



FD 36037

**Before the
SURFACE TRANSPORTATION BOARD**

240763

TRI-CITY RAILROAD)
COMPANY, LLC, a Washington)
limited liability company,)
)
Petitioner,)
)
vs.)
)
THE CITY OF RICHLAND, of the)
State of Washington, located in)
Benton County, Washington; and)
CITY OF RICHLAND RAILROAD)
an Unregistered Entity or Tradename)
)
Respondents.)
)
)

**VERIFIED STATEMENT OF
RANDOLPH PETERSON RE:
PETITION FOR EXPEDITED
DECLARATORY ORDER**

**ENTERED
Office of Proceedings
May 25, 2016
Part of
Public Record**

[CONTAINS COLOR]

STATE OF WASHINGTON)
) : ss.
County of BENTON)

RANDOLPH PETERSON, being first duly sworn on oath, does hereby
depose and state:

1. I am the President and CEO for Petitioner Tri-City Railroad
Company, LLC ("TCRY"). I am over the age of eighteen, and am competent to
testify to the matters contained herein. The matters contained herein are either
based upon personal knowledge, or are within the scope of my speaking authority
for TCRY.

2. TCRY is a limited liability company organized under the laws of the State of Washington. Its headquarters are located in Kennewick, Washington, and its principal place of business is within the State of Washington. TCRY is a Class III railroad operating under notice of exemption. **Exhibit 1** is a true and correct copy of TCRY's Notice of Exemption, FR-4915-00-P.

3. On September 28, 1948, the Interstate Commerce Commission, authorized construction of rail to serve the Hanford Nuclear Facility, in the matter *Northern Pacific Railroad Company et al Trackage Rights etc.*, FD 15925 (I.C.C. 1948). See **Exhibit 2**, a true and correct copy of FD 15925. TCRY became aware of this document once it entered into a lease for the same trackage described therein, in 2002.

4. The tracks were known in the 1940s as the "Hanford Trackage." In recent times, they have also been referred to as the "Richland Trackage", as well as the "Port of Benton Trackage" or "POB Trackage". To be distinct from the "City of Richland Railroad", I refer to the trackage TCRY operates upon as the Hanford Trackage. **Exhibit 3** is a true and correct copy of the rail map, as of 2015, showing TCRY's operations on the Hanford Trackage.

5. Prior to 1999, the Hanford Trackage west of the wye ended in a short spur (See **Exhibit 4**, a true and correct copy of a picture of the short spur) depicted below:



6. In 1997, Richland entered into Contract No. R006-97ES13438.000 with the United States Department of Energy (“DOE Easement”), which was recorded with the Benton County Auditor on October 30, 1997 under recording number 97-27682. See **Exhibit 5**, which is a true and correct copy of the DOE Easement. The DOE Easement provides that it is for “the purpose of constructing, repairing and maintaining a railroad spur which connects to the railroad currently owned and operated by DOE[.]”

7. On October 1, 1998, the DOE transferred its interest in the Hanford Trackage to the Port of Benton (“POB”). See Indenture, a true and correct copy of which is attached as **Exhibit 6**.

8. On February 1, 1999, POB granted Richland an easement “for an access and utility easement for a railroad spur.” See Easement Deed, a true and

correct copy of which is attached as **Exhibit 7**. The deed was recorded with Benton County under No. 1999-003771. Unlike the DOE Easement, the POB Easement Deed does not specify that the railroad spur continues from the Hanford Trackage, though it does state that it begins from a point located within the DOE railroad spur easement.

9. In 1999, Richland constructed railroad tracks of slightly less than 2 miles in length, with a short, 500' passing track near the middle of the new rail. As of 2002, no industries were located upon that spur.

10. In 2002, POB entered into a Railroad Lease with TCRY for occupancy of certain premises and operation of a common carrier by rail on the Hanford Trackage. See **Exhibit 8**, a true and correct copy of the Railroad Lease. At the time TCRY entered into the lease, there was no indication that Richland planned on developing a railroad, let alone a railroad that would be in competition with TCRY.

11. Prior to entering into the Railroad Lease in 2002, TCRY entered into a Service Agreement with Richland, under which TCRY contracted to operate on the City of Richland's track on Richland's behalf. See **Exhibit 9**, a true and correct copy of the Service Agreement. From 2002 through 2009, TCRY, as operator, provided service to several industries which began to receive service along Richland's rail.

12. In 2009, BNSF Railway Company (“BNSF”) commenced suit against TCRY, claiming that under FD 15925, BNSF had the right to operate without charge on the Hanford Trackage constructed by the DOE, and that it was not responsible for maintenance of the same. See *BNSF Railway Co. v. Tri-City & Olympia Railroad Co., LLC.*, 835 F. Supp.2d 1056 (2011) a true and correct copy of which is attached as **Exhibit 10**.

13. In December, 2010, Richland terminated the Service Agreement with TCRY as the operator of what Richland began to call ‘City of Richland Railroad’ (“CORR”). Richland then demanded that TCRY agree to eliminate its only passing track on its system, located at its interchange point with the two Class I carriers, in order that Richland could construct a new, unrelated at-grade crossing (“Center Parkway”); and then demanded that TCRY pay an annual access fee going forward to operate on the CORR. See **Exhibit 11**, a true and correct copy of which is attached. TCRY refused to sign the agreement. CORR thereafter banned TCRY from accessing any customers on the CORR.

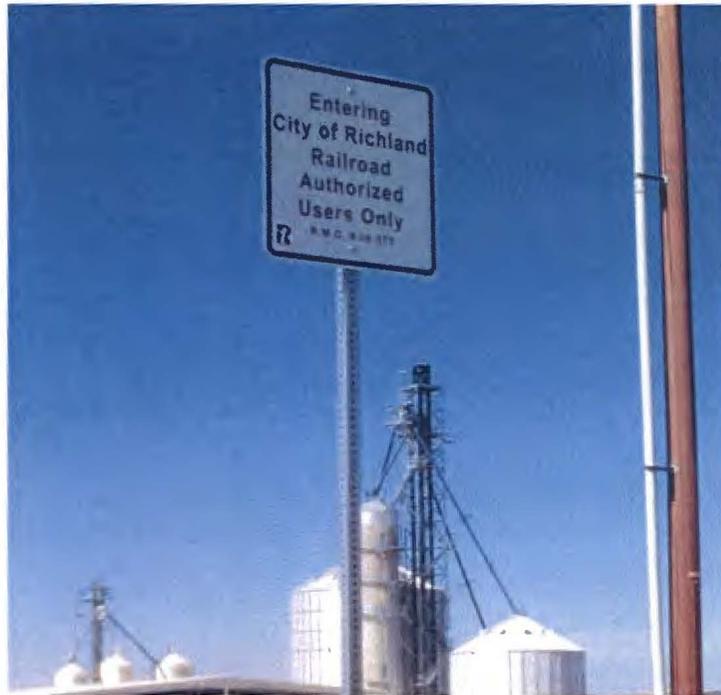
14. After CORR banned TCRY from direct service of shippers on its railroad, TCRY’s only access on the CORR is as a handling carrier for the Union Pacific.

15. On January 5, 2011, Richland and BNSF entered into a contract under which BNSF agreed to cease doing business with TCRY at TCRY’s

interchange location. See Contract No. 22-11, a true and correct copy of which is attached as **Exhibit 12**.

16. In April 2011, Richland and UP signed the “City of Richland Standard Form Railroad Track Use Agreement. See Contract No. 42-11, a true and correct copy of which is attached as **Exhibit 13**.

17. After CORR forbade TCRY’s operations on the CORR, the below sign, threatening criminal prosecution for trespass, was posted in 2011. (See **Exhibit 14**, a true and correct copy of a picture of the City of Richland Railroad sign)



18. In 2013, CORR reconstructed the railroad track it built in 1999 pursuant to its DOE/POB easement, adding numerous switches and double track for a large portion of its railroad.

19. In 2013, Richland filed a petition with the Washington State Utilities and Transportation Commission (“UTC”) to remove TCRY’s only parallel passing track.¹ Removal of the passing track would benefit Richland, and CORR, in two ways. First, it would provide Richland with an additional arterial road for traffic; second, it would eliminate TCRY’s only parallel passing track on its system, having the effect of leaving TCRY’s market competitor, CORR, with the only parallel main and siding on either Railroad.

20. CORR sought and received approval from the Washington State Department of Ecology to fill in certain wetlands for the purposes of constructing new rail. See Order 10664, a true and correct copy of which is attached as **Exhibit 15**.

21. **Exhibit 16** is a true and correct copy of a rail spur easement granted by CORR to Del Hur Industries for Del Hur to construct and connect a rail spur to the CORR.

22. TCRY was never presented an opportunity to comment upon or oppose the creation of the CORR and its market competition with TCRY over the

¹ See FD 35915.

same shippers, because CORR never properly sought authority from the Board to operate.

23. The CORR, as depicted below (**Exhibit 17** is a true and correct copy of a map showing the location of the CORR), presently charges BNSF and UP a fee in order for them to have access to the CORR. In addition, the shippers on the CORR are separately charged by the rail carriers:



24. In the City of Richland’s January 2016 Horn Rapids update, it identifies CORR connecting to and extending from the “Port of Benton Railroad”, and being connected to “existing private railroad”. A true and correct copy of the 2016 Horn Rapids update is attached as **Exhibit 18**.



Figure 12: Railroad Infrastructure Plan

25. Richland continues to advertise sale of commercial property on the CORR. A true and correct copy of such an advertisement is attached as **Exhibit 19**.

26. Below is a true and correct copy of a chart (**Exhibit 20**) depicting rail traffic on the CORR. The chart divides inbound/outbound carloads handled directly by BNSF, or by UP with TCRY as its handling carrier.

City of Richland Railroad
Rail Traffic

For the Period: January 1, 2002 - May 4, 2016

Customer	Delivered by Tri-City Railroad 1/1/02 - 8/23/09	Delivered by BNSF 8/24/09 - 5/4/16	Delivered by Tri-City Railroad 8/24/09 - 5/04/16	Total Carloads
WALTERS	115	318	257	690
CENTRAL WASHINGTON CORN PROCESSORS	0	2334	939	3273
PREFERRED FREEZER SERVICES	0	449	1823	2272
DEL HUR INDUSTRIES	0	690	0	690
WEST COAST WAREHOUSE	11	16	323	350
NORTHSTAR BIO FUELS (JBS)	0	0	336	336
GAVILON	144	33	24	201
SAFETY-KLEEN	100	0	0	100
HENNINGSEN - POB TRANSLOAD	21	0	67	88
CERTIFIED DEF	0	0	20	20
CITY OF RICHLAND	0	17	0	17
PACIFIC ECOSOLUTIONS	16	0	0	16
CH2M HILL	2	0	0	2
CHPRC	2	0	0	2
CITY LOOP	0	2	0	2
COST LESS CARPET	0	0	1	1
PERMAFIX	1	0	0	1
Total Carloads	412	3859	3790	8061

By way of explanation, Central Washington Corn Processors, Preferred Freezer Services, Del Hur Industries, Northstar BioFuels, Certified Def., Cost Less Carpet, and the City Loop did not exist prior to 2009, which is why the chart above does not reflect any of their carloads prior to 2009.

27. Depicted below is a true and correct copy of a chart (**Exhibit 21**), which reflects that between January 1, 2013 and May, 2016, traffic on the CORR consisted of 6,074 carloads. All those carloads crossed TCRY.

City of Richland Railroad
 Carload Activity
 January 1, 2013 - May 4, 2016

CUSTOMER	IN-TOTAL	UPGRADE	TOTAL
WEST COAST WAREHOUSE (WCW)	16	288	304
DEL HUR	83		83
WALTERS	259	48	307
CITY OF RICHLAND	17		17
CENTRAL WASHINGTON CORN PROCESSORS (CWCP)	2334	398	2732
PREFERRED FREEZER SERVICES	449	1823	2272
CITY LOOP	2		2
CERTIFIED DEF.	0	20	20
COST LESS CARPET	0	1	1
NORTHSTAR BIO FUELS (NBS)	0	336	336
TOTAL	3180	2914	6074

28. Neither CORR nor Richland have sought from TCRY a license or easement, nor has TCRY granted a license or easement modifying or expanding the scope of the 1997 and 1999 railroad spur easements. Neither CORR nor Richland have ever sought permission from TCRY to permit the transit of rail traffic across its Railroad to reach CORR, nor has CORR compensated TCRY for crossing its Railroad.

Randolph Peterson

RANDOLPH PETERSON

SUBSCRIBED AND SWORN to before me this 16th day of May, 2016,
by RANDOLPH PETERSON.

Debbie K Miller

Notary Public in and for the State of
Washington, residing at Spokane

My Commission Expires: 11-19-2019



VERIFIED STATEMENT OF RANDOLPH PETERSON
RE: PETITION FOR DECLARATORY ORDER -

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2016, I caused to be served a true and correct copy of the foregoing **VERIFIED STATEMENT OF RANDOLPH PETERSON RE: PETITION FOR DECLARATORY ORDER**, by the method indicated below and addressed to the following:

Heather Kintzley Richland City Attorney 975 George Washington Way PO Box 190 MS-07 Richland, WA 99352	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERED FED EX TELECOPY
The City of Richland 505 Swift Boulevard Richland, WA 99352	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERED FED EX TELECOPY

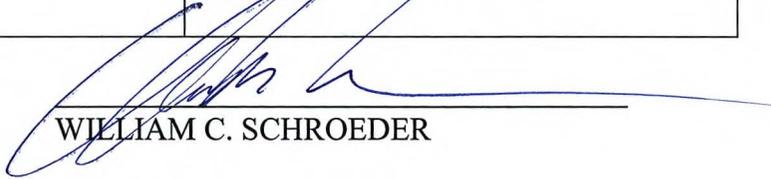

WILLIAM C. SCHROEDER

EXHIBIT 1

31116

SERVICE DATE - JUNE 23, 2000

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33888]

Tri-City Railroad Company, L.L.C.--Lease and Operation Exemption--Rail Line of the Port of Benton in Richland, WA

Tri-City Railroad Company, L.L.C. (Tri-City), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the Port of Benton (POB) and operate approximately 17 miles of rail line currently owned by the POB,¹ known as the Hanford Site Rail System, Southern Connection extending from milepost 46.6 at the junction with the Union Pacific rail line in Richland, WA, to milepost 28.3 at the border to the U.S. Department of Energy's Hanford Site, connecting with the Hanford Site Rail System, Northern Connection (north of the City of Richland). Tri-City will become a Class III rail carrier.²

Tri-City indicates that it has entered into a maintenance and operation contract with the POB, which provides for Tri-City's operation of the rail line on behalf of the POB.

