

ATTACHMENT B

Item #: _____ 5e _____

Date of Meeting: August 6, 2013

FIBER OPTIC LINE EASEMENT

THIS EASEMENT ("Easement"), made as of the ____ day of _____, 2013 ("Effective Date") by and between the Port of Seattle, a Washington municipal corporation ("Grantor") and WDH Black Rock, LLC, a Washington limited liability company ("Grantee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. GENERAL

1.1 Grantor hereby grants Grantee a non-exclusive easement, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Grantor (the "Drawings and Specifications"), an aerial fiber optic communications line and supporting poles ("FIBER OPTIC LINE"), along the rail corridor of Grantor at or near the station of Snohomish, County of Snohomish, State of Washington, from approximately Mile Post 37.22 to Mile Post 37.35 as shown on the drawing attached hereto as Exhibit "A" and made a part hereof ("Easement Area").

1.2 Grantor reserves the right to require Grantee to relocate the FIBER OPTIC LINE from the supporting poles to the existing Snohomish County PUD poles within the Easement Area as depicted on Exhibit B for which Grantor will provide at least one hundred twenty (120) days prior written notice.

1.3 Grantee shall not disturb any improvements of Grantor or of Grantor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements within the Easement Area.

1.4 Grantee shall use the Easement Area solely for construction and maintenance of a FIBER OPTIC LINE in accordance with the Drawings and Specifications (the "Improvements"), any revisions must be submitted to Grantor in writing and subject to prior written approval by Grantor. Grantee shall not use the Easement Area for any other purpose.

1.5 In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Easement Area, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable (i) to refund Grantee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage sustained by Grantee in connection therewith.

1.6 Any contractors or subcontractors performing work on the FIBER OPTIC LINE or entering the Easement Area on behalf of Grantee shall be deemed servants and agents of Grantee for purposes of this Easement.

1.7 The rights granted under this easement are specifically subject to a Freight Easement BNSF Railway Company conveyed to GNP Rly, Inc., recorded under Snohomish County Auditor's File No. 200912210439. Eastside Community Rail, LLC, (the "Freight Operator") is the successor in interest to GNP and assumed all rights and obligations of GNP under GNP's Operation and Maintenance Agreement with the Port

1.8 The rights granted under this Easement are also specifically subject to an easement recorded under Snohomish County Auditor's File No. 201012211039 in favor of Puget Sound Energy, as amended by amendment recorded under Snohomish County Auditor's File No. 201302120664, and all other rights granted to third parties pursuant to recorded and unrecorded third party leases, licenses, permits, easements or other agreements for the use or occupancy of the Easement Area

2. COMPENSATION

2.1 Grantee shall pay Grantor, prior to the Effective Date, the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) as compensation for the use of the Easement Area.

2.2 Grantee agrees to reimburse Grantor and/or the rail operator operating on the Easement Area, including but not limited to the Freight Operator, (hereinafter the "Rail Operator(s)") within thirty (30) days after receipt of bills therefor for all costs and expenses incurred by Grantor and/or Rail Operator, including all costs associated with any required flagging services, in connection with Grantee's use of the Easement Area or the presence, construction and maintenance of the FIBER OPTIC LINE.

2.3 All invoices are due thirty (30) days after the date on the invoice. In the event that Grantee shall fail to pay any monies due to Grantor within thirty (30) days after the invoice date, then Grantee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Grantee at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less.

2.4 For the purpose of this Easement, "cost" or "costs" "expense" or "expenses" include, but are not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

3. COMPLIANCE WITH LAWS

3.1 Grantee shall observe and comply with any and all local, federal and state laws, statutes, regulations, ordinances, ("Legal Requirements") relating to the construction, maintenance, and use of the FIBER OPTIC LINE and the use of the Easement Area.

3.2 Where the Easement Area is in active railroad or other transportation use, prior to entering the Easement Area, Grantee shall and shall cause its contractors to comply with all Grantor's and/or Rail Operator's applicable safety rules and regulations. Prior to commencing

any work on the Easement Area, Grantee shall complete and shall require its contractor to complete a safety-orientation program as directed by the Rail Operator.

4. RIGHT OF GRANTOR TO USE

Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Easement Area;
- (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Easement Area; or
- (c) to use the Easement Area in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Easement Area by Grantee for the purpose specified in this Easement.

5. GRANTEE'S OPERATIONS

5.1 Grantee shall notify Grantor's, Property Manager at (206) 787-3630, and the Rail Operator at the contact number provided by Grantor, at least five (5) business days prior to installation of the FIBER OPTIC LINE and prior to entering the Easement Area for any subsequent maintenance thereon; provided that in emergency situations, Grantee may enter the Easement Area without prior notice and shall provide notice to Grantor and Rail Operator thereafter as soon as reasonably practicable.

5.2 In performing any work permitted under this Easement, Grantee shall use only public roadways. Grantee shall obtain Grantor's and Rail Operator's approval before traveling over any portion of Grantor's railroad corridor outside of the Easement Area.

5.3 Grantee shall, at its sole cost and expense, provide flagger services when deemed necessary by the Grantor or the Rail Operator.

5.4 Under no conditions shall Grantee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Easement Area unless Grantee has obtained prior written approval from Grantor and the Rail Operator. Grantee shall, at its sole cost and expense, perform all activities on and about the Easement Area in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Grantor, or the safe operation and activities of Grantor or Rail Operator. If ordered to cease using the Easement Area at any time by Grantor or Rail Operator's personnel due to any hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the

Easement Area to determine the safe nature thereof, it being solely Grantee's responsibility to ensure that Grantee's use of the Easement Area is safe. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement.

5.5 Grantee shall, at its sole cost and expense, construct and at all times maintain the FIBER OPTIC LINE in accordance with the National Electric Code. Grantee's use of a rail mounted cable plow to install Grantee's FIBER OPTIC LINE is strictly prohibited unless advance written approval is granted by Grantor

5.6 Grantee shall, at its sole cost and expense, construct and maintain the FIBER OPTIC LINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Grantor, or the safe operation and activities of Grantor and Rail Operator. Grantor and/or the Rail Operator may direct one of its field engineers to observe or inspect the construction and/or maintenance of the FIBER OPTIC LINE at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the FIBER OPTIC LINE by Grantor or Rail Operator's personnel due to non-compliance with the same or any other hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing right of Grantor, the parties agree that Grantor has no duty or obligation to observe or inspect, or to halt work on, the FIBER OPTIC LINE, it being solely Grantee's responsibility to ensure that the FIBER OPTIC LINE is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right granted by this Section will alter in any way the liability allocation provided by this Easement. If at any time Grantee shall, in the sole judgment of Grantor, fail to properly perform its obligations under this Section, Grantor may, at its option and at Grantee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Grantee shall promptly reimburse Grantor for all costs and expenses of such work, upon receipt of an invoice for the same. Grantor's failure to perform any obligations of Grantee shall not alter the liability allocation hereunder.

5.7 During the construction and any subsequent maintenance performed on the FIBER OPTIC LINE, Grantee shall perform such work in a manner to preclude damage to the property of Grantor or that of the Rail Operator, and preclude interference with the Rail Operator operations. The construction of the FIBER OPTIC LINE shall be completed by within ninety (90) days of the Effective Date. Upon completion of the construction of the FIBER OPTIC LINE and after performing any subsequent maintenance thereon, Grantee shall, at Grantee's own cost and expense, restore the Easement Area to its former state as of the Effective Date of this Easement.

5.8 If at any time during the term of this Easement, Grantor shall desire the use of the Easement Area in such a manner as would, in Grantor's reasonable opinion, be interfered with by the FIBER OPTIC LINE, Grantee shall, at its sole expense, within thirty (30) days after receiving written notice from Grantor to such effect, relocate the FIBER OPTIC LINE (such relocation to include, without limitation, the construction of a new FIBER OPTIC LINE) within the Easement Area or other area within Grantor's rail corridor that Grantor determines is available. Any such relocation of Grantee's FIBER OPTIC LINE shall be as Grantor, in

Grantor's sole discretion, may determine necessary to avoid interference with Grantor's proposed use of the Easement Area. In the event Grantor determines that the FIBER OPTIC LINE cannot be relocated or reconstructed within the Easement Area or moved to another area within Grantor's rail corridor, Grantor reserves the right to terminate this Easement by providing Grantee with one hundred and twenty (120) days written notice of such termination.

5.9 Prior to Grantee conducting any boring work on or about any portion of the Easement Area, Grantee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Grantee's operations will be subject at all times to the liability provisions herein.

5.10 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Grantee and reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

5.11 Any open hole, boring, or well-constructed on the Easement Area by Grantee shall be safely covered and secured at all times when Grantee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Easement Area by Grantee shall be:

- (a) filled in to surrounding ground level with compacted bentonite grout; or
- (b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Grantor's property for more than ten (10) days, but must be properly disposed of by Grantee in accordance with applicable Legal Requirements.

5.12 Upon termination of this Easement, Grantee shall, at its sole cost and expense:

- (a) remove the FIBER OPTIC LINE and all appurtenances thereto at the sole discretion of the Grantor;
- (b) report and restore any damage to the Easement Area arising from, growing out of, or connected with Grantee's use of the Easement Area;

- (c) remedy any unsafe conditions on the Easement Area created or aggravated by Grantee; and
- (d) leave the Easement Area in the condition which existed as of the Effective Date of this Easement.

5.13 Grantee's on-site supervisors shall retain/maintain a fully executed copy of this Easement at all times while within the Easement Area.

6. LIABILITY

6.1 To the fullest extent permitted by law, Grantee shall and shall cause its contractor to release, indemnify, defend and hold harmless Grantor and Grantor's successors, assigns, officers, employees and agents (collectively, "Indemnitees") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise (collectively "liabilities") of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part):

- (a) This Easement, including, without limitation, its environmental provisions,
- (b) Any rights or interests granted pursuant to this Easement,
- (c) Grantee's occupation and use of the Easement Area,
- (d) The environmental condition and status of the Easement Area caused by or contributed by Grantee, or
- (e) Any act or omission of Grantee or Grantee's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over,

even if such liabilities arise from or are attributed, in whole or in part, to any negligence of any Indemnitee. The only liabilities with respect to which Grantee's obligation to indemnify the Indemnitees does not apply are liabilities to the extent proximately caused by the gross negligence or willful misconduct of an Indemnitee.

6.2 Further, to the fullest extent permitted by law, notwithstanding the limitation in section 7.1, Grantee shall and shall cause its contractor to now and forever waive any and all claims, regardless whether based on the strict liability, negligence or otherwise, that railroad is an "owner", "operator", "arranger", or "transporter" with respect to the FIBER OPTIC LINE for the purposes of CERCLA or other environmental laws. Grantee will indemnify, defend and hold the Indemnitees harmless from any and all such claims regardless of the negligence of the Indemnitees. In no event shall grantor be responsible for the environmental condition of the Easement Area.

6.3 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

7. PERSONAL PROPERTY WAIVER

All personal property, including, but not limited to, fixtures, equipment, or related materials upon the easement area will be at the risk of grantee only, and grantor, its employees, officers and agents shall not be liable for any damage thereto or theft thereof, whether or not due in whole or in part to the negligence of any Indemnitee.

8. INSURANCE

- I. Grantee and its contractors shall at its expense procure and maintain throughout the term of the Easement, the following insurance policies:
 - a. Commercial General Liability insurance for property damage and bodily injury in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate to include completed operations. Coverage shall be primary and non-contributory with any insurance the Port carries and shall include a waiver of subrogation in favor of the Port. The coverage shall include no exclusions or limitations for work being done within 50 feet of railroad property and the definition of insured contract shall remove any exclusion for work being done within 50 feet of railroad property. The Port shall be listed as an additional insured on this policy with a copy of the endorsement delivered to the Port upon execution of the Easement.
 - b. Automobile Liability insurance with a combined single limit covering bodily injury and property damage of \$1,000,000 per occurrence covering Grantee's owned, non-owned, leased or rented vehicles. The Port shall be an additional insured by endorsement or by inclusion as an Insured within the policy.
 - c. Workers' Compensation and Employers' Liability in accordance with the provisions of Title 51 of the Revised Code of Washington and covering Grantee's employee's industrial accidents and injuries.
- II. Grantee and its contractors, shall at its expense procure and maintain the following insurance for any drilling, boring, excavation, maintenance, construction, or other operational work that is to take place within the Easement Area.
 - a. Commercial General Liability insurance for property damage and bodily injury in amounts of not less than \$2,000,000 per occurrence and \$4,000,000 million in the general aggregate to include completed

operations. Coverage shall be primary and non-contributory with any insurance the Port carries and shall include a waiver of subrogation in favor of the Port. The coverage shall include no exclusions or limitations for work being done within 50 feet of railroad property and the definition of insured contract shall remove any exclusion for work being done within 50 feet of railroad property. The Port shall be listed as an additional insured on this policy with a copy of the endorsement delivered to the Port upon execution of the Easement.

- b. Automobile Liability insurance with a combined single limit covering bodily injury and property damage of \$1,000,000 per occurrence covering Grantee's owned, non-owned, leased or rented vehicles; The Port shall be an additional insured by endorsement or by inclusion as an Insured within the policy form.
- c. Contractors Pollution Liability Insurance. Contractors pollution liability insurance providing coverage, on an occurrence basis, or claims made coverage policy form, with limits of liability of at least \$1,000,000 per occurrence providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of the contractor's operations for others; contractor's site (owned); arising from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with pollutants and hazardous materials. If any policy is claims made, the policy shall have a 365 day extended claim reporting period to cover claims occurring during the Easement term but reported after termination of the Easement. The Port shall be listed as an additional insured on this policy with a copy of the endorsement delivered to the Port upon execution of the Easement.
- d. Railroad Protective Liability Insurance: Grantee shall ensure that it and its contractors provide Railroad Protective Liability coverage by obtaining a separate Railroad Protective Liability policy. This insurance shall name the Port and its officers, directors, agents, and employees as the named insured with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The coverage shall be effective for the entire duration of the work to be performed within the Easement Area. The policy shall be issued on a standard ISO form CG 00 35 10 93, or equivalent.
- e. Workers' Compensation and Employers' Liability in accordance with the provisions of Title 51 of the Revised Code of Washington and covering Grantee's employee's industrial accidents and injuries.

III. Evidence of Insurance. Grantee shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, and evidence of railroad protective liability insurance upon execution of the Easement.

- IV. The limits of insurance required by this Easement or as carried by Grantee shall not limit the liability of Grantee nor relieve Grantee of any obligation hereunder.
- V. Waiver of Subrogation. Without affecting any other rights or remedies, Grantee (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Grantee arising out of or incident to the perils required to be insured against under this Easement. Accordingly, Grantee shall cause each insurance policy required by this Easement to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto.
- VI. Worksite Safety: Grantee shall be solely and completely responsible for safety and safety conditions within the Easement Area, including the safety of all persons and property during performance of any maintenance or approved Grantee Alterations work therein. Grantee shall comply with all Rail Operator's rules as they pertain to safety.

9. ENVIRONMENTAL

9.1 Grantee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Easement Area, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Easement Area. Grantee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Easement Area.

9.2 Grantee shall give Grantor immediate notice to the Port's 24 Hour Dispatch at (206) 787-3350 of any release of hazardous substances on or from the Easement Area, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Easement Area. Grantee shall use the best efforts to promptly respond to any release on or from the Easement Area. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

9.3 In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the FIBER OPTIC LINE which occurred or may occur during the term of this Easement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Easement Area or Grantor's right-of-way.

9.4 Grantee shall promptly report to Grantor in writing any conditions or activities upon the Easement Area known to Grantee 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 Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

10. ALTERATIONS

Grantee may not make any alterations to the Easement Area or permanently affix anything to the Easement Area or any buildings or other structures adjacent to the Easement Area without Grantor's prior written consent.

11. NO WARRANTIES

Grantor's duties and warranties are limited to those expressly stated in this easement and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by grantor other than those contained in this Easement. Grantee hereby waives any and all warranties, express or implied, with respect to the Easement Area or which may exist by operation of law or in equity, including, without limitation, any warranty of merchantability, habitability or fitness for a particular purpose.

12. QUIET ENJOYMENT

Grantor does not warrant its title to the Easement Area nor undertake to defend Grantee in the peaceable possession or use thereof. No covenant of quiet enjoyment is made.

13. DEFAULT

If default shall be made in any of the covenants or agreements of Easement contained in this document, or in case of any assignment or transfer of this Easement by operation of law, Grantor may, at its option, terminate this Easement by serving five (5) days' notice in writing upon Grantee. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any Section of this Easement. The remedy set forth in this Section 13 shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

14. LIENS AND CHARGES

Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on Easement Area. Grantor is hereby authorized to post any notices or take any other action upon or with respect to Easement Area that is or may be permitted by law to prevent the attachment of any such liens to Easement Area; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 14 or any other Section of this Easement. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon Grantee's Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Easement Area that are attributable to Grantee's Improvements.

15. TERMINATION

15.1 Grantor may terminate this Easement as provided in Section 5.8.

15.2 If at any time Grantee fails to properly perform its obligations under this Easement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Grantee fails to perform such obligation within 30 days after written notice thereof from Grantor to Grantee, or (iii) at Grantee's sole cost, arrange for the performance of such work as Grantor deems necessary for the safety of rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority of permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee shall not alter the liability allocation set forth in this Easement.

15.3 Limited Easement for Entry. If this Easement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited Easement to enter upon the Easement Area to the extent necessary to undertake the actions directed by Grantor. The terms of this limited Easement include all of Grantee's obligations under this Easement. Termination will not release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements, if any, are removed and the Easement Area is restored to its condition as of the Effective Date. If Grantee fails to surrender the Easement Area to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Easement Area is surrendered.]

16. ASSIGNMENT:

No assignment of Grantee's rights hereunder shall be effective without Grantor's written approval which shall not be unreasonably withheld. Subject to the foregoing, this Easement shall inure to the benefit of and be binding upon Grantor and Grantee's successors and assigns.

17. NOTICES

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If mailed to Grantor: Port of Seattle
Attn: Real Estate
P.O. Box 1209

Seattle, WA 98111

If delivered to
Grantor:

Port of Seattle
Attn: Real Estate
2711 Alaskan Way
Seattle, WA 98121

If to Grantee:

WDH Black Rock LLC.
1225 E. Sunset Drive, Suite 145 #823
Bellingham, WA 98226

If to Railroad
Operator:

Port will provide contact information
for Railroad Operator in writing upon
execution of the Easement.

18. SURVIVAL

Neither termination nor expiration will release either party from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the FIBER OPTIC LINE and Grantee's Improvements are removed and the Easement Area are restored to its condition as of the Effective Date.

19. RECORDATION

This Easement will be recorded in the official records of Snohomish County

20. APPLICABLE LAW

All questions concerning any interest in real property created or affected by this Easement and the interpretation or application of provisions of this Easement shall be governed by the law of the State of Washington.

21. SEVERABILITY

To the maximum extent possible, each provision of this Easement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Easement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Easement.

22. NO OTHER AGREEMENTS

This Easement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Easement Area, and supersedes any and all other

agreements between the parties hereto relating to Grantee's use of the particular Easement Area as described herein.

23. MISCELLANEOUS

23.1 In the event that Grantee consists of two or more parties, all the covenants and agreements of this Easement herein contained shall be the joint and several covenants and agreements of such parties.

23.2 The waiver by Grantor of the breach of any provision herein by Grantee shall in no way impair the right of Grantor to enforce that provision for any subsequent breach thereof.

IN WITNESS WHEREOF, this Easement has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

PORT OF SEATTLE
LLC.

WDH BLACK ROCK CABLE,

By: _____
Its: _____

By: _____
Its: _____

STATE OF _____)
) §
COUNTY OF _____)

On this _____ day of _____ 2013, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of the **Port of Seattle**, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said authority, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.

Signature: _____
Notary Public in and for the State of Washington
Notary (print name) _____
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) §
COUNTY OF KING)

On this _____ day of _____ 201_, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ of, _____ that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said authority, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.

Signature: _____
Notary Public in and for the State of Washington
Notary (print name) _____
Residing at _____
My appointment expires: _____