafter “Tacoma”), and the **CITY OF CHEHALIS**, a municipal corporation (hereinafter “Chehalis”)(collectively “the Parties”).

WITNESSETH:

WHEREAS, Tacoma has owned and operated the Mountain Division of the municipal railroad system for a number of years, including the approximately 20-mile portion of the system extending from Maytown in Thurston County to the Port of Chehalis in Lewis County (hereinafter “the Chehalis Extension”); and,

WHEREAS, Tacoma wishes to consolidate its own railroad operations to conserve municipal resources and better serve customers; and,

WHEREAS, Lewis County, the City of Chehalis and other local communities wish to ensure local control over the operation of the Chehalis Extension of the railroad system, including numerous crossings in Centralia, Chehalis and Lewis County; and,

WHEREAS, Chehalis and Lewis County need three (3) years to apply for and obtain grant funding from foundations, governments and other sources to fund the purchase of the Chehalis Extension and related rights, assets, and other improvements; and,

WHEREAS, other municipal entities in Lewis County, including the City of Centralia and the Ports of Centralia and Chehalis, may eventually wish to participate with Lewis County and the City of Chehalis; and,

WHEREAS, Tacoma wishes to ensure continuing municipal control of the Chehalis Extension and, to that end, is willing to offer an Option to Purchase on certain terms, which include the potential forfeiture of a portion of the funds deposited in escrow by the County and Chehalis should certain conditions arise;

NOW, THEREFORE, IN CONSIDERATION of the above-referenced recitals, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT FOR OPTION TO PURCHASE

SECTION 1. OPTION TO PURCHASE. Subject to the terms and conditions of this Agreement, Tacoma hereby grants and conveys to County and Chehalis and their designees (singly and collectively “Optionee”) an irrevocable option (the “Option”) to purchase that portion of the Tacoma Rail Line that runs between the Port of Chehalis located in Chehalis, Washington, and Maytown, Washington, and is approximately twenty (20) miles in length. The Property is described as follows:

1.1 **Tax Parcel Numbers:** Found in Exhibit “C.”

- 1.2 **Legal Description:** to be described in Exhibit "A", attached hereto and by this reference incorporated herein as though fully set forth, including all buildings and improvements thereon (hereinafter "Property"). Such Property shall include all of Tacoma's right, title and interest in: any tangible personal property and fixtures of any kind owned by Tacoma and attached or used exclusively in connection with the ownership, maintenance or operation of the land and buildings, if any, and all of Tacoma's right, title, and interest in any third party leases, licenses, franchises, occupancy agreements, or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting or relating to, the Property, as of the date of Closing. Within ninety (90) days of Closing, as defined in Section 15 herein, Tacoma shall pay to Optionee the amount, if any, of all rents under the leases and all security deposits held by Tacoma under the leases from the date of closing. Included in Exhibit "B" is a list of current agreements, leases, crossings, easements to be assigned with the Property.

SECTION 2. TERM OF OPTION. The Option shall commence on the date of acceptance of this Agreement and shall expire three (3) years thereafter if Optionee has not given Tacoma written notice of exercise of the Option on or before such date. Optionee acknowledges that Tacoma is currently leasing the Property to Western Washington Railroad, which said lease is set to expire January 17, 2014. As a condition of this Agreement, Tacoma agrees it will use commercially reasonable efforts to continue to lease the Property to Western Washington Railroad (WWR) throughout the three-year option period granted hereunder. It is understood by the Parties that WWR is responsible for maintaining the Property under its current lease, and Tacoma shall require WWR under any future lease to maintain the Property in its present condition, normal wear and tear excepted.

SECTION 3. OPTION EARNEST MONEY.

- 3.1 **Deposit.** As consideration for the Option, within five (5) business days from the effective date of this Agreement, Optionee shall deposit One Hundred and Fifty Thousand Dollars (\$150,000.00) with TITLE GUARANTY COMPANY OF LEWIS COUNTY, in Chehalis, Washington ("Escrow Agent") as Option Earnest Money, the entire amount of which shall be applied to the Purchase Price at Closing. The Option Earnest Money shall be deposited by Escrow Agent in an interest bearing account at a financial institution acceptable to Optionee, with all interest accruing to the account of Optionee, to be held subject to the terms and conditions of this Agreement.
- 3.2 **Funds to be Paid at Closing.** At Closing, the entire amount of the Purchase Price, less the amount of the Option Earnest Money to be applied to the Purchase Price and all interest earned on the Option Earnest Money, shall be paid by Optionee to Escrow Agent in cash or certified check, bank cashier's check or wire transfer of funds (so long as the form of payment is recognized by Escrow Agent as immediately available funds), subject, however, to the Closing adjustments described in Section 16, ESCROW/CLOSING COSTS.

SECTION 4. DISPOSITION OF OPTION EARNEST MONEY.

- 4.1 **Termination before Second Anniversary.** If Optionee terminates this Agreement before the second anniversary of this Agreement's execution by the Parties (hereinafter "the Second Anniversary"), the entire Option Earnest Money deposit in escrow shall be returned to Optionee.
- 4.2 **After Second Anniversary.**
- 4.2.1 **Additional Earnest Money Deposit.** If Optionee does not terminate this Agreement before the Second Anniversary, Optionee shall be required to deposit an additional One Hundred Thousand and no/100 Dollars (\$100,000.00) in earnest money with the escrow agent identified above by the Second Anniversary. If the Optionee does not timely deposit the additional earnest money in escrow, Tacoma may terminate this Agreement and the Option Earnest Money shall be returned to Optionee.
- 4.2.2 **Partial Forfeiture.** If for any reason other than the inability of Optionee to secure grant funding to purchase the Property, Optionee terminates this Agreement after the Second Anniversary, Optionee shall forfeit \$50,000.00 of the Option Earnest Money and all remaining funds in escrow shall be returned to Optionee.

SECTION 5. RIGHT OF FIRST REFUSAL. Tacoma grants Optionee a right of first refusal to purchase the Property on the terms and conditions stated in the Purchase and Sale Agreement portion of this Agreement.

- 5.1 **Option to Purchase.** Tacoma shall not sell, transfer or otherwise dispose of the Property without first offering such Property to Optionee.
- 5.2 **Election of Price and Requirements of Competing Offer.** If Tacoma receives an acceptable offer from a buyer that is ready, willing and able to purchase the Property in its entirety before the Second Anniversary (the "Competing Offer"), Tacoma shall give Optionee notice of the terms and conditions of the Competing Offer and shall offer the Property to Optionee for Three Million and no/100 Dollars (\$3,000,000.00). The other terms of purchase shall be those stated in Sections 1, 3, 7, and 9 through 19 of this Agreement.
- 5.3 **Notice of Offer to Optionee.** Tacoma shall make such offer in writing and shall notify Optionee of such offer as provided in Section 7 of this Agreement.
- 5.4 **Notice of Acceptance or Rejection.** Optionee or its designee shall notify Tacoma of its acceptance or rejection of such offer within one hundred twenty (120) calendar days of Optionee's receipt of Tacoma's offer and in the manner provided in Section 7.
- 5.5 **Time to Purchase.** Optionee shall have One Hundred Twenty (120) days from and after notifying Tacoma of its acceptance of Tacoma's offer, to pay the price of Three Million and no/100 Dollars (\$3,000,000.00) on the terms and conditions stated in the Purchase and Sale

Agreement below.

SECTION 6. PURCHASE PRICE. The purchase price shall be Three Million and no/100 Dollars (\$3,000,000.00).

SECTION 7. NOTICES.

- 7.1 All notices to be given by each Party to the other pursuant to this Agreement shall be delivered in person or deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the Parties at the addresses set forth below their signatures.
- 7.2 Any Party, by written notice to the other(s) as above described, may alter the address for receipt of such notice.
- 7.3 Receipt of any notice shall be defined as the earlier of: three (3) business days following the postmark date; or the date the notice is actually received by the Party.

SECTION 8. RECORDING. The Parties hereto agree that a "Memorandum of Option to Purchase Real Estate," in form acceptable to the Parties, shall be executed by the Parties contemporaneously with this Agreement and recorded in Lewis County, Washington.

PURCHASE AND SALE AGREEMENT

SECTION 9. EXERCISE OF OPTION. Optionee may exercise the Option at any time during the term of the Option by delivering written notice to Tacoma of such exercise in accordance with Section 7. If Optionee exercises this Option to Purchase, the purchase of the Property shall be subject to the terms and conditions stated in **Sections 1, 3, 6, 7, and 9 through 19** of this Agreement, which shall constitute the terms and conditions of purchase of the Property.

SECTION 10. CONDITIONS TO OPTIONEE'S PURCHASE. Optionee's obligations to purchase Property shall be subject to and contingent upon the satisfaction as of Closing of the following conditions:

- 10.1 **Indemnification against Liens.** Optionee shall indemnify and hold harmless Tacoma from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Tacoma resulting from any actions taken by Optionee in connection with inspection of the Property.
- 10.2 **Due Diligence.** Satisfactory inspection of the Property, including, but not limited to, the rail line system, regarding its condition. Such review shall extend to all matters concerning the Property including, but not limited to, the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based

paint or materials in, on, or under the Property; the condition or existence of any of the above-ground or underground structures or improvements, including tanks and transformers in, on or under the Property; and the condition of title to the Property (collectively, the "Condition of the Property"). Tacoma will allow Optionee and its agents at their sole expense to have access to the Property for the purpose of conducting physical and environmental and other due diligence. Prior to accessing the Property, the County and/or Chehalis shall obtain a Right of Entry permit from Tacoma, and be responsible for any costs related to accessing the Property, which may include paying flagging cost since the Property is an active railroad. Tacoma shall cooperate in good faith with Optionee's due diligence activities and make appropriate employees, agents, or contractors available to answer reasonable inquiries from Optionee concerning the Condition of the Property. Optionee shall have until Closing to determine in their sole and absolute discretion whether there are any conditions including, but not limited to, environmental conditions, affecting the Property that are unacceptable to any or all of them in their sole discretion. If Optionee determines that there is an existing condition affecting the Property that is unacceptable to it in its sole discretion, then Optionee shall terminate this Agreement. If Optionee does so terminate this Agreement, this Agreement shall terminate and Tacoma shall pursuant to Section 4 refund to the Optionee the Option Earnest Money and other monies held in escrow, and none of the Parties shall have any further obligation hereunder.

- 10.3 **Title.** Obtaining and examining title reports, surveys and title commitments, to determine whether Optionee will be able to obtain title insurance endorsements it desires and to identify any title concerns it may have. If Optionee is not, for any reason, satisfied with the status of any such reports, surveys, or commitments, then Optionee may elect to terminate this Agreement in which case Tacoma shall refund pursuant to Section 4 the Option Earnest Money and any other monies held in escrow to the Optionee, and none of the Parties shall have any further rights or obligations hereunder.
- 10.4 **Intergovernmental Agreement of Lewis County Entities.** Timely approval by the respective governing bodies of Lewis County and the City of Chehalis, and any other municipal entities that choose to participate as Optionee, of this Agreement and the timely approval and execution by those governing bodies of an inter-local agreement providing for: full payment of debt service on any bonds or other obligations issued or to be issued by Lewis County and/or those entities to fund the purchase of the Property; full payment of all costs to investigate, remediate, or respond to any physical condition limiting the use of the Property or any and all environmental conditions (including but not limited to release of hazardous substances) on, in or under the Property to the extent not paid by Tacoma; and payment of any and all costs of operation, maintenance and insurance of the Property. All of such approvals and executions of agreements shall be obtained and completed within TWO (2) YEARS of the execution of this Agreement. Optionee shall have TWO (2) YEARS from and after the execution of this Agreement to obtain such approvals and agreements. This contingency is non-waivable. If such approvals and agreements are not obtained prior to the expiration of such two-year

period, this Agreement shall terminate and Tacoma shall refund pursuant to Section 4 to the Optionee the Option Earnest Money and other monies held in escrow, and none of the Parties shall have any further obligation hereunder.

- 10.5 Surface Transportation Board.** At Optionee's sole expense, Optionee obtains any necessary authority or exemption from the Surface Transportation Board ("STB") to complete the transaction contemplated by this Agreement or obtain a ruling from the STB that the acquisition of the Property is not subject to the jurisdiction of the STB. Tacoma shall reasonably cooperate with the Optionee in connection with any hearings or submittals required to obtain the necessary authority or a jurisdictional ruling from the STB.
- 10.6 Termination.** If the required governmental approvals or agreements are not obtained, or if Optionee does not approve of the results of its investigations and reviews and matters relating thereto and decides not to proceed with this transaction, then Optionee may terminate this Agreement by giving a written notice to Tacoma and Escrow Agent stating Optionee's disapproval and intent to terminate this Agreement ("Termination Notice") and stating the section(s) of the Agreement upon which it bases termination. If Optionee's failure to give written notice of its dissatisfaction with the results of its investigation and review prior to the expiration of the applicable deadline, then the right to Terminate shall be deemed waived. If Optionee gives its Termination Notice to Tacoma, then Escrow Agent shall disburse to Optionee pursuant to Section 4 all funds deposited into escrow by Optionee, all accrued interest thereon, and upon such disbursement neither Optionee nor Tacoma shall have any further liability to the other under this Agreement.

SECTION 11. TACOMA'S DISCLOSURE AND REPRESENTATIONS.

- 11.1 Warranty.** Tacoma makes no warranties as to the condition of the Property, and it is specifically agreed between the Parties that Tacoma is not required to make any disclosures regarding the Condition of the Property. Notwithstanding the foregoing, Tacoma is required to cooperate with Optionee in the due diligence process as provided in Section 10.2. This sale is AS IS, WHERE IS, WITH NO WARRANTIES.
- 11.2 Property Maintenance.** Tacoma will perform ordinary maintenance on the Property until the earlier of Closing or as otherwise agreed.
- 11.3 Boundaries/Square Footage.** Tacoma makes no representations regarding the locations or length of the boundary lines and other improvements. Optionee has personally observed the Property and has reached Optionee's own conclusions as to the adequacy and acceptability of the boundaries and square footage of the Property based upon such personal inspection.
- 11.4 Material Impairment by Pending Litigation.** Tacoma has not received any written notice of and has no knowledge of any actual or pending litigation, proceeding or claim by any organization, person, individual, or government agency against Tacoma that could materially impair Tacoma's ability to perform its obligations under this Agreement.

- 11.5 **Adverse Property Rights.** Tacoma has not received any written notice of and has no knowledge of any actual or pending litigation asserting through a claim of adverse possession or other prescriptive rights that Tacoma does not own the Property or any portion of the Property.
- 11.6 **Uncured Existing Violations.** Tacoma has not received any written notice of and Tacoma has no knowledge of any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Property or the conduct of railroad operations on the Property.
- 11.7 **Third Party Rights in Property.** To Tacoma's knowledge, the Property is not subject to any leases, tenancies or rights of persons in possession, franchises, occupying agreements, unrecorded easements or other agreements demising space in, providing for the use or occupancy of, or otherwise similarly affecting the Property other than the agreements listed in Exhibit "C".
- 11.8 **Labor Agreements.** Tacoma represents that execution of this Agreement or conveyance of any of the Property will not cause Optionee to become a party to any collective bargaining agreement or to become an employer of persons now employed by Tacoma. Tacoma shall indemnify Optionee for any sums Optionee is obliged to expend during a term of five years following the execution of this Agreement by virtue of becoming an employer of any such persons.

SECTION 12. ENVIRONMENTAL MATTERS.

- 12.1 **Condition of Property.** It is expressly understood by Tacoma and Optionee that the Property is an active railroad. Notwithstanding the foregoing, Tacoma has no knowledge of the existence at any time, whether still occurring or not, of any of the following activities on the Property:
- i. Routine fueling of trains or train related equipment;
 - ii. Treatment of railroad ties;
 - iii. Creosote treating operations (provided that cross ties installed over time are creosote treated but Tacoma does not engage in any treating operations);
 - iv. Above-ground or underground storage tanks;
 - v. Transformers; or
 - vi. Repair shops.
- 12.2 **Intent of the Parties.** In full recognition of the foregoing, Optionee and Tacoma agree that it is the express intent of the Parties that the Optionee and Tacoma shall have no liability for hazardous water or materials present on the Property to each other, except as provided herein.

- 12.3 **Environmental Compliance.** Tacoma represents and warrants, to the best of its knowledge, that the Property was not used for the generation, storage, treatment, or disposal of any Hazardous Substances (as defined in Section 12.5). Tacoma further gives assurance, to the best of its knowledge, that: (i) no Hazardous Substance, the release of which has or might result in or contribute to the need for remedial action, was or is being released at, on or beneath the Property; and (ii) no underground storage tanks exist on the Property which have in the past or are now currently releasing Hazardous Substances on, at or under the Property.
- 12.4 **Optionee's Reliance.** Optionee is entering into this Agreement in reliance on Tacoma's representation that there are no known Hazardous Substances present on, at or under the Property, and further that Tacoma has not caused any such releases of Hazardous Substances. If facts later establish that Tacoma did cause a release(s) of Hazardous Substances on, at or under the Property, Tacoma shall be responsible after closing to reimburse Optionee for all required remedial action costs Optionee incurs to properly remediate, and/or dispose of such Hazardous Substances which may be found to exist on, at or under the Property, as well as any other costs and expenses covered by Section 12.6 below. Optionee shall have no obligation to inspect the Property for the existence of Hazardous Substances and no obligation of Tacoma shall be waived whether or not Optionee inspects the Property for the existence of Hazardous Substances. Tacoma agrees that it shall be fully responsible and liable for any Hazardous Substances that have been, or are being released on, at or under the Property, if such release was or is caused by or resulting from Tacoma's actions.
- 12.5 **Hazardous Substances and Other Definitions.** For the purpose of this Agreement, the terms "Hazardous Substances" shall be defined according to the Model Toxics Control Act ("MTCA") at RCW 70.105D.020(10) and WAC 173-340-200. The term "Hazardous Substances" shall also include materials and/or wastes regulated under the Toxics Substance Control Act (15 U.S.C § 2601, et seq.), and its implementing regulations at 40 CFR Part 761.3, including hazardous, toxic, radioactive or infectious substance. The terms "release" or "released", "remedial action", "remediate", and "potentially responsible person" as they appear in this Article shall be defined according to RCW 70.105D.020(25), RCW 70.105D.020(26) and RCW 70.105D.020(21) respectively, and WAC 173-340-200, as well as applicable common law.
- 12.6 **Tacoma's Environmental Indemnity and Hold Harmless.** For a period of twenty-four (24) months following the date of Closing on Optionee's purchase of the Property ("Indemnity Period"), Tacoma shall indemnify, defend, and hold Optionee and Optionee's officers, directors, elected officials, employees harmless from and against any and all present and future claims, demands, and any and all injuries, causes of action (including without limitation causes of action for tort), damages, liabilities, losses, expenses (including without limitation, fines, penalties, judgments, and attorney's fees), and all costs and fees for legal actions, including remedial actions related thereto (collectively "Loss" or "Losses"), whether such Loss or Losses are initiated by a federal or state agency, or local jurisdiction (including the Optionee if Optionee decides to voluntarily undertake remedial actions on the Property), and/or a non-

governmental third party, which are caused by or resulting from Tacoma releasing a Hazardous Substance on, at or under the Property. For purposes of this Section 12, the phrase "caused by or resulting from Tacoma releasing a Hazardous Substances on, at or under the Property" means Tacoma either released such Hazardous Substances on its own, directed others (i.e., an employee or third party) to do so, or such Hazardous Substances were otherwise released by persons working for and/or on behalf of Tacoma, with or without Tacoma's knowledge. This Agreement to indemnify and hold harmless shall apply to Losses brought by any party based upon any applicable state or federal statutory or common law, and shall include, but not be limited to, any and all remedial action costs to address such release of Hazardous Substances, as well as any and all litigation costs and expenses, administration, oversight, and personnel costs arising from such release of Hazardous Substances. Notwithstanding the above, Tacoma shall have no obligation to indemnify, defend, and hold Optionee harmless from and against Losses based on a release of Hazardous Substances on, at or under the Property not caused by the actions of Tacoma. Optionee shall cooperate with and make available to Tacoma such assistance as may be reasonably requested by Tacoma with respect to any Losses. Tacoma shall have sole discretion regarding the settlement of any Losses, provided that Optionee will not be subject to any liability for any settlement made without consent, but such consent shall not be unreasonably withheld.

12.7 Reservation of Tacoma. Tacoma reserves and does not waive its right to seek contribution for the recovery of remedial action costs from Optionee under RCW 70.105D.080, or other applicable federal or state law, or under applicable common law during and following termination of the Indemnity Period.

12.8 Reservation of Optionee. In addition to and notwithstanding the foregoing, Optionee reserves and does not waive its right to seek contribution for the recovery of remedial action costs from Tacoma under RCW 70.105D.080, or other applicable federal or state law, or under applicable common law.

12.9 Optionee's Environmental Indemnity and Hold Harmless. Optionee shall indemnify, defend, and hold Tacoma and Tacoma's officers, directors, elected officials, employees harmless from and against any and all present and future claims, demands, and any and all injuries, causes of action (including without limitation causes of action for tort), damages, liabilities, losses, expenses (including without limitation, fines, penalties, judgments, and attorney's fees), and all costs and fees for legal actions, including remedial actions related thereto (collectively "Loss" or "Losses"), whether such Loss or Losses is initiated by a federal or state agency, or local jurisdiction (including Optionee if Optionee decides to voluntarily undertake remedial actions on the Property), and/or a non-governmental third party, which are caused by or resulting from Optionee releasing a Hazardous Substances on, at or under the Property after Closing. For the purpose of this Article, the phrase "caused by or resulting from Optionee releasing a Hazardous Substances on, at or under the Property" means Optionee either released such Hazardous Substances on its own, directed others (i.e., an employee or third party) to do so, or such Hazardous Substances were otherwise released by persons working

for and/or on behalf of Optionee, with or without Optionee's knowledge. This Agreement to indemnify and hold harmless shall apply to Losses brought by any Party based upon any applicable state or federal statutory or common law, and shall include, but not be limited to, any and all remedial action costs to address such release of Hazardous Substances, as well as any and all litigation costs and expenses, administration, oversight, and personnel costs arising from such release of Hazardous Substances. Notwithstanding the above, Optionee shall have no obligation to indemnify, defend, and hold Tacoma harmless from and against Losses based on a release of Hazardous Substances on, at or under the Property not caused by the actions of Optionee, or for any Conditions of the Property existing prior to Closing and transfer of possession to Optionee, or to any Releases occurring on the Property prior to Closing and transfer of possession to Optionee. Provided, however, this Indemnity and Hold Harmless shall include Losses arising from Optionee's exacerbation of a Release existing on or around the Property at the date of Closing. Tacoma shall cooperate with and make available to Optionee such assistance as may be reasonably requested by Optionee with respect to any Losses. Optionee shall have sole discretion regarding the settlement of any Losses, provided that Tacoma will not be subject to any liability of any settlement made without consent, but such consent shall not be unreasonably withheld.

SECTION 13. CONDITIONS TO TACOMA'S OBLIGATION TO SELL.

- 13.1 **City Council Approval.** Tacoma's obligations to sell the Property shall be subject to and contingent upon the approval by the Tacoma City Council and such contingency shall be non-waivable. This Agreement shall be deemed terminated if the City Council has not approved the transaction prior to Closing.
- 13.2 **Weyerhaeuser Right of Refusal.** Tacoma's obligation to sell the Property to the Optionee shall be subject to and contingent upon providing notice of its desire to sell the Property to Optionee and the Price to the Weyerhaeuser Company 90 days prior to the closing date in the Agreement, whereby the Weyerhaeuser Company shall have the right to repurchase the Property at the Price. If the Weyerhaeuser Company or its successor fails to exercise such right within 90 days of said notice, Tacoma's contingency shall be met.

SECTION 14. CONVEYANCE OF TITLE. Conveyance of fee title shall be by way of a bargain and sale deed. Optionee and Tacoma understand that the form of the deed may affect significant legal rights.

SECTION 15. CLOSING. Closing shall be within ten (10) days after satisfaction or waiver of all contingencies and as agreed by the Parties, but not later than February 1, 2017, the latter of which shall be the termination date of this Agreement. Closing shall mean the date on which all documents are recorded and the net sales proceeds are available for disbursement to Tacoma. Optionee and Tacoma shall deposit, when notified and without delay, in escrow with TITLE GUARANTY COMPANY OF LEWIS COUNTY, the title company which will conduct the Closing, all instruments, moneys, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Agreement.

SECTION 16. ESCROW/CLOSING COSTS.

- 16.1 **Place of Closing.** Closing shall occur at TITLE GUARANTY COMPANY OF LEWIS COUNTY, 200 N. W. Prindle Avenue, Chehalis, Washington, 98532, who shall act as the escrow/closing agent unless the Parties agree in writing otherwise.
- 16.2 **Closing Costs.** Unless limited by law or modified by the terms of this Agreement, Optionee and Tacoma shall pay at Closing all customary and usual closing costs and fees, including but not limited to the following: Tacoma shall pay the seller's excise tax, the cost of recording fees, and seller's half share of escrow fees. Optionee shall pay all costs and fees associated with any buyer's financing, recording fees, any other costs agreed to under the terms of this Agreement, and buyer's half share of the escrow fees.

SECTION 17. TERMINATION OF PURCHASE. If the Purchase and Sale Agreement is terminated for any reason, any costs authorized under this Purchase and Sale Agreement to be advanced from the earnest money deposit shall be deducted before the remaining earnest money is refunded to the Optionee or forfeited to Tacoma in accordance with Section 4 of this Agreement. Disposition of the Option Earnest Money as provided in Section 4 of this Agreement shall constitute Tacoma's sole and exclusive remedy for Optionee's failure to purchase the Property. If a dispute should arise regarding the disbursement of any earnest money, if the earnest money is held by someone other than Optionee or Tacoma, the Party holding the earnest money may interplead the funds into court and that Party shall recover all costs and attorney fees associated with the interpleader action from the earnest money before any other disbursements are made.

SECTION 18. CASUALTY/LOSS. If, prior to Closing, the Property or improvements on the Property are destroyed or materially damaged by fire or other casualty, Optionee may elect to terminate this Agreement, and the earnest money shall be refunded to Optionee pursuant to Section 4.

GENERAL PROVISIONS APPLICABLE TO OPTION AGREEMENT AND PURCHASE AGREEMENT

SECTION 19. GENERAL PROVISIONS.

- 19.1 **Integration.** This Agreement contains the entire understanding of the Parties. No variations, modifications, or changes shall be binding upon any Party unless set forth in a document duly executed by or on behalf of such Party. The representations, warranties, and covenants set forth herein shall survive the Closing and shall not merge into any document or instrument executed and delivered at or in connection with Closing.
- 19.2 **Amendment.** Optionee and Tacoma agree that they may only amend this Agreement by written agreement.
- 19.3 **Time is of the Essence.** Time is of the essence as to all terms and conditions of this Agreement.
- 19.4 **Computation of Time.** Unless specified otherwise herein, any periods of time referenced in

this Agreement shall expire at 9:00 p.m. (Pacific Time Zone) of the last calendar day of the specified time period, unless the last day is a Saturday, Sunday, or legal holiday as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 9:00 p.m. (Pacific Time Zone) on the next business day. Any specified period of three (3) days or less shall include business days only.

19.5 **Backup Offers.** Optionee is aware that during the term of this Agreement, Tacoma may continue to market the Property and solicit and accept backup offers.

19.6 **Venue/Applicable Law.** This Agreement shall be interpreted and construed according to the laws of the state of Washington; venue shall be in Lewis County, Washington.

19.7 **Survival.** All terms of this Agreement, which are not satisfied or waived prior to Closing, shall survive Closing. These terms shall include, but not be limited to, representations and warranties, attorney's fees and costs, disclaimers, repairs, rents and utilities, etc.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

CITY OF TACOMA, a Washington municipal corporation

By _____
T. C. Broadnax, City Manager

CITY OF CHEHALIS, A Washington municipal corporation

By _____
Merlin MacReynold, City Manager

LEWIS COUNTY, a Washington municipal corporation

By _____
P. W. "Bill" Schulte, Chairman,
Board of County Commissioners

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared T. C. **BROADNAX, to me known to be the city Manager of the City of Tacoma, a Washington municipal corporation**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that his is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the state of Washington
Residing at _____
My name is _____ (printed)
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared **MERLIN MACREYNOLD, to me known to be the City Manager of the City of Chehalis, a Washington municipal corporation**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that his is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the state of Washington
Residing at _____
My name is _____(printed)
My appointment expires_____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared **P. W. "BILL" SCHULTE**, to me known to be the Chairman of the Lewis County Board of County Commissioners, a Washington municipal corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that his is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the state of Washington
Residing at _____
My name is _____(printed)
My appointment expires _____

EXHIBIT "A"

Parcel List

TRMW MP 47.5C to End of C-Line

Thurston Parcel #	Lewis Parcel #
09200011001	023564004000
09790002000	009772002000
09790005001	023602002000
Portion of 12603310000	023602001002
12604330400	009647002000
12605320100	021058011000
12607410100	021410000000
12608220300	003456002000
12618110300	003449008000
12619110300	003205026000
12619420200	003325001000
13501100000	003325003000
13512200000	003326002000
13513221400	003331004000
13524120100	003356000000
13636400000	002119002001
	002134005001
	000548003001
	000549001001
	000798003001
	000676003008
	000670001003
	000670001004
	000660003001
	003563002000
	002439002005
	003583005003
	021502002000
	021506007000
	021513002000
	021607001000
	005605082000
	005659005000
	004331005000
	004272003001
	005752002000
	004870003000
	005771004000
	005811005000
	005811004000

EXHIBIT "B"

LEGAL DESCRIPTION

TRMW MP 47.5C to End of C-Line

That portion of the Tacoma Rail Mountain Division right of way acquired from the Weyerhaeuser Company by Quit Claim Deed recorded under Thurston County Auditor's File No. 9508140208, records of Thurston County, Washington and by Quit Claim Deed recorded under Lewis County Auditor's File No. 9511613, records of Lewis County, Washington and from Lakeside Industries Inc. by Warranty Deed recorded under Lewis County Auditor's File No. 3364589, records of Lewis County and from Daniel A. Chaney and Lisa Chaney, husband and wife and Christopher M. Hunter, a single person by Corrective Deed recorded under Lewis County Auditor's No. 3262870, records of Lewis County, Washington, all lying between Mile Post 47.5C located in the Southeast Quarter of Section 3, Township 16 North, Range 2 West, W.M, in Thurston County, Washington and the Southerly terminus of said Tacoma Rail Mountain Division right of way located in the Southeast Quarter of Section 31, Township 14 North, Range 2 West, W.M, in Lewis County, Washington.

Except those portions of said right of way conveyed to Daniel A. Chaney and Lisa Chaney, husband and wife and Christopher M. Hunter, a single person by Corrective Deed recorded under Lewis County Auditor's No. 3262871 and to the State of Washington by Quit Claim Deeds recorded under Lewis County Auditor's Nos. 3377947 and 3377948, records of Lewis County, Washington.

Situate in the, Counties of Thurston and Lewis, State of Washington; and as further shown in Exhibit "B" attached hereto and by this reference incorporated herein.

The foregoing shall be referred to as the "Premises".

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may or may not appear of public record, including those shown on any recorded plat or survey.

EXHIBIT "C"

MAP OF PREMISES

TRMW MP 47.5C to End of C-Line