The transaction is scheduled to be consummated on or after June 21, 2000.

¹ See Port of Benton--Acquisition and Operation Exemption--U.S. Department of Energy Rail Line in Richland, WA, STB Finance Docket No. 33653 (STB served Oct. 6, 1998).

² Tri-City states that its projected revenues will not exceed those that would qualify it as a Class III carrier.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33888, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John Hawkenson, 2579 Stevens Drive, Building 1171, P.O. Box 1700, Richland, WA 99352.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: June 16, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

31093
SEC

SERVICE DATE - OCTOBER 20, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33881

PORT OF BENTON--CHANGE IN OPERATOR EXEMPTION--TRI-CITY RAILROAD
COMPANY, L.L.C.

Decided: October 17, 2000

On May 31, 2000, Port of Benton (POB) filed a verified notice of exemption under 49 CFR 1150.31 for a change of operator on approximately 17 miles of its rail line, known as the Hanford Site Rail System, Southern Connection, extending from milepost 46.6 at the junction with the Union Pacific Railroad Company rail line in Richland, WA, to milepost 28.3 at the border of the U.S. Department of Energy's Hanford Site, connecting with the Hanford Site Rail System, Northern Connection (north of the City of Richland).

On June 13, 2000, Tri-City Railroad Company, L.L.C. filed a verified notice of exemption to lease and operate the above-described rail line from POB.¹ Because the June 13 filing is essentially a substitute for the May 31 filing, POB, by letter filed October 4, 2000, requests that the notice of exemption it filed on May 31 be withdrawn. The request will be granted and the proceeding will be dismissed.

It is ordered:

1. The request to withdraw the notice of exemption filed on May 31, 2000, is granted and the proceeding in STB Finance Docket No. 33881 is dismissed.

¹ See Tri-City Railroad Company, L.L.C.--Lease and Operation Exemption--Rail Line of the Port of Benton in Richland, WA, STB Finance Docket No. 33888 (STB served June 23, 2000).

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

EXHIBIT 2

CONFIDENTIAL--SUBJECT TO INSPECTION ONLY BY PARTIES TO THE RECORD

This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 15925

NORTHERN PACIFIC RAILWAY COMPANY, ET AL. TRACKAGE RIGHTS ETC.

Submitted July 15, 1948.

Decided September 28, 1948.

- (1) Acquisition by the Northern Pacific Railway Company of trackage rights over that portion of the Yakima branch line of railroad of the Oregon-Washington Railroad & Navigation Company, Union Pacific Railroad Company, lessee, between Kennewick and a connection with tracks to be constructed by the United States of America, in Benton County, Wash., approved and authorized. Conditions prescribed.
- (2) Certificate issued authorizing operation by the Northern Pacific Railway Company and the Union Pacific Railroad Company over that portion of a line of railroad, constructed and to be constructed by the United States of America, extending from a connection with the Yakima branch of the Oregon-Washington Railroad & Navigation Company to and into an exchange yard which the United States will construct near the north bank of the Yakima River, in Benton County, Wash. Conditions prescribed.

L. B. daPonte, Conrad Olson, and F. J. Melia for applicants,
Roger I. Harris and F. A. Allan for Atomic Energy

Commission.

A. N. Whitlock, Thomas H. Maguire, and Larry H. Dugan for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, intervener.

J. E. Daubenspeck, H. F. Love, L. A. Borden, A. R. Tonn,
and G. A. Robison for employees of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

P. K. Byers and C. W. Stevens for other railway employees.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS LEE, MAHAFFIE, AND MILLER

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed and the case was argued orally. Our conclusions differ somewhat from those recommended by him.

The Northern Pacific Railway Company, hereinafter sometimes called the Northern Pacific, and Oregon-Washington Railroad & Navigation Company, Union Pacific Railroad Company, lessee, hereinafter referred to jointly as the Union Pacific, by application filed November 25, 1947, applied for permission, under section 1(18) of the Interstate Commerce Act, to extend their operations by trackage rights and joint use over that portion of a line of railroad, constructed and to be constructed by the United States of America, from a connection with the Yakima branch of the Oregon-Washington Railroad & Navigation Company to and into an interchange yard which the

United States will construct near the north bank of the Yakima River, approximately 6.67 miles; in connection with which proposed operation the Northern Pacific Railway Company proposes to acquire, under section 5(2) of the act, trackage rights over the said Yakima branch from the point of connection with the proposed railroad to be constructed by the United States to Kennewick, approximately 4.92 miles, all in Benton County, Wash. The Atomic Energy Commission, hereinafter referred to as AEC, intervened in support of the application, and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the Milwaukee, intervened in opposition thereto. A hearing was held and briefs were filed. At the hearing railway employees of the Milwaukee, lines west, were represented and opposed the granting of the application. Representatives of other railway employees also entered appearances at the hearing but introduced no evidence. No representations have been made by any State authority. Unless otherwise indicated, all points hereinafter mentioned are in the State of Washington.

The sole purpose of the instant application is to provide additional rail transportation service from the south to the Hanford Engineering Works, also known as the Hanford Project, a vast area located in Benton, Grant, and Franklin Counties, comprising 640 square miles, or more than 400,000 acres. Hanford Works is used by the Government in the production of plutonium, an element which is not only vital in connection with the development of military weapons, but which also has important and far reaching peacetime applications. It is the only large-scale plutonium producing plant in the United States. Tremendous inbound tonnages of coal, chemicals and other commodities are received at the project, making continued rail service thereto essential.

Construction of Hanford Works was commenced in March 1943, and completed in February 1945. The original construction and operation was conducted by E. I. du Pont de Nemours and Company, under the supervision of the War Department, in accordance with the provisions of a "pure cost contract" under which the Government agreed to reimburse the contractor for all expenditures and losses, including transportation costs. By appropriate Congressional legislation approved August 1, 1946, and an Executive Order issued December 31, 1946, the project was transferred from the War Department to AEC. As of September 1, 1946, the General Electric Company has been operating Hanford Works pursuant to a pure cost contract substantially the same as the original duPont contract. Since the inception of Hanford Works, the contracts under which operations are conducted have been classified as "secret" by the authorities charged with the duty of its administration. The nature of the project requires that the greatest degree of security be exercised at all times because the interruption of plant production for any reason would be critical.

In connection with the original construction, the Government built a standard-gage, single track railroad line to serve the residential and operational areas. This Government-owned-and-operated railroad system is made up of approximately 180 miles of main line, industrial spurs, and classification yards, a portion of which formerly belonged to the Milwaukee. In

Finance Docket No. 14330, Chicago, M. St. P. & P. R. Co., Trustees Abandonment, 254 I.C.C. 831, decided October 15, 1943, which permitted abandonment of that portion of the Milwaukee's Hanford branch extending from a point near Vernita to Hanford, approximately 25.105 miles. Subsequently that segment was acquired by the Government for \$375,000, and it now forms a part of the Government railroad within the restricted area.

At present, the only rail service to Hanford Works is provided from the north by the Milwaukee's Hanford branch extending from Beverly Junction to a connection with the Government-owned railroad, approximately 20.79 miles. Interchange is effected at Riverland, a point approximately 1.75 miles inside the Government confine, but in the Milwaukee's tariffs the station designation is shown as Hanford. The history of the Milwaukee's line and its operational function into the project will be described below.

Richland is the residential section and the main administration area of Hanford Works. It is located in the extreme southeastern section of the reservation, about 5 miles north of the proposed connection with the Union Pacific, and approximately 48 miles by rail from the connection with the Milwaukee on the north. Richland is to be developed into a normal American community. It is a modern and permanent city with standard school facilities, stores, service establishments, theaters, churches, recreational facilities, a post office, and a bank. This community grew from approximately 250 inhabitants before the project was undertaken until now it contains sufficient housing to accommodate approximately 18,000 individuals whose family heads are engaged in the operation of Hanford Works. In addition, another community of about 5,000 construction workers is located at North Richland, approximately 2 miles north of the existing city limits of Richland. The industrial area of the project extends north, east, and west of Richland and contains several main production plants, 1 of which is not more than 4 miles from Richland. Other processing plants are located farther north, and are closer to the Milwaukee than to the proposed interchange with the applicants. Because of a current expansion program, it is anticipated that the permanent population of Richland will ultimately increase to 25,000 citizens, and that the temporary population of North Richland, during the period of the new construction, will approximate 20,000 inhabitants. The work already assigned in connection with the expansion program is sufficient to last 4 or 5 years.

In order to expedite completion of the expansion program and in the interest of economy, the authorities at Hanford Works recently have obtained the use of a major portion of the Government-owned Pasco General Depot, hereinafter sometimes referred to as the depot, located southeast of Pasco near the confluence of the Snake and Columbia Rivers. The depot is approximately 15 miles from Richland, and consists of 8 permanent type modern warehouses, each containing approximately 166,000 square feet of floor space. In addition, various other shops and service buildings, which are appurtenant to an establishment of this nature, are available. The depot area comprises 715 acres and is provided with adequate outside storage yards, roadways, unloading docks, a railroad system to meet the requirements

of the operation, and is fenced and patrolled in accordance with security regulations. It is considered a permanent facility in connection with future operations of Hanford Works. The original cost to the Government for construction of the warehouse buildings alone in 1942 was approximately \$2,535,000, and it is estimated that to duplicate these warehouses on the Hanford Project at present prices would cost the Government more than \$5,000,000, exclusive of necessary appurtenances. The depot is switched by the Northern Pacific, but the tracks of the Spokane, Portland & Seattle Railway are adjacent thereto. It is utilized for storage of various materials and equipment which must be protected from the weather, and which are now arriving for the current expansion program at Hanford Works. Between June 19, 1947, and January 26, 1948, a total of 167 carloads, or 9,384,246 pounds, of freight was received and placed in storage at the depot for ultimate use at Richland. Much of this property was received by rail, and consists principally of building materials and certain chemicals. The volume is expected to increase greatly. Storage space for chemicals shipped in tank-car lots is limited in the restricted area so that provision must be made to hold chemicals at the depot until needed. Some plumbing supplies stored at the depot were trucked in from Portland, Oreg., and other nearby points.

Negotiations for a southern rail connection to serve the project were commenced in June 1943, when the applicants were invited by army officials in charge of construction at Hanford Works to build, at the railroads' expense, a line to connect near Richland with the Government's railroad then under construction within the reservation. This the railroads refused to do. Subsequent discussions involving alternative proposals were had between the parties, culminating in an agreement reached during the first week of August 1943, under which the railroads were to contribute \$75,000 and to pay an allowance of \$2 for each loaded car handled in line-haul movement into or out of the project. Because of higher construction costs in 1947 as compared to 1943, these amounts were increased to \$100,000 and \$4 per car, respectively, in the final contract. The lump-sum contribution by the railroads was to be in lieu of the cost to them of constructing interchange tracks at the point of connection. The project authorities insisted that for security reasons the interchange yards be located within the reservation. Contracts covering the proposed construction by the Government and operation by the applicants of the southern gateway were prepared and completed in September 1943, but because of failure to obtain requisite approval of the Office of Defense Transportation such construction and operation into the project were not consummated at that time. Thereafter the matter lay dormant until the middle of 1947 when the then commanding officer of the project contacted the applicants and again broached the proposition that the railroads build a southern connection at their own expense. The applicants rejected the idea of building into the project but stated that they were willing to resume negotiations on bases similar to those existing in 1943, when the original proposal was blocked. Further discussions were had which finally resulted in execution of the two contracts covering the proposed construction and operation of the southern connection for which authority is sought in the instant application.

Both agreements are dated November 6/ 1947, and are conditioned upon our prior approval, if such approval is required. Pursuant to the terms of the first contract, the Union Pacific grants to the Northern Pacific the right to use in bridge movement that portion of the former's Yakima branch, extending from a connection at Kennewick to the junction of the Union Pacific's line with the track to be constructed by the Government, a distance of approximately 26,000 feet. As compensation for the rights granted, the Northern Pacific agrees to pay the sum of \$4,594.52 per annum, or one-half of 5 percent on an agreed book value of \$183,772.93, plus one-half of 5 percent upon the actual cost of all future additions and betterments chargeable to capital account. The Northern Pacific will also pay a per-car proportion of the actual costs incurred by the Union Pacific for maintenance and operation, including insurance and taxes. Following a test period the parties may agree upon a flat-rate per-car charge which will be subject to future changes from time to time as conditions warrant. Nothing herein is to be construed as permission to change the rent, or the basis thereof, without our prior authority. General control, management and administration of the joint trackage shall remain in the Union Pacific, but all rules, regulations, and train schedules shall be equal, just, and fair as between the parties using the line. The books and records of the Union Pacific bearing on the costs of improvements to the property, or of maintenance and operation thereof, shall be made available to the Northern Pacific for inspection at all times. Should the Northern Pacific default on any payment or fail to perform any of its covenants under the agreement, which default or failure shall continue for a period of 6 months after written notice by the Union Pacific, the latter may, at its election, terminate the agreement and exclude the former from all use of the property covered thereby. Other provisions pertaining to joint employees, damage claims for loss of property or injury to persons, negligence of workmen, clearing wrecks, and arbitration, usually embodied in instruments covering joint-facility arrangements between railroads are contained in the agreement. The contract, by its terms, is to become effective upon completion of construction of the Government track with which the Yakima branch is to connect, and continue in effect so long as the Northern Pacific shall have the right to operate over said Government track; provided that the Northern Pacific may terminate the agreement by 6 months' notice in writing at anytime after 2 years from such effective date.

The second agreement is by and between the United States of America, acting through the AEC; on the one hand, and the Northern Pacific and Union Pacific, on the other. It provides that the Government will at its sole cost and expense acquire the necessary right-of-way for, and construct a line of railroad extending from the point of connection with the existing Government line within the reservation at or near Richland to a connection with the Yakima branch of the Union Pacific, approximately 5.4 miles, including a bridge across the Yakima River; also the facilities at the interchange yard, and a wye track to be located at a point between said interchange yard and Richland. Upon completion of all such construction, the applicants shall each contribute one-half of the sum of \$100,000, which sum it is agreed fairly represents the cost to which the applicants would be subjected if they constructed interchange trackage at the point of connection with the Yakima branch. For the right to operate over the Government's line between the southern boundary

of Hanford Works, on the north bank of the Yakima River, to the connection with the Union Pacific's Yakima branch, approximately 3.4 miles, the applicants also will pay, as rental, until such time as the total of such payments made by them equals the initial actual cost to the Government of constructing that segment, the sum of \$4 for each loaded car moved in either direction over the segment, on which the haul of the Northern Pacific is beyond Pasco and that of the Union Pacific is beyond Kennewick. Stoppage in transit at Kennewick from points beyond shall not cause a shipment to lose the character of a line-haul movement. After such rental payments shall equal the cost of constructing the bridge and the segment from the bridge to the connection with the Yakima branch, the applicants shall continue to have the right, during the term of the agreement, to operate over the trackage without further rental payments. No rental or other charge is to be paid by the applicants for the right to operate over the segment extending from the north bank of the Yakima River to the interchange yard, for use of the facilities at the yard or the wye track. The applicants may, by mutual agreement, arrange for either of them to operate a joint train between Kennewick and the interchange yard in order to move the business of both railroads; the railroad operating such joint train shall be considered as the agent of the other company in such operation. The Government may terminate the agreement at any time upon 6 months' advance notice in writing to the applicants.

The estimated cost of the bridge and the trackage upon which the \$4-per-car allowance is applicable amounts to \$225,000. In addition, the Union Pacific will incur a capital expenditure of \$3,322 for construction of a connection between its Yakima branch and the Government's trackage serving the Hanford area. Construction of the Government's track will commence promptly upon our approval of the application herein. Traffic anticipated by the applicants to be handled through the southern connection during the first 5 years of operation commencing July 1, 1948, in order, is shown as 7,040, 9,940, 8,256, 8,256, and 8,256 carloads. The principal commodities expected to be handled, and the probable points of origin, are shown as follows: Cement from Lime, Oreg., Seattle and Spokane; coal from Castle Gate, Utah, and Kleenburn and Rock Springs, Wyo.; iron and steel from Seattle, Portland, Chicago, Ill., and Pittsburgh, Pa.; machinery from Chicago and Schenectady, N. Y.; and lumber and miscellaneous construction and operating materials from Portland and Tacoma. The annual average traffic for the succeeding years, after the fifth fiscal year ended June 30, 1953, is estimated at 7,266 carloads, consisting of 7,000 of coal and 266 carloads of miscellaneous materials. The foregoing estimates of traffic represent an arbitrary allocation for the combined operations of the applicants; no breakdown is made as to the respective individual business each of them anticipate handling into the project.

Coal is the bulk of the inbound tonnage to the Hanford Works, although considerable other traffic will be required in carrying out the expansion program. An estimated 40 percent of the traffic,

except coal, is expected to move through the southern connection. The coal may be handled through either connection, depending upon the source of supply, the rates applicable thereon, and other factors. Contracts are made on a BTU basis in the spring of each year for the amount of coal estimated to be needed at the project during the coming year. At the time of the hearing, some coal was being obtained from mines local to the Milwaukee and no doubt would continue to be handled by that carrier through the northern connection so long as those sources remain available. It is the opinion of responsible officers of both AEC and the prime contractor that sufficient traffic will move inbound to the project to support profitable operations by the applicants as well as the Milwaukee. An equitable and fair distribution of all shipments is contemplated, because to divert traffic from the Milwaukee to an extent that operations through the northern connection no longer would be profitable and endanger discontinuance of that gateway by abandonment of the Hanford branch would defeat the primary purpose of the plan seeking additional rail service to the project. Because of the current expansion program, the transportation superintendent of the prime contractor estimated that even with construction of the southern connection, the Milwaukee's revenues from project traffic for the next 3 or 4 years will be comparable to those received by it during the past 2 or 3 years.

Financial results of operation for the first 5 years mentioned above are shown by the applicants as follows: Gross freight revenues \$2,703,500, \$3,299,700, \$2,118,000, \$2,118,000, and \$2,118,000; operating expenses, estimated at 50 percent of gross revenues, \$1,351,750, \$1,649,850, \$1,059,000, \$1,059,000 and \$1,059,000; joint-facility rents, representing rental payments at the rate of \$4 a car as provided in the contract, \$28,160, \$39,760, \$33,024, \$33,024, and \$33,024; and net railway operating income \$1,323,590, \$1,610,090, \$1,025,976, \$1,025,976, and \$1,025,976. Corresponding figures for the annual average succeeding years are \$1,536,700, \$768,350, \$29,064, and \$739,286.

Proponents of the southern connection rely primarily on the greater degree of security, and secondarily on the operating convenience and the large savings in transportation costs that will result if such connection is made available. Concern was expressed by the present manager of Hanford Works, who is charged with the responsibility of its security, as to the rail facilities now serving the project. It is his opinion that another railroad line to the area is needed as a matter of ordinary prudence, and in order to minimize the possibility of interruption of manufacturing operations that any discontinuance of rail service to the area would entail. In his judgment the proposed connection with the Union Pacific on the south would provide, at modest expense, the most effective and practical means of obtaining additional rail transportation service to the project. Such a connection, in addition to making available completely different transcontinental rail networks of the applicants, would also be over tracks physically located at a considerable distance from the existing Milwaukee outlet. He has no fault to find with the quality of service performed by the Milwaukee during the war, but insists that the significance of Hanford Works, at that time, was virtually unknown while now its military importance is common knowledge throughout the world, and plans must be formulated on the basis that in the event of future emergency the project will be at the top of any list of national defense targets.

As to secondary reasons advocated, it is stated that the southern connection is essential for the efficient use of the Pasco storage facility. Under existing conditions, rail traffic stored at the depot must move via the Northern Pacific from Pasco to Easton, and thence over the Milwaukee for delivery to the Government railroad at Hanford, a distance of approximately 257 miles, as compared to a single line haul of 14 miles over the proposed connection to Richland. Excessive transportation costs also result. For example, a 30,000-pound carload of machinery moved over the longer rail route would result in freight charges amounting to \$360. The same shipment by common carrier truck from the depot to Hanford would cost \$99, and to Richland \$54. Cumbersome articles not readily susceptible to truck transportation now must be handled by rail over the circuitous route to Hanford. Then too, the trucking of materials between the depot and Richland is not desirable because of congested traffic conditions on the highway, and the bottleneck through the Yakima valley and over the Pasco bridge. If the southern connection is authorized, all materials requiring warehousing could be shipped by rail from the depot to Richland at a nominal transit charge. The Milwaukee contends that transit arrangements at the depot would be so complicated and expensive to administer that no economical rules or practicable plan of handling traffic in that manner could be devised. The southern connection would also reduce, by more than 300 miles, the distance between the Hanford project and the Los Alamos project of the AEC near Santa Fe, N. Mex., and conceivably could result in a reduction in transit time of from 2 to 5 days on carload shipments to the project from major shipping points in California, Colorado, New Mexico, Oregon, Idaho, Wyoming and points in southern and southwestern territories.

Considerable testimony was adduced at the hearing tending to show the effect the southern connection would have on freight rates to Hanford Works. The traffic supervisor for the prime contractor testified that such rates would be on the same basis as those applying to Pasco and Kennewick, and as a result the Milwaukee would be forced to meet these rates or lose competitive traffic on which a lower rate was applicable to Pasco or Kennewick than to Hanford. Present rates on coal from Synnyside and Wattis, Utah, to Kennewick are \$1.05 a ton lower than to Hanford; and from Klecnburn, Wyo., the differential on the same commodity via the southern connection is \$1.29 a ton lower than the Milwaukee rate to Hanford. The excess rail mileages from these points via the Milwaukee and its connections to Hanford as compared to the routes over the applicants' connections to Kennewick are as follows: Klecnburn 88 miles, Wattis 240 miles, and Sunnyside 186 miles. The Union Pacific's route from Kennewick to Portland is also substantially shorter than that of the Milwaukee from Hanford through Tacoma. Other comparisons of distances favorable via the proposed connection and the applicants' lines are of record, but need not be detailed herein.

In many instances proposals for adjustment of commercial class and commodity rates to and from Hanford were acted upon favorably by the carriers so that the same bases of rates are now in effect to or from Kennewick as are applicable via the

Milwaukee to or from Hanford. The traffic supervisor was told by officials of the Milwaukee that because of the geographical location of Hanford as compared to Kennewick, a complete equalization of rates could not be made, but that it was felt reductions could be effected in perhaps 90 percent of the cases upon the assurance that the southern connection would not materialize. Approval of an application under section 4 of the act may be necessary in order to effect some of the reductions contemplated. Since the filing of the instant application, however, the Milwaukee's efforts to reduce rates to the Kennewick basis have been going forward more rapidly, and at the time of the argument the program was practically completed.

Effective November 8, 1943, Milwaukee section 22 quotation No. A-4 was negotiated which afforded the same net cash land-grant rates, plus 10 cents per 100 pounds, as were applicable via the Northern Pacific between Kennewick and certain defined territories throughout the country on traffic moving to or from Hanford. It did not apply on coal from Wyoming; but did apply to United States property shipped on Government bills of lading for account of the War Department on which the War Department was entitled to reduction of rates over land-grant routes. The quotation afforded some measure of relief in payment of higher freight charges at Hanford compared with rates applicable to or from Kennewick. Nevertheless, it was estimated that from the start of the project in 1943 to October 1, 1946, the Government would have saved approximately \$1,500,000 in freight charges paid to the Milwaukee and its connections if there had been a physical connection with the applicants on the south, and land-grant rates had applied on the shipments moved into the project. Since such rates were repealed effective October 1, 1946, no savings with respect thereto would have accrued to the Government after that date. Consequently, this phase of the case need not be considered further.

For the period January 1 to December 31, 1947, savings in freight on coal shipments received at Hanford would have amounted to \$266,591, and on the actual carload movements of various other commodities to \$31,380, if a southern connection to the project had been available. The AEC believes that with the increase of future shipments as a result of the expansion program, the savings in freight charges correspondingly will be greater. The traffic supervisor for the prime contractor is concerned first of all with the rates the Government must pay on traffic to and from the project; the matter of distances the shipments must move is secondary.

Prior to 1943, the Milwaukee's rates to Hanford were not specifically designed for the traffic which developed to and from the project. However, starting in 1943, numerous and repeated requests for special rates were made by the army, the prime contractors, and others, and in those instances where concurrences with connecting carriers were obtained, favorable disposition was made with respect to practically every request. An exception would be in the case of coal to Kennewick from points in southern Wyoming local to the Union Pacific upon which that carrier now receives revenues of \$4.95 a ton. To acquiesce in a reduction of the Hanford rate to that basis would cause the Union Pacific to haul the traffic 67 miles farther to the Milwaukee connection at Marengo for \$1.24 a ton loss revenue.

Consequently, the Union Pacific refused to join in the Milwaukee's request to equalize rates on such traffic. A similar situation exists with respect to Roslyn and Ronald, local points on the Northern Pacific, and from mines in Utah from which coal is shipped to Hanford, and on which the Western Pacific Railroad is a participating carrier. The Milwaukee contends that request by the AEC for a general reduction of Hanford rates to the Kennewick bases was not officially made to it until October 20, 1947. Since the desires of AEC are now known, and because of the threatened potential competition from the applicants, the Milwaukee has embarked upon a policy of effecting rate reductions in all cases wherein the present Kennewick rate is lower than those applicable at Hanford. With the cooperation of its connections, it sees no reason why such equalization cannot be made.

The Milwaukee's Hanford branch was constructed in 1912 for the purpose of providing rail service to an irrigated area south of Vernita. It was maintained and operated at the usual branch-line standards and enjoyed very large earnings until 1933, when unfavorable market conditions caused a transition in the tributary territory from the growing of apples and pears to the production of soft fruits and early market vegetable crops. In 1938-39 the branch was operated at a deficit. Prior to 1943, train service was operated only when traffic was offered for shipment and averaged about one trip a week. The engine and crew operated out of Othello, and were also used to provide service on the Moses Lake and Marcellus branches of the Milwaukee.

That portion of the Hanford branch which produced the most traffic was requisitioned by the Government. During the 10-year period 1938-47, the total freight charges on traffic originating and terminating on the portion retained by the Milwaukee averaged only \$2,066 a year. In 1929 that portion had total freight revenues of only \$5,500 out of a total of \$219,000 produced on the entire branch. Various reports of responsible agencies unanimously conclude that the territory tributary to the Hanford branch now operated by the Milwaukee is not suitable for irrigation or other agricultural development. Studies were made by the Milwaukee in 1934, and again in 1938-39 to determine whether the Hanford branch should be abandoned.

The Hanford branch, as it now exists, follows the course of the Columbia River for a considerable distance and lies at the base of some precipitous slopes. Some raveling of banks has been experienced in the past, but no serious rock slides, causing interruption of service, have occurred during the 35 years the branch has been in operation. The branch traverses a sparsely settled area capable of being policed with a minimum of effort. It has 52 culverts, and 19 bridges consisting of 141 spans with a total length of 2,217 feet. The longest bridge has 23 spans and is 316 feet long; the highest is not over 12 or 15 feet above the water line. All bridges are of pile and timber construction and of a type that can be easily replaced in case of damage. No traffic delays have occurred because of the failure of any bridge on the branch since service to the project was instituted.

Beginning with the development of Hanford Works, the Milwaukee started an extensive improvement and rehabilitation program on its retained portion of Hanford branch. Passing tracks were extended and set-out tracks constructed. Heavier rail was laid on the curves; over 7 miles of 100-pound being substituted for 65-pound rail. Hardwood ties and guard rails were placed on the curves, and the shoulders of the track were restored by additional filling. The entire branch from the connection with the Government-owned line near Riverland to Beverly Junction was ballasted, and a wye, costing \$55,000, was installed at the latter point to facilitate rail service to the project in the event the Milwaukee's bridge across the Columbia River was incapacitated. Additional facilities for employees were provided at Beverly, and new trackage was installed at that point to handle the greatly expanded traffic to the project. The additional expense at Beverly and on the branch directly attributable to service to the project is estimated by the Milwaukee at \$418,653.

After many of these improvements had been made, the commanding general in charge of the Manhattan project, which included Hanford Works, made a personal inspection trip over the branch. At the conclusion of the trip the general stated that if the Milwaukee officials would continue to feel a personal responsibility in handling the project's traffic, and would continue to maintain the branch as they were doing, and that if certain additional safeguards, at the time discussed, were completed, he "was not going to worry about the Milwaukee Road". This inspection by, and expression of, the general occurred in December 1943, after construction of the southern connection had been blocked by the adverse ruling of ODT.

Generous assistance in the form of adequate equipment and experienced operating personnel was extended by the Milwaukee to the army and the prime contractor in providing complete and efficient service within the project during the war. Many commendations were received by the Milwaukee for the services thus rendered. The Hanford branch is adequate to handle the traffic now moving over it, and is maintained to a standard capable of handling a great amount of additional traffic. No difficulties or complications of operations have been experienced at any time. The Milwaukee maintains a general agent at Hanford who keeps in close contact not only with the regular service, but also with respect to special service that may be required from time to time. It is the opinion of the Milwaukee that adequate service and security will continue to be had with single-line operation to the project, and it is willing to comply with any request of the Government, or the prime contractor, in the way of improvements, safeguards, and service. It is also willing to reinstall the west leg of the wye which was removed with the approval of the army at the close of hostilities, and which can be replaced in a few days as the grade is still intact.

Traffic for the account of Hanford Works commenced moving over the Milwaukee's branch on April 5, 1943. Carload shipments for the period April 5 to December 31, 1943, the years 1944-46, and the period January 1 to October 31, 1947, in order, are shown by the Milwaukee as follows: Inbound, 12,816, 23,719, 7,642, 7,602, and 6,654, total 58,433 cars; outbound 5, 1,673,

2,933, 759, and 69; total 5,459 cars; or a grand total, inbound and outbound, of 63,872 cars. The inbound traffic was consigned to 93 different consignees, 5 of which were classified by the Milwaukee as being either the Government or the prime contractor, and the remaining 88 were commercial firms which paid the freight bills. The outbound shipments, starting with January 1944, were made by 45 different consignors, of which 5 were Government agencies or the prime contractors, and the remaining 40 were commercial firms. In each case, the majority of commercial firms referred to received or forwarded freight on commercial bills of lading and constituted subcontractors working for the prime contractor on the project.

During the first 9 months of 1947, the average traffic moved each month into the project consisted of 578 cars of coal and 97 cars of other commodities. For the last 3 months of 1947, the expansion program has increased the movement of the other commodities to an average of 701 cars a month. Present freight-train service is operated from Beverly to the interchange yard at Riverland daily, except Sundays. Occasional special runs are made when requested. The traffic to the Hanford area also necessitates the operation of extra trains on the Milwaukee main line. For an average of 60 carloads moving west-bound each week, an extra train involving round trips for train and engine crews in each of 6 operating subdivisions between Harlowton, Mont. and Othello, approximately 360 miles, is required. An average of 30 carloads per day moving east-bound from Tacoma and other Pacific coast points requires 2 extra trains per week, involving round trips for a complete train and engine crew in each of 2 operating subdivisions between Tacoma and Othello.

The Milwaukee is apprehensive lest the construction of the southern connection will divert the traffic it now handles into the project to such an extent that its Hanford branch, of necessity, will have to be abandoned. It points out that the contract between AEC and the applicants provides for the cost of the new trackage, estimated at \$625,000, to be repaid by the applicants at the rate of \$4 for each loaded car handled in line-haul movement over the southern outlet. On this basis, the Milwaukee notes that it will take 156,250 revenue carloads of freight to repay the full amount, and that according to the traffic estimates submitted by the applicants in the return to questionnaire, a period of 21 years will be required to furnish that amount of traffic. The Milwaukee contends that it cannot look forward to any traffic from or to the project until the Government investment is liquidated because no employee of the Government or the prime contractor could justify routing traffic over the Hanford branch when such traffic could be handled by the applicants at a lower transportation cost as a result of the \$4-per car repayment to the Government.

Employees of the Milwaukee, lines west, which includes operation of trains over the Hanford branch, are opposed to the application on the ground that construction of the southern connection will cause them to lose seniority on the work that they now are, and have been, handling since the Hanford project was started in 1943. They contend that, already having lost rights

on the 25 miles of track taken over by the Government, their right to serve the project should not be further curtailed, or taken over completely, by the employees of the applicants. They state that it would be difficult, because of age limits, for Milwaukee employees to obtain new jobs with other carriers, if granting of the application results in their services no longer being required. The employees contend that in view of the services heretofore performed, especially during the war period, and unless the welfare of the country is involved in the matter, the Milwaukee should be granted the exclusive privilege of continuing to serve the project. According to advice furnished by the Milwaukee to its employees, the shipments moving into the project furnishes regular employment to 24 men in engine and train service, for which annual wage earnings of approximately \$99,000 are paid. An additional \$30,000 in wages, making a total of approximately \$129,000 annually, would be lost to engine and train service employees in the event maintenance of the Hanford branch no longer is justified as a result of the shipments being diverted to other lines. A total of 5 clerical and station employees at Beverly, earning combined wages of \$15,827.76 a year, also would be affected if the Milwaukee traffic to the project is lost. The foregoing figures are predicated upon a loss of all Milwaukee business into the project; a partial loss of such business would result in a partial reduction in the annual wages now received.

The application herein was filed ^{to the contention} subject of the applicants that their operations over the Government's line of railroad come within the exemption provisions of section 1(18) to (22) of the act, as the proposal will not constitute an extension of the applicants' railroad but will be merely an arrangement for the joint possession and use of industrial spur and switching tracks. They state that no communities or industries other than the Government property will be served by this portion of the trackage, and that the territory is immediately tributary to the Yakima branch of the Union Pacific. Such contention is untenable. The record shows that service by the applicants over the Government line will be for the Government, the prime contractor, and subcontractors working on the development program. In addition, the applicants' common carrier services will be used by business establishments now located, or to be located, at Richland. Under the circumstances, the proposal of the applicants results in an extension of their lines of railroad for which a certificate of public convenience and necessity is required. Texas & Pacific Ry. Co. v. G. C. & S. F. Ry. Co., 270 U. S. 266, 277-9.

The magnitude and importance of Hanford Works require that rail services of the applicants through the southern connection be made available. Security alone is a sufficient ground upon which to predicate such finding, but, contrary to the contention of the Milwaukee, this record contains ample additional evidence showing that operation by the applicants into the project will be in the public interest. Complete and efficient utilization of the storage depot at Pasco can be realized only by the rail service proposed by the applicants, and such service will result in benefits to the Government in providing more direct routes and lower transportation costs on shipments moving to and from Richland. The need for the southern connection has been recognized by those charged with the management of the project since its inception. Heretofore the Commission has recognized that the interests of a shipper are matters of substantial importance in determining the question of public convenience and necessity. See

Finance Docket No. 15665, Chesapeake & Ohio Railway Company Construction, 267 I.C.C. . Considering the fact that the principal shipper in the present case is the Government, and that the essential nature of the project to be served demands that every contingency capable of disrupting continuous rail operation be perpetually anticipated, the public interest is materially enhanced.

Although the Milwaukee's exclusive service to the project during the war was adequate, the record herein clearly demonstrates that some traffic, particularly that destined to Richland, can be handled more conveniently and expeditiously through the southern connection. Such a connection should be made available, but we are not convinced that the method of defraying the cost thereof should be approved. Conceivably the 34 allowance to the Government for every carload of traffic handled by the applicants may tend to divert traffic from the Milwaukee's northern connection to the extent that the Hanford branch eventually will have to be abandoned, thereby defeating the primary object which the instant application proposes to achieve, namely, the establishment of two rail lines to the project. Irrespective of the confidence expressed by counsel for the AEC at the argument that its judgment in routing traffic to and from the project will not be questioned by the General Accounting Office, no one at the hearing was willing to guarantee the Milwaukee sufficient traffic to warrant continued operation of the Hanford branch. Consequently, our approval of this phase of the transaction will be conditioned upon payment by the applicants for the bridge and the segment of the Government's line from the bridge to the connection with the Yakima branch, or for the use of the bridge and segment, being made in periodic and regular installments. The installments should be sufficient to liquidate the cost of the bridge and segment over a period of 15 to 25 years, as agreed upon by the AEC and the applicants, without interest, and when full payment has been made, the applicants should thereafter be permitted to operate over the line without further payments. The applicants should advise us, within 30 days from the date hereof, whether the conditions imposed are acceptable to them, and if so, undertake to file with us, when completed, a certified copy of the agreement in the form in which it is executed. Copy of the modified agreement also should be furnished all parties of record. Except for the fact that the Government is involved, it is questionable whether the applicants should contribute \$100,000 toward the cost of the interchange tracks to be constructed within the project.

Operation by the Northern Pacific over that portion of the Union Pacific's Yakima branch, for which authority under section 5(2) of the act is herein sought, will not affect adequate transportation service to the public. This phase of the proposal does not contemplate a guaranty or assumption of payment of dividends or fixed charges, and no increase in the applicants' total fixed charges will result. No other railroad has sought to be included. Employees of the applicants conceivably cannot be adversely affected by the action herein taken. However, we will include, by reference, conditions for their protection similar to those prescribed in Chicago & N. W. Ry. Co. Merger, 261 I.C.C. 672. Contentions of the parties as to either fact or law not specifically discussed herein have been given consideration and are found to be without material significance or not justified.

We find that, subject to the conditions for the protection of applicants' employees referred to above, acquisition by the Northern Pacific Railway Company of trackage rights over that portion of the Yakima branch line of railroad of the Oregon-Washington Railroad & Navigation Company, Union Pacific Railroad Company, lessee, between Kennewick and a connection with tracks to be constructed by the United States of America, in Benton County, Wash., described herein, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest.

We further find that the present and future public convenience and necessity require operation by the Northern Pacific Railway Company and the Union Pacific Railroad Company over that portion of a line of railroad, constructed and to be constructed by the United States of America, extending from a connection with the Yakima branch of the Oregon-Washington Railroad & Navigation Company to and into an exchange yard which the United States will construct near the north bank of the Yakima River, in Benton County, Wash., described herein, upon the express condition that the agreement between the applicants and the Atomic Energy Commission, insofar as it pertains to payment for the tracks over which operation herein is authorized, shall be modified in conformity with the suggestions set forth above.

An appropriate certificate and order will be issued.

5-28

CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D.C., on the 28th day of September; A.D: 1948.

Finance Docket No. 15925

NORTHERN PACIFIC RAILWAY COMPANY, ET AL. TRUCKAGE RIGHTS ETC.

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to the conditions with respect to the protection of employees indicated in said report, acquisition by the Northern Pacific Railway Company of trackage rights over that portion of the Yakima branch line of railroad of the Oregon-Washington Railroad & Navigation Company, Union Pacific Railroad Company, lessee, between Kennewick and a connection with tracks to be constructed by the United States of America, in Benton County, Wash., described in the aforesaid report, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

It is hereby certified, That the present and future public convenience and necessity require operation by the Northern Pacific Railway Company and the Union Pacific Railroad Company over that portion of a line of railroad, constructed and to be constructed by the United States of America, extending from a connection with the Yakima branch line of the Oregon-Washington Railroad & Navigation Company to and into an exchange yard which the United States will construct near the north bank of the Yakima River, in Benton County, Wash., described in the report aforesaid: Provided, however, and this certificate is issued upon the express condition that the agreement between the applicants and the Atomic Energy Commission, insofar as it pertains to payment for the bridge and a part of the tracks over which operation herein is authorized, shall be modified in conformity with the suggestions set forth in said report.

It is further ordered, That this certificate and order shall take effect and be in force from and after 40 days from its date. Tariffs applicable to the lines herein involved may be established upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

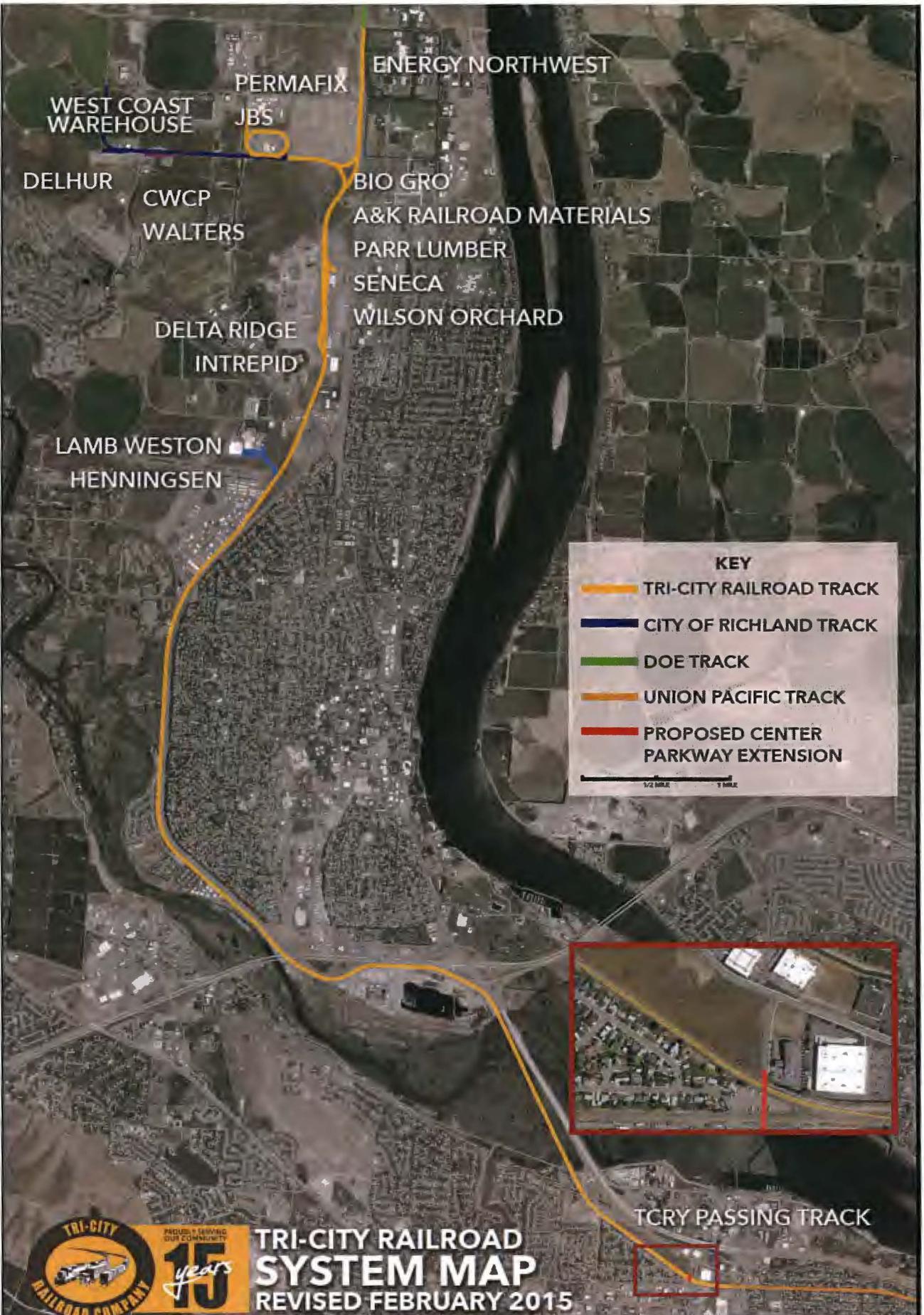
And it is further ordered, That the Northern Pacific Railway Company and the Union Pacific Railroad Company, when filing schedules establishing rates and charges applicable on said lines of railroad, shall in such schedules refer to this certificate and order by title, date, and docket number.

By the Commission, division 4.

(SEAL.)

W. P. BARTEL,
Secretary.

EXHIBIT 3



WEST COAST WAREHOUSE

PERMAFIX
JBS

ENERGY NORTHWEST

DELHUR

CWCP
WALTERS

BIO GRO
A&K RAILROAD MATERIALS

PARR LUMBER

SENECA

WILSON ORCHARD

DELTA RIDGE

INTREPID

LAMB WESTON
HENNINGSEN

KEY

- TRI-CITY RAILROAD TRACK
- CITY OF RICHLAND TRACK
- DOE TRACK
- UNION PACIFIC TRACK
- PROPOSED CENTER PARKWAY EXTENSION

1/2 MILE 1 MILE



TCRY PASSING TRACK



TRI-CITY RAILROAD SYSTEM MAP
REVISED FEBRUARY 2015

EXHIBIT 4



EXHIBIT 5

97 27682

FILED BY

OCT 30 9 16 AM '97

BOBBIE GAGNER
BENTON COUNTY, AUDITOR

VOL 676 PAGE 3587

Return Address:
 CITY ATTORNEY
 CITY OF RICHLAND
 PO BOX 190
 RICHLAND, WA 99352

9700765

PLEASE PRINT OR TYPE INFORMATION: *Cascade 116*

<p>Document Title(s)(or transactions contained therein):</p> <p>1. <i>Easement</i></p> <p>2.</p> <p>3.</p> <p>4.</p>
<p>Grantor(s)(Last name first, first name, middle initials):</p> <p>1. <i>United States of America</i></p> <p>2. <i>through DOE</i></p> <p>3.</p> <p>4.</p> <p>Additional names on page _____ of document.</p>
<p>Grantee(s)(Last name first, first name, middle initials):</p> <p>1. <i>City of Richland</i></p> <p>2.</p> <p>3.</p> <p>4.</p> <p>Additional names on page _____ of document.</p>
<p>Legal description (abbreviated: ie. lot, block, plat or section, township, range, qtr./qtr.)</p> <p><i>Section 22, T10N, R 28 E</i></p> <p>Additional legal is on page _____ of document.</p>
<p>Reference Number(s) of documents assigned or released:</p> <p>Additional numbers on page _____ of document.</p>
<p>Assessor's Property Tax Parcel/Account Number</p> <p><i>Portion of 1-2208-100-0000-000</i></p> <p>Property Tax Parcel ID is not yet assigned.</p> <p>Additional parcel numbers on page _____ of document.</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.</p>

EXCISE TAX NOT REQUIRED
BENTON COUNTY EXCISE TAX DIVISION
BY *Bill Soler* DEPUTY

VOL 676 PAGE 3588

CONTRACT NO. R006-97ES13438.000

EASEMENT

The UNITED STATES OF AMERICA (Grantor), acting by and through the DEPARTMENT OF ENERGY (DOE) pursuant to the authority of 42 USC §2201(q) hereby grants to the CITY OF RICHLAND, Washington, a municipal corporation, an easement for the purpose of constructing, repairing and maintaining a railroad spur which connects to the railroad currently owned and operated by DOE upon the following described land in the County of Benton, State of Washington:

AN ACCESS AND UTILITY EASEMENT FOR A RAILROAD SPUR BEING 100.00 FEET WIDE, HAVING 50.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 22, THENCE SOUTH 00°25'13" EAST 2644.01 FEET ALONG THE EAST LINE OF SAID SECTION 22 TO THE EAST QUARTER CORNER OF SAID SECTION; THENCE NORTH 81°08'07" WEST 967.39 FEET LEAVING SAID EAST LINE TO A POINT ON THE CENTERLINE OF AN EXISTING RAILROAD SPUR AND THE TRUE POINT OF BEGINNING OF SAID CENTERLINE, THENCE NORTH 72°25'32" WEST 17.04 FEET LEAVING SAID CENTERLINE OF AN EXISTING RAILROAD SPUR TO A POINT ON A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 487.28 FEET; THENCE NORTHWESTERLY 45.62 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°21'52" TO ITS POINT OF TANGENCY; THENCE NORTH 67°03'40" WEST 481.05 FEET; TO A POINT ON A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1145.92 FEET; THENCE WESTERLY 865.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°15'50" TO A POINT OF REVERSE CURVE TO THE RIGHT SAID REVERSE CURVE HAVING A RADIUS OF 1145.92 FEET; THENCE SOUTHWESTERLY 397.47 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°52'25" TO ITS POINT OF TANGENCY; THENCE SOUTH 89°32'55" WEST 100.000 FEET TO THE TERMINUS SAID CENTERLINE.

THE LEFT AND RIGHT MARGINS OF SAID 100.00 FEET EASEMENT SHALL EXTEND OR FORESHORTEN TO TERMINATE AT RIGHT ANGLES TO SAID CENTERLINE AT THE TRUE POINT OF BEGINNING, AND AT THE EAST LINE OF THE WEST HALF OF SAID SECTION 22 TOWNSHIP 10 NORTH RANGE 28 EAST.

CONTAINS 180,647 SQUARE FEET ACCORDING TO THE BEARINGS AND DISTANCES AS DESCRIBED.

CONTRACT NO. R006-97ES13438.000

This conveyance is subject to existing easements, rights of record and the following terms and conditions:

1. DEFINITIONS:

- a. The term "Premises" as used herein means the real property described in the preceding paragraphs of this easement.
- b. The term "Government" as used herein means the United States of America or any agency thereof.
- c. The term "DOE" as used herein means the Department of Energy or any duly authorized representative thereof, including without limitation, the Manager, Department of Energy, Richland Operations Office.
- d. The term "Grantee" as used herein means the City of Richland, the grantee herein.

2. RESERVED USE OF THE PREMISES: The Government reserves unto itself, its contractors and its assigns the right (1) to use, maintain, repair, remove and replace existing roads, railroads, water lines, power lines and other facilities that may touch or intersect the Premises; (2) to construct, use, maintain, repair, remove and replace railroads, water lines, canals, power lines and other facilities over, under, across and upon the Premises; and (3) to place, use, maintain, repair, remove and replace monitoring equipment such as fire control and fire alarm facilities over, under, across, and upon the Premises. DOE's use will not be inconsistent with the purpose of this easement.

3. ACCESS: The Grantee and its authorized representatives shall have a non-exclusive right of ingress and egress to and from the Premises over abutting Government-owned lands and over such roads within DOE's property as DOE may specify from time to time for the installation, operation, maintenance, repair, and replacement of the railroad spur. The Grantee's use of the aforesaid lands and roads shall be subject to such security limitations and conditions, and also subject to such other conditions and regulations that DOE may require or issue from time to time. The Grantee's use and occupation of the Premises shall be subject to such rules and regulations regarding safety, security and access as DOE may prescribe from time to time.

4. DOE APPROVAL OF EQUIPMENT OWNED BY OTHERS: Grantee shall not install or allow the installation of any equipment owned and operated by others on the Premises without prior written approval of DOE. Grantee shall assume all responsibility for ensuring that all equipment installed on the Premises is operated in conformance with

CONTRACT NO. R006-97ES13438.000

the terms of this easement. All obligations imposed by acceptance of this easement on Grantee for compliance with applicable laws and regulations and for the indemnification of the Government, DOE and its authorized representatives apply with equal force to Grantee in regard to the operation of any equipment installed on the Premises, regardless of ownership, unless that equipment is installed by or on behalf of the Government, DOE or its authorized representatives. DOE shall not assume any obligation to provide an alternate site for operation of non-Grantee owned equipment if that equipment is determined to interfere with DOE operations and programs.

5. ORDERLY INSTALLATION: All installation, maintenance, operation, repair and replacement of operations conducted by Grantee upon Premises shall be conducted in a neat, orderly and permanent manner and all such installation on the Property shall be conducted in such a manner as not to endanger personnel or property of the Government and its contractors and shall be in accordance with the provisions of all applicable laws, regulations, ordinances and licenses.

To the extent deemed necessary for the protection of the health and safety of employees or personnel of DOE or the Grantee, or their contractors, or the public, DOE may, but shall not be obligated to, close all routes of ingress and egress to and from the Premises, or cause said Premises to be evacuated, or both; provided, that DOE shall give such advance notice of the closure or evacuation as circumstances permit. DOE's determination that such action is necessary shall be conclusive and the Government, DOE and its officers, employees, and authorized representatives shall not be liable for any damage or loss caused by such action.

6. MAINTENANCE OF PROPERTY: Grantee agrees to maintain the Premises in good condition and agrees to make all necessary repairs.
7. TERMINATION: The easement granted herein will be annulled and forfeited in whole or in part for nonuse for a period of two consecutive years, or for abandonment of the rights granted herein. Such annulment or forfeiture shall be by written notice thereof given by DOE to the Grantee and shall be effective as of the date of said notice.

DOE may terminate in whole or in part this easement if it determines that the Grantee's use thereof interferes with or endangers the DOE's operations and programs.

CONTRACT NO. R006-97ES13438.000

Upon termination of all or any part of the easement granted herein, the Grantee shall, if directed to do so by the DOE, remove all of their railroad and utility type equipment and restore the Premises to the condition existing at the time of original occupancy, all without cost to the Government or the DOE; provided, that the DOE may at its discretion accept a cash settlement in lieu of such physical restoration. All property remaining on the Premises after 60 days, or such additional time as DOE may allow in writing, shall become the property of the Government without compensation to the Grantee.

8. INTERFERENCE WITH OTHER OPERATIONS: The Grantee's operations and activities on the Premises shall be so conducted that interference is not caused to the operations of the Government and/or its operating contractors on Government-owned land in the vicinity of the Premises or elsewhere within the Hanford Site. If such interference results from the Grantee's operations hereunder, DOE may, at its discretion, issue written notice to the Grantee, which will include details of its defaulting conduct. A reasonable opportunity to take corrective action at Grantee's expense will be provided the Grantee unless DOE determines that said interference creates an emergency situation.
9. INTERFERENCE WITH OTHER OPERATION - EMERGENCY SITUATION: It is understood by Grantee that the radio-electronic type operations of the Government and its operating contractors which are now located or hereinafter placed in the vicinity of the Premises or elsewhere within the Hanford Site, are, or will be, maintained and conducted in the interests of the national defense and security and that it is of vital importance that these installations remain operable at all times. Therefore, should Grantee's electrical or utility lines at any time or for any reason cause interference with such radio-electronic type operations to the extent of making their signals unintelligible, and Grantee or its representatives are not immediately available to take corrective action, DOE shall have the right to, and Grantee hereby authorizes DOE to, enter onto the Premises and de-energize the offending station or stations. This right will be exercised only in emergency situations and Grantee shall be given such advance notice as and if circumstances permit, and in any event, Grantee shall be notified as soon as practicable after the de-energizing has been accomplished and shall be allowed to resume operation of the offending station or stations as soon as corrective measures have been effected to DOE's satisfaction. The Grantee shall hold the Government, DOE and its authorized representatives harmless from any and all claims, costs or liabilities of any nature arising out of any action taken under the authority reserved in this section.
10. INDEMNITY: The Grantee, by acceptance of this easement agrees that it shall indemnify and save harmless the Government, DOE, the contractors of DOE and the officers, employees and representatives of the Government, from any claims, costs (including, but not limited to attorney fees, consultant fees and/or expert witness fees)

CONTRACT NO. R006-97ES13438.000

or liabilities (including, but not limited to sums paid in settlement of claims), arising during the term of the grant or thereafter from the injury or death of any person or persons or the damage of any property attributable to Grantee's occupancy or use of the easement or as a result of Grantee's exercise of any other rights allowed under the terms of this easement.

11. ENVIRONMENTAL INDEMNITY: The Grantee, by acceptance of this easement agrees that it shall indemnify and save harmless the Government, DOE, contractors of DOE and authorized representatives of DOE, from any claims, costs (including, but not limited to, attorney fees, consultant fees and/or expert witness fees) or liabilities (including, but not limited to, sums paid in settlement of claims), which arise during or after the term of the easement from or in connection with the presence or suspected presence of hazardous substances in the air, soil, water, groundwater or soil vapor on or under the facilities or premises which the Grantee is allowed to use under this easement, or arising from or in connection with the presence or suspected presence of hazardous substances which have been released from the facilities or premises, unless the hazardous substances are present solely as a result of the actions of the Government, DOE or its authorized representatives. Hazardous substances, for the purposes of this permit shall include, but not be limited to, any hazardous or toxic substance, material or waste which is (1) petroleum or petroleum derivative; (2) asbestos; (3) polychlorinated biphenyls (PCB); (4) designated as "Dangerous Waste" or "Extremely Hazardous Waste" by the State of Washington under authority of the Hazardous Waste Disposal Act, RCW Chap. 70-105, and associated regulations, WAC Chap. 173-303; (5) designated as "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sections 9601, et seq.; (6) designated as "Hazardous Waste" pursuant to the Resource Conservation and Recovery Act (RCRA), 42 USC Sections 6901, et seq.; (7) designated as a "Hazardous Substance" under the Clean Water Act, 33 USC § 1321, or listed pursuant to 33 USC § 1317; (8) listed by the U.S. Department of Transportation at 49 CFR 172.101 or the U.S. Environmental Protection Agency at 40 CFR Part 302; (9) is subject to corrective action requirements pursuant to Section 3003 of RCRA; and (10) any other substance, waste or material which is regulated as hazardous, dangerous or solid waste by any federal, state or local agency.

On the date of execution of this easement the Grantee's responsibilities under the indemnification clause become effective. The Grantee's responsibilities of indemnifications are prospective from the date of execution.

CONTRACT NO. R006-97ES13438.000

The indemnification shall specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, removal, restoration or remedial action required by any federal, state or local regulatory authority, or undertaken by the Government, DOE or its authorized representatives to comply with any federal, state or local environmental protection or restoration laws, regulations or ordinances deemed applicable to the site by the Government or DOE. The obligation undertaken by Grantee to provide indemnification to the Government, DOE or its authorized representatives shall survive the expiration or early termination of this easement.

To insure that DOE is in compliance with requirements stated in the Hanford Resource Conservation and Recovery Act Permit, Chapter I §E.15, the Grantee shall immediately report to DOE the release of any dangerous waste or hazardous substances occurring on the Hanford Site. This immediate verbal report shall contain the following information:

- a. Name, address, and telephone number of the point of contact for the Grantee;
- b. Location at which the release occurs;
- c. Name and quantity of material(s) involved;
- d. The extent of injuries, if any;
- e. An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- f. Estimated quantity of released material that resulted from the incident; and,
- g. Actions which have been undertaken to mitigate the occurrence.

12. **DAMAGE TO GOVERNMENT PROPERTY:** Any property of the Government that is damaged or destroyed as a result of the actions of Grantee, its employees or agents, incident to the use of the Premises or the exercise of any other rights authorized by this easement shall be promptly repaired or replaced by Grantee to the satisfaction of DOE, or in lieu of such repair or replacement Grantee shall, if required by DOE, pay DOE a sufficient sum of money to compensate for the loss sustained by the Government as a result of the damage to or destruction of such Government property.

13. **PERMITS AND LICENSES:** Grantee shall obtain all necessary permits, licenses, certifications and/or authorizations required for construction, occupancy and operations on the easement. Grantee shall abide by all federal, state and local laws and regulations applicable to the operations on the easement. Grantee shall ensure that its operations are fully protective of the environment and of human health and

CONTRACT NO. R006-97ES13438.000

safety. To ensure this result Grantee warrants that it will abide by mandatory environmental protection, safety and health standards for operations on DOE property as identified in DOE Order 5480.4 and in Richland Implementing Procedure 5480.4B. At the request of DOE, Grantee shall produce any required licenses, permits, certifications or authorizations as evidence of compliance with this provision. Failure to comply with any part of this provision shall constitute grounds for termination of the easement.

14. FEDERAL, STATE, AND LOCAL TAXES: Grantee shall pay any and all applicable Federal, state, and local taxes levied against it for its use of the Premises.
15. REASSIGNMENT: Neither this easement nor any interest therein or claim thereunder may be assigned or transferred by Grantee except as expressly authorized in writing by DOE.
16. CONSIDERATION: As consideration for this easement DOE recognizes that the Grantee is a municipal corporation and as such mutual benefits, in the form of economic development within the community, are derived from this project
17. COVENANT AGAINST CONTINGENT FEES: Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Grantee for the purpose of securing business.
18. OFFICIALS NOT TO BENEFIT: No elected or appointed public official shall be admitted to any share or part of this easement, or to any personal benefit that may arise therefrom; but this provision shall not be construed to extend to this easement if made with a corporation for its general benefit.
19. AGREEMENT BY GRANTEE: By affixing the signature of its authorized representative at the location indicated below, Grantee hereby agrees to the terms and conditions of the easement.
20. HEADINGS: The headings in this easement are for the purposes of reference and convenience only and shall not limit or otherwise define the meaning thereof.

21. SPECIAL TERMS AND CONDITIONS: The following provisions have been included to minimize impacts to the DOE railroad system and operations during the planning and construction phase of this project.
1. DOE shall review, comment, and approve the definitive design for that portion of the rail lying on DOE property, and oversee any modifications of DOE's existing rail line during construction. The switch to be installed off of DOE's rail line and any other construction activities pertaining to the line will be constructed to the American Railroad Engineering Association standards. The design and construction of the grantees track will be done, so as not to block access to either side of DOE's rail storage yard. During construction of the rail-line coordination will be required between the grantee and Cascade Natural Gas Company so as not to damage the newly installed gas line along the railroad right-of-way.
 2. DOE shall review, comment and approve the grantees construction schedule to ensure that construction activities do not impact DOE operations.
 3. DOE and the Grantee shall establish joint operations procedures governing post construction activities.

IN WITNESS WHEREOF, the United States of America, acting by and through the United States Department of Energy, has caused this easement to be executed by its duly authorized representative on the 14th day of October, 1997.

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By [Signature]

Title Realty Officer

APPROVED AND AGREED:

CITY OF RICHLAND, WASHINGTON

By [Signature]
Joseph C. King
Title City Manager

Date October 7, 1997
JCK
10-8-97

EXHIBIT 6

INDENTURE

STATE OF WASHINGTON §
 §
COUNTY OF BENTON §

THIS INDENTURE is effective the 1st day of October 1998, between the UNITED STATES OF AMERICA, acting by and through the U.S. DEPARTMENT OF ENERGY, (the "Grantor") and the PORT OF BENTON, acting through its Board of Commissioners, (the "Grantee") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Grantor has owned and maintained certain real property and improvements thereto in or proximate to Richland, Washington known as the Hanford 1100 Area (the "Real Property") and the Hanford Rail Line, Southern Connection (the "Railroad") and certain personal property appurtenant to said real property ("Personal Property"); and

WHEREAS, Grantor has determined that it is in the best interest of the UNITED STATES OF AMERICA to convey said Real Property and Railroad to Grantee for the purpose of fostering economic development; and

WHEREAS, Grantor has the authority to sell, lease, grant, and dispose of said Real Property, Railroad, and Personal Property pursuant to the Atomic Energy Act of 1954, as amended, specifically Section 161(g) (42 U.S. Code § 2201(g)); and

WHEREAS, Grantor may need continued rail access to the Hanford Nuclear Reservation (the "Hanford Site") for so long as Grantor conducts operations at said site; and

WHEREAS, Grantee agrees to use said Real Property and Railroad to create economic and employment opportunities in the community served by the PORT OF BENTON; and

WHEREAS, Grantee agrees to provide Grantor continued rail access to the Hanford Site for as long as Grantee continues to maintain and/or operate the Railroad.

NOW THEREFORE, for the following consideration, the Parties agree as follows:

L DESCRIPTION OF PROPERTY AND CONVEYANCE

- A. Grantor owns and maintains Real Property and improvements thereto having an area of approximately 768 acres and containing 26 buildings, improved parking and other support areas, and grassy swales, which is described in Attachment A. Grantor also owns and maintains the Railroad and improvements thereto having an area of approximately 92 acres and linear track length of approximately 16 miles, which is described, in part, in Attachment B. Finally, Grantor owns Personal Property that is described in Attachment C. Grantor hereby grants, conveys, and forever quitclaims to Grantee, without warranty, either express or implied, said Real Property, Railroad, and Personal Property on an "as is" and "where is" basis and subject to certain terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions set forth in this instrument. The quitclaim deed (the "Deed") conveying said Real Property, Railroad, and Personal Property is attached (see Attachment D).
- B. The descriptions of the Real Property, Railroad, and Personal Property set forth, respectively, in Attachments to this Indenture and any other information provided herein are based on the best information available to Grantor and believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to Grantor or any other Federal

agency, shall not constitute grounds or reason for noncompliance with the terms of this Indenture or for any claim by Grantee against the UNITED STATES OF AMERICA including, without limitation, any claim for allowance, refund, deduction, or payment of any kind.

- C. Grantor shall make reforms, corrections, and amendments to the Deed if necessary to correct such Deed or to conform such Deed to the requirements of applicable law.

II. CONSIDERATION

Grantor's conveyance is in consideration of the assumption by Grantee of all Grantor's maintenance obligations and its taking subject to certain terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions set forth in this instrument.

III. TITLE EVIDENCE

Grantee reserves the right to procure a title report and/or obtain a title insurance commitment issued by a licensed Washington Title insurer agreeing to issue to Grantee, upon recordation of the Deed, a standard owner's policy of title insurance insuring Grantee's good and marketable title to said Real Property and Railroad.

IV. COSTS OF RECORDATION

Grantee shall pay all taxes and fees imposed on this transfer and shall obtain at Grantee's expense and affix to the Deed such revenue and documentary stamps as may be required by Federal, State of Washington, and local laws and ordinances. The Deed and any security documents shall be recorded by Grantee in the manner prescribed by State of Washington and Benton County recording statutes.

V. EASEMENTS, RESTRICTIONS, AND LIMITATIONS

- A. Grantor retains an easement, described in the Deed found at Attachment D, on the road known as Stevens Drive that extends north from the junction of Spengler Street to Horn Rapids Road (the "Road"). Grantee shall have a right of first refusal governing any conveyance in the Road by Grantor.
- B. Grantee shall take title subject to all public utility and other easements on record, described in Attachment E, and any other zoning regulations and restrictions appearing on plats, in the Deed, or in any title report prepared to support this transfer of Real Property and the Railroad.
- C. Grantor retains an easement, described in Attachment F, for Grantor's existing infrastructure, including telecommunications infrastructure, on the Real Property and Railroad. Grantee shall reasonably negotiate and convey no-cost new easements to support access to existing or new infrastructure of any type or to improve on said infrastructure.
- D. Grantor shall have until March 31, 1999, to remove personal property not conveyed to Grantee and cultural artifacts described in Section XXIII, below from buildings on the Real Property and the Railroad and vacate any of the buildings in which it currently operates.
- E. Grantee shall take title subject to the use permit, described in Attachment F, executed between the Home Depot and Grantor.

VI. LICENSES

- A. Grantor reserves unto itself a no-cost license for whole or partial use of the buildings described in Attachment G and a parking lot for use by Grantor's Safeguards and Security Division to conduct

its "Emergency Vehicle Operations course". The term for these licenses also is listed in Attachment G, said licenses terminating upon: (i) early abandonment of licenses upon notification to Grantee; or (ii) expiration of licenses unless renewed. Renewal shall be in at Grantor's option for one-(1) year periods not to exceed a total of ten (10) periods, and Grantee shall presume that said options are exercised unless notice declining renewal is received within thirty (30) days or more of each license expiration. Grantor shall cooperate with Grantee in the event that Grantee has a commercial tenant for space licensed by Grantor, and to the extent practicable, abandon such license(s) if (i) such abandonment is in the best interest of the UNITED STATES OF AMERICA, and (ii) substitute space is made available by Grantee, if Grantor requires such space and it is not available within the Hanford Site.

- B. Grantor's operations in those buildings and the parking lot in which it retains licenses shall be: (i) conducted in a neat and orderly manner so as not to endanger personnel or property of Grantee or Grantee's other licensees, lessees, and invitees; and (ii) in compliance with all applicable laws, regulations, rules, and ordinances. In the event that the buildings licensed to Grantor become unsuitable for occupancy for any reason, including damage, destruction, or collective wear and tear, Grantor reserves the right to restore the buildings during the term of the licenses.
- C. Before expiration or prior termination of building licenses, Grantor shall restore the buildings or building interiors to the condition in which they were conveyed or to such improved condition as may have resulted from any improvement made therein by Grantee during license terms, subject to ordinary wear and tear for which Grantor is not liable hereunder.
- D. Grantor shall be responsible for all utilities and maintenance associated with operations conducted in the building under license. In the event that partial building space is used, Grantor and Grantee shall agree on a suitable prorated amount for building utilities and maintenance that Grantor shall be responsible to pay to Grantee periodically.
- E. Grantor reserves to the General Services Administration ("GSA") a license to site a double-wide trailer and use parking spaces and a portion of the parking lot for enclosed storage on the Real Property located south of building 1175 (address: 2565 Stevens Drive, Richland, Washington) to have and use until abandoned. GSA shall be responsible for all utilities and maintenance associated with operations conducted from its trailer.
- F. Grantor reserves unto itself a no-cost license providing access to the Railroad for as long as Grantee maintains and/or operates said Railroad. Grantor shall pay published tariffs as applicable.

VII. CONDITION OF REAL PROPERTY AND MAINTENANCE OF RAILROAD

- A. Grantor shall clean the Real Property to an "industrial use" standard prior to transfer under this Indenture and subsequent abandonment of licenses. All buildings, utilities, and other property conveyed will be transferred in "as is" and "where is" condition as at the signing hereof, without any warranty or guarantee, expressed or implied, of any kind or nature, except as otherwise expressly stated in this Indenture. Grantor shall not be obligated to repair, replace, or rebuild any structures if and when licenses are abandoned except when Grantor's use resulted in damages exceeding ordinary wear and tear. Except as provided for in Section VIII. below, Grantor shall not be responsible for any liability to Grantee or third persons arising from such condition of the Real Property. The failure of Grantee to inspect fully the Real Property or to be fully informed as to the condition thereof will not constitute grounds for any noncompliance with the terms of this Indenture.

- B. For so long as Grantee continues to maintain and/or operate the Railroad (or Grantee's similarly situated successor(s)), Grantee shall maintain the Railroad, including all structures, improvements, facilities and equipment in which this instrument conveys any interest, at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined jointly by Grantor and Grantee.

VIII. WARRANTIES AND REPRESENTATIONS

- A. Grantor represents and warrants under its enabling legislation (the Atomic Energy Act of 1954, as amended) that: (i) it has the full capacity, power and authority to enter into this Indenture and the transactions contemplated herein; and (ii) the execution, delivery and performance by Grantor of this Indenture has been duly authorized and approved by all necessary governmental action on the part of Grantor.
- B. Grantee represents and warrants that: (i) it is a political instrumentality of the State of Washington and duly organized under laws of the State of Washington; (ii) it has full capacity, power and authority to enter into and perform this Indenture and the continuing obligations contemplated herein; and (iii) the execution, delivery and performance by Grantee of this Indenture have been duly and validly authorized and approved by all necessary action on the part of Grantee.
- C. Grantor represents that, to the best of Grantor's knowledge, there are no facts known to Grantor that materially affect the value and condition of the Real Property and Railroad that are not readily observable by Grantee or that have not been disclosed to Grantee. The Parties acknowledge that in the course of abandoning any licenses, Grantor may learn additional facts regarding the value and condition of the Real Property. Grantor shall identify such facts and disclose them to Grantee in a timely manner.
- D. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA") Section 120(h)(1) (42 U.S. Code § 9620(h)(1)), and 40 U.S. Code of Federal Regulations Part 373, Grantor has made a complete search of its records concerning the Real Property and Railroad. These records indicate that hazardous substances, as defined by CERCLA Section 101(14), have been stored, disposed, or generated on the Real Property during the time Grantor owned said Real Property. Quantities of hazardous substances were released or disposed of on the Real Property during the course of ownership by Grantor, and the Real Property was listed on the National Priorities List by the Environmental Protection Agency ("EPA"). Said Real Property was remediated and removed from the National Priorities List in September 1996. Grantor agrees to meet all CERCLA obligations associated with the transfer of the Real Property now or in the future upon notice by Grantee.
- E. All remedial actions necessary to protect human health and the environment with respect to any such hazardous substances remaining on the Real Property have been or will be taken before the date of transfer, and any additional remedial actions found to be necessary by regulatory authorities with jurisdiction over the Real Property or Railroad attributable to contamination of hazardous substances shall be conducted by Grantor at Grantor's expense.

IX. ASSIGNMENT OF LEASES AND CONTRACTS

- A. Grantor hereby assigns Parts 1, 2, and 3 of the lease dated May 1, 1996, (see Attachment H) executed between Grantor and R.H. Smith Distributing Co., Inc. ("Smith") for fuel oil distribution from building 1172A. Grantee hereby accepts the obligations of Grantor under this lease in consideration of the payments by Smith for building 1172A operations, which are assigned herewith to Grantee. Grantor shall notify Smith of assignment.

- B. Grantor hereby assigns the lease dated March 5, 1998, (see Attachment H) executed between Grantor and Livingston Rebuild Center, Inc. ("LRC") for equipment repair services in building 1171. Grantee hereby accepts the obligations of Grantor under this lease in consideration of the payments by LRC for building 1171, which are assigned herewith to Grantee. Grantor shall notify LRC of assignment.
- C. Grantor hereby assigns two agreements, a supplemental agreement, and permit made among and by the Atomic Energy Agency (and its successors); Burlington Northern, Inc.; Oregon-Washington Railroad & Navigation Company; and Union Pacific Railroad Company governing access to the Railroad (see Attachment H). Grantee hereby accepts the obligations and considerations under this agreement and permit. Grantor shall notify successors Burlington Northern and Union Pacific of these assignments.

X OTHER AGREEMENTS

- A. No prior, present, or contemporaneous agreements shall be binding upon Grantor or Grantee unless specifically referenced in this Indenture. No modification, amendment, or change to this Indenture shall be valid or binding upon the Parties unless in writing and executed by representatives authorized to contract for the Parties.
- B. Grantor on written request from Grantee may grant a release from any of the terms, reservations, restrictions and conditions contained in the Deed. Grantor may release Grantee from any terms, restrictions, reservations, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions if Grantor determines that the Real Property and Railroad no longer serve the purposes for which they were conveyed or the Grantee determines that continued ownership of the Railroad is no longer economically viable. All or any portion of the Real Property or Railroad may be reconveyed to Grantor subject to the conditions detailed in Section XVII. below.

XI NOTICES

Any notices required under this Indenture shall be forwarded to Grantor or Grantee, respectively, by Registered or Certified mail, return receipt requested, or by overnight delivery, at the following addresses:

Realty Officer
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, G3-18
Richland, Washington 99352

Executive Director
Port of Benton
3100 George Washington Way
Richland, Washington 99352

XII LIMITATION OF GRANTOR'S AND GRANTEE'S OBLIGATIONS

- A. The responsibilities of Grantor, as described in this Indenture, are subject to: (i) the availability of appropriated program funds for remediation and operation of the Hanford Site; and (ii) the federal Anti-Deficiency Act (31 U.S. Code §§ 1341 and 1517).
- B. Grantee shall, to the extent permitted under applicable law, indemnify and defend the United States against, and hold the UNITED STATES OF AMERICA harmless from, damages, costs, expenses, liabilities, fines, or penalties incurred by Grantor and/or third parties and resulting

from Grantee's activities on the Real Property and Railroad, or any part thereof, including releases or threatened releases of, or any other acts or omissions related to, any hazardous wastes, substances, or materials by Grantee and any subsequent lessee or owner of the Real Property or Railroad or any subdivision thereof, their officers, agents, employees, contractors, sublessees, licensees, or the invitees of any of them.

- C. Grantee hereby releases the UNITED STATES OF AMERICA, and shall take whatever action may be required by Grantor to assure the complete release of the UNITED STATES OF AMERICA from any and all liability for restoration or other damage under the Deed or other agreement covering the use by Grantee or its licensees, invitees, and lessees of any Real Property transferred by this instrument.
- D. Grantee's responsibilities for maintenance and operation of the Railroad under the terms of this Indenture are subject to the economic viability of the Railroad. Section XVII. below shall apply if Grantee determines that economic viability is impossible after ten (10) years.

XIII. RIGHT OF ACTION

The provisions of this Indenture are not intended to benefit third persons, and breach thereof shall not be the basis for a cause of action by such third person against either Grantor or Grantee.

XIV. DISPUTES

- A. Except as otherwise provided in this Indenture, any dispute concerning a question of fact that is not disposed of by agreement between the Parties shall be submitted for decision by the Manager, U.S. Department of Energy, Richland Operations Office, or his successor in function ("Manager-RL). The Manager-RL shall, within twenty (20) days, mail or otherwise furnish a written decision to Grantee. The decision of the Manager-RL, shall be final and conclusive unless, within twenty (20) calendar days from the date of receipt of such copy, Grantee mails or otherwise furnishes to the Manager-RL, a written appeal addressed to the Associate Deputy Secretary for Field Management (FM-2). The decision of the Associate Deputy Secretary for Field Management (FM-2), this officer's successor, or the duly authorized representative for the determination of such appeals shall be presented in writing within twenty (20) calendar days from receipt of notice of appeal and shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute under this Section, Grantee shall proceed diligently with the performance of this Indenture in accordance with the decision of the Manager-RL.
- B. This Section shall not preclude consideration of questions of law in correction with decisions provided for herein. Nothing in this Section, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

XV. PLANNING AND DEVELOPMENT

- A. Grantor is aware that Grantee is acquiring the Real Property and Railroad for development for industrial use. Accordingly, Grantor agrees that it shall cooperate reasonably with Grantee and sign such documents and undertake such other acts, without incurring costs or liability, that are necessary for Grantee to complete the planning, zoning, and development of the Real Property and Railroad, the resale and marketing of any portion of the Real Property, and the formation and operation of special districts, metropolitan districts, and other quasi-governmental entities organized for the purpose of providing infrastructure facilities and services to or for the benefit of

the Real Property and Railroad.

- B. Without incurring costs or liability, Grantor will cooperate reasonably with Grantee by signing such documents necessary for Grantee to apply to the Auditor and to the Treasurer of Benton County, Washington and to the Washington State Department of Revenue for tax valuation or abatement with regard to the Real Property that Grantee intends to sell. Upon request by Grantee, Grantor will execute and deliver to and in the name of Grantee one or more easements, accompanied by a legal description, for subsequent re-grant to local utility providers, for the purpose of installing new utility systems and relocating any existing systems, on any portion of the Real Property in which Grantor retains an interest. Other easements include, without limitation easements for ingress and egress and private utility lines required in connection with any portion of the Real Property and Railroad being conveyed. Such easement documents shall be in form and content satisfactory to Grantor and Grantee.

XVII SUCCESSORS AND ASSIGNS

- A. The covenants, provisions, and agreements contained herein shall in every case be binding on and inure to the benefit of the Parties hereto and their respective successors. The rights and responsibilities under this Indenture may not be assigned by Grantee within ten (10) years of the date of this Indenture without the written consent of Grantor, said consent not being unreasonably withheld.
- B. Grantee shall not enter into any transaction that would deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions set forth herein, and if an arrangement is made for management or operation of the Real Property and Railroad by any agency or person other than Grantee, it shall reserve sufficient rights and authority to ensure that said Real Property and Railroad shall be operated and maintained in accordance with the terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions.

XVIII REVERSIONARY INTEREST

- A. For the ten (10) years next following the effective date of this Indenture, in the event that any of the aforesaid terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions are not met, observed, or complied with by Grantee, whether caused by the legal inability of said Grantee to perform any of the obligations herein set out, or otherwise, the title, right of possession, and all other rights conveyed by the Deed to Grantee, or any portion thereof, shall at the option of Grantor revert to the UNITED STATES OF AMERICA in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur, and title, right of possession, and all other rights conveyed, except those that have reverted, shall remain vested in Grantee.
- B. The Railroad shall be used and maintained for the purposes for which it was conveyed, and if said Railroad ceases to be used or maintained for such purposes, all or any portion of the Railroad shall, in its then existing condition, at the option of Grantor, revert to the UNITED STATES OF AMERICA. If Grantor notifies Grantee or its similarly situated successor(s) that rail service no longer is required, such reversionary interest shall terminate and Grantee shall be free to abandon or convert the use of any portion or all of the Railroad.

- C. Grantee agrees that in the event Grantor exercises its option to revert all right, title, and interest in and to any portion of the Real Property or Railroad to the UNITED STATES OF AMERICA or Grantee voluntarily returns title to said Real Property and Railroad in lieu of a reverter, then Grantee shall provide protection to, and maintenance of said Real Property and Railroad at all times until such time as the title actually reverts or is returned to and accepted by the UNITED STATES OF AMERICA. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in 41 U.S. Code of Federal Regulations § 101-47.4913 in effect as of the date of the conveyance.

XVIII. USE OF REAL PROPERTY AND RAILROAD

Grantee shall use and maintain the Real Property and Railroad on fair and reasonable terms without unlawful discrimination. In furtherance of this condition (but without limiting its general applicability and effect) Grantee specifically agrees that: (i) it will establish such fair, equal, and nondiscriminatory conditions to be met by all users of the Real Property and Railroad, provided that Grantee may prohibit or limit any given type and kind of use if such action is necessary to promote safe operations; (ii) in its operation and the operation of the Real Property and Railroad, neither it nor any person or organization occupying space or facilities thereupon shall discriminate against any person or class of persons by reason of race, color, creed, sex, age, marital status, political affiliation or non-affiliation, national origin, religion, handicap or sexual orientation in the use of any of the facilities provided for the public; and (iii) that in any agreement, contract, lease, or other arrangement under which a right or privilege granted to any person, firm or corporation to conduct or engage in any lawful activity, Grantee shall insert and enforce provisions requiring the party to: (i) furnish said service on a fair, equal and nondiscriminatory basis to all users thereof; and (ii) charge fair, reasonable, and nondiscriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

XIX. ACCESS

- A. Subject to the provisions of Section V.A. above, Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the land access routes to the Real Property and Railroad. Grantee shall, either by the acquisition and retention of easements or other interests in or rights for the use of land or by adoption and enforcement of zoning regulations, prevent the construction, erection or alteration of any structure in the access routes to and from the Real Property and Railroad.
- B. Grantor reserves the right of access to those portions of the Real Property and Railroad for the purpose of construction, installing, maintaining, repairing, operating, and/or removing utility, telecommunications, or well monitoring equipment over, under, across, and upon the Real Property and Railroad.

XX. SEVERABILITY

If the construction of any of the foregoing terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions recited herein as provisions or Attachments, or the application of the same as provisions in any particular instance is held invalid, the particular term, reservation, restriction, license, easement, covenant, equitable servitude, contract, lease, or condition in question shall be construed instead merely as conditions upon the breach of which Grantor may exercise its option to cause the title, interest, right of possession, and all other rights conveyed to Grantee, or any portion thereof, to revert to it. The application of such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions as provisions elsewhere in the Indenture and the construction of the remainder of such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions as provisions shall not be affected thereby.

XXI. GRANTEE'S STATUS

Grantee shall remain at all times a political instrumentality of Benton County, State of Washington.

XXII. ENVIRONMENTAL DISCLOSURES

A. Lead-Based Paint Conditions.

1. Prior to use of any Real Property by children under seven (7) years of age, Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards from the said Real Property in accordance with all federal, State of Washington, and local lead-based paint laws, rules, regulations, and ordinances.
2. Grantee agrees to indemnify Grantor and the UNITED STATES OF AMERICA to the extent allowable under applicable law from any liability arising by reason of Grantee's failure to perform Grantee's obligations hereunder with respect to the elimination of immediate lead-based paint health hazards, the prohibition against the use of lead-based paint, and Grantee's responsibility for complying with applicable federal, State of Washington, and local lead-based paint laws, rules, regulations, and ordinances.

B. Presence of Asbestos.

1. Grantee is informed that the Real Property may be improved with materials and equipment containing asbestos-containing materials. The Due Diligence Assessment Report (see Attachment I) prepared by R.E. Morgan for Fluor Daniel Hanford, Inc. on August 28, 1998, discloses the condition and probable locations of asbestos-containing materials. Grantee is cautioned that unprotected or unregulated exposure to asbestos in product manufacturing and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration ("OSHA") and the EPA regulate asbestos because the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.
2. Grantee is invited, urged, and cautioned to inspect the Real Property to ascertain the any asbestos content and condition and corresponding hazardous or environmental conditions relating thereto. Grantor shall assist Grantee in obtaining any authorization that may be required to carry out any such inspection. Grantee shall be deemed to have relied solely on its own judgement in assessing the overall condition of all or any portion of the Real Property, including without limitation, any asbestos hazards or concerns.

C. Presence of Polychlorinated Biphenyls. Except for the 1162 and 1163 facilities, buildings on the Real Property were constructed prior to the enactment of the Toxic Substances Control Act of 1976, as amended, (15 U.S. Code §§ 2601 - 2692) that banned the manufacture of polychlorinated biphenyls ("PCBs"). Fluorescent light fixtures may contain ballasts with trace amounts of PCBs. Spills from overheated ballasts and ballast management (e.g., removal from service) are subject to requirements found in 40 U.S. Code of Federal Regulations Part 761.

D. Grantor's Disclaimer.

1. No warranties, either express or implied, are given with regard to the condition of the Real Property including, without limitation, whether the Real Property does or does not

contain lead-based paint, asbestos, PCBs or petroleum residues attributable to past operations (see "Environmental Assessment for the Transfer of 1100 Area, Southern Rail Connection and Rolling Stock, Hanford Site, Richland, Washington," also contained in Attachment I) or is not safe for a particular purpose. The failure of Grantee to inspect or to be fully informed as to the condition of all or any portion of the Real Property shall not constitute grounds for any claim or demand for adjustment or noncompliance with the terms of this Indenture.

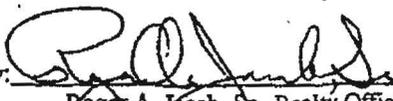
2. Grantor assumes no liability for damages for personal injury, illness, disability, or death to Grantee or to Grantee's successors, assigns, employees, invitees, or any other person, subject to Grantee's control or direction or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Real Property, whether Grantee has properly warned or failed to properly warn the individuals(s) injured.

XXIII. CULTURAL ARTIFACTS AND HISTORIC STRUCTURES

- A. Grantor conducted an inspection of the Real Property on February 3, 1998, in compliance with Part V, Paragraph C of the "Programmatic Agreement for the Built Environment," which states that the Grantor's Cultural Resources Program shall undertake a cultural assessment of the contents of historic buildings and structures to locate and identify artifacts that may have interpretive or educational value as exhibits for local, State of Washington, or national museums. Said assessment has been completed, and artifacts identified are listed in Attachment J.
- B. Grantor and Grantee shall jointly execute a Memorandum of Understanding ("MOU") with the Washington State Department of Community, Trade, and Economic Development, Office of Archeology and Historic Preservation that will address cultural resource issues associated with the Real Property and Railroad. After joint negotiation of an acceptable MOU, Grantee shall be bound by the terms of said MOU for the purposes of cultural artifacts disposition and care under the terms of this Indenture.

IN WITNESS WHEREOF, the Parties, by and through their authorized representatives, have executed the foregoing Indenture on the date first written above.

United States of America by and through the U.S. Department of Energy
GRANTOR:

By: 
Roger A. Jacob, Sr., Realty Officer, Richland Operations Office

Date: August 28, 1998

Witnessed by Notary Public: Deann K. Krutner State of Washington, County of Benji

My Commission Expires: July 04, 2001

Port of Benton, Washington
GRANTEE:

By: *Ben Bennett*
Ben Bennett, Executive Director, Port of Benton, Washington

Date: September 25, 1998

Witnessed by Notary Public: Thomas A. Cowan

My Commission Expires: July 9, 2002



EXHIBIT 7

EXCISE TAX NOT REQUIRED
BENTON COUNTY EXCISE TAX DIVISION
J. J. [Signature] DEPUTY
2-5-99



WHEN RECORDED RETURN TO:

City Attorney
City of Richland
P.O. Box 190
Richland, WA 99352

Portion of Parcel #1-2208-100-000-000

EASEMENT DEED

The Grantor, **PORT OF BENTON**, a Washington corporation, for and in consideration of the transfer of property and other valuable considerations, conveys and quitclaims to the **CITY OF RICHLAND**, Washington, a municipal corporation, an access and utility easement in, over and under the following described property situated in the County of Benton, State of Washington:

A portion of Section 22 Township 10 North, Range 28 East W.M., City of Richland, Benton County Washington. More particularly described as follows:

An access and utility easement for a railroad spur, being 100 feet wide having 50.00 feet on each side of the following described centerline;

Beginning at the Northeast corner of said Section 22; Thence South 00°24'19" East 2643.94 feet along the East line of said Section 22, to the East quarter corner of said Section 22; Thence leaving said East line North 80°28'41" West 1066.18 feet to a point on the centerline of an existing railroad spur and the "TRUE POINT OF BEGINNING" of said 100.00 foot wide access and utility easement; Thence North 74°12'40" West 428.29 feet to a point on a tangent curve concave to the Southwest, said curve having a radius of 573.69 feet; Thence Westerly 161.61 feet along said curve thru a central angle of 16°14'25" to its point of tangency; Thence South 89°32'55" West 376.58 feet to a point known as Point "A"; Thence continuing South 89°32'55" West 690.68 feet to a point on the West line of the Northeast quarter of said Section 22 and the terminus of said centerline.

The left and right margins of said 100.00 foot access and utility easement shall extend or foreshorten to terminate at the West line of the Northeast quarter of said Section 22 and at right angles to the centerline of said easement at the True Point of Beginning.

Together with, an access and utility easement for a railroad spur, being 50.00 feet wide having 25.00 feet on each side of the following described centerline;

Beginning at the aforementioned Point "A", said Point "A" also being the "TRUE POINT OF BEGINNING" of said 50.00 foot wide access and utility easement; Thence North 84°05'32" West 68.95 feet; Thence North 84°05'29" West 87.57 feet to a point on a tangent curve concave to the Northeast, said curve having a radius of 573.69 feet; Thence Northwesterly 837.38 feet along said curve thru a central angle of 83°37'56" to its point of tangency, said point being 25.00 feet East of and measured at right angle to the West line of the Northeast quarter of Section 22 Township 10 North, Range 28 East W.M.; Thence North 00°27'34" West 1725.75 feet, parallel to and 25.00 feet east of said West line of said Section 22, to a point on the North line of the Northeast quarter of said Section 22 and the terminus of said centerline.

The left and right margins of said 50.00 foot access and utility easement shall extend or foreshorten to terminate at the South margin of Battelle Boulevard, said South margin being located 40 feet South of the North line of the Northeast quarter of said Section 22 and at right angles to the centerline of said easement at the True Point of Beginning.

For the purpose of constructing, installing maintaining, repairing, and operating a utility easement with full right to go upon said premises at any time for such purposes, together with the right to trim brush and trees that may interfere with the construction, maintenance and operation of same and the right to permit franchise holder and utility licensees of the City of Richland to place telephone and television cable circuits.

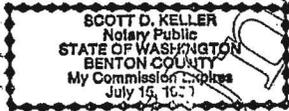
DATED this 1st day of February, 1999.

By: A. Ben Bennett
Its: Executive Director
By: _____
Its: _____

STATE OF WASHINGTON)
) :ss
COUNTY OF BENTON)

On this 1st day of February, 1999, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared A. Ben Bennett and WA, to me known to be the Exec. Director and WA of Richland, 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 they are 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.



[Signature]
Notary Public in and for the State of Washington; residing at Richland

COPIES

NOTARY

1999-003771
 Page: 3 of 3
 02/05/1999 12:00P
 10.00 Benton County
 CITY OF RICHLAND EAS

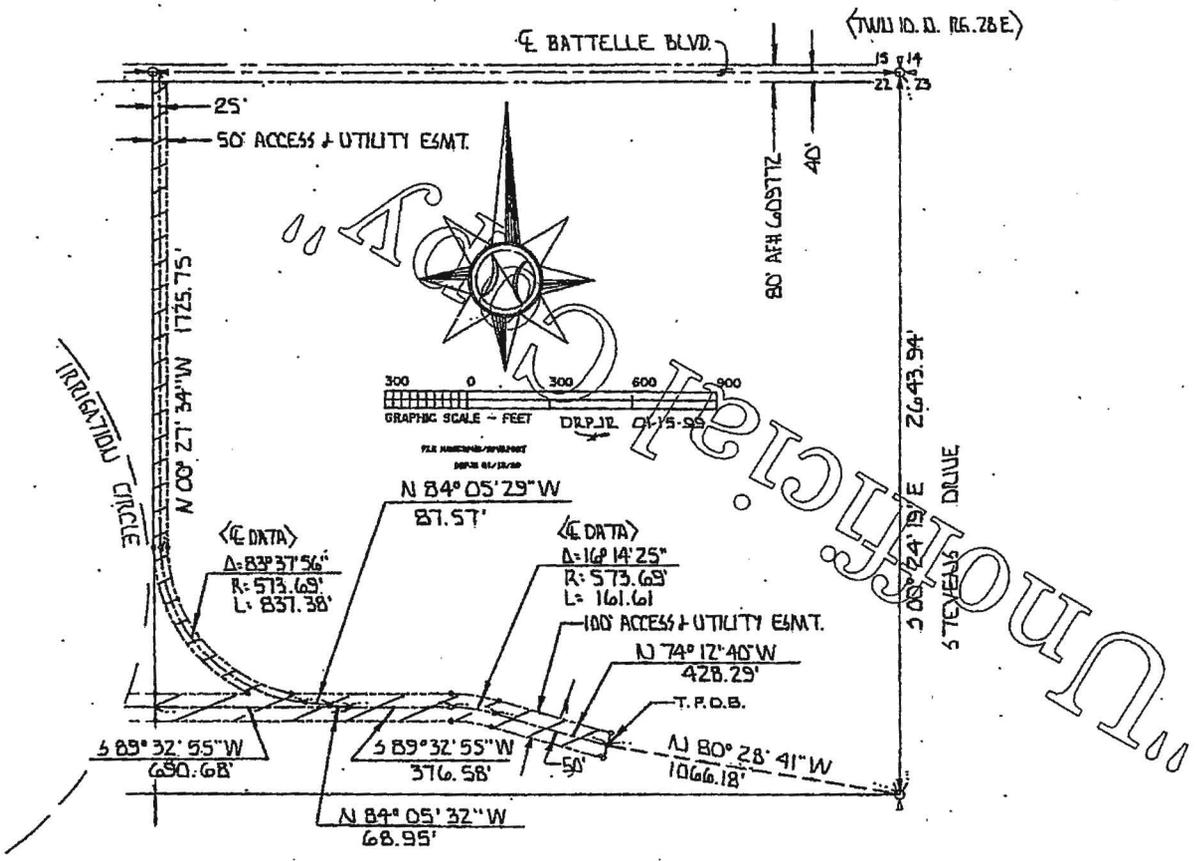


EXHIBIT 8

RAILROAD LEASE
Port of Benton-Tri-City Railroad Company

PARTIES:

LESSOR: PORT OF BENTON, a municipal corporation of the State of Washington, hereafter "Port".

TENANT: TRI-CITY RAILROAD COMPANY, L.L.C., a Washington limited liability company hereafter "Tenant".

RECITALS:

WHEREAS, the Port acquired the Southern Connection of the Hanford Railroad from the United States Department of Energy (hereafter "DOE") to prevent the closure of the railroad and to maintain railroad operations for economic development purposes.

WHEREAS, DOE conveyed the former 1100 Area to the Port to enable the Port to generate revenues to pay the costs of operation and maintenance of the railroad.

WHEREAS, the Port entered into an Operations and Maintenance Agreement with Livingston Rebuild Company dated October 1, 1998 which has been assigned to the Tenant and this agreement requires the Port to pay certain expenses related to the railroad, including insurance premiums, in excess of \$100,000.00 per year and the Port has the responsibility for the inspection, maintenance and replacement of the bridges and overpasses.

WHEREAS, the Port has been required to pay for the replacement of a section of the railroad bridge which was destroyed by fire.

WHEREAS, the Port entered into a Building Lease with Livingston Rebuild Company for the railroad maintenance building in the Port's Manufacturing Mall (formerly DOE's 1100 Area), which Lease has been assigned to the Tenant.

WHEREAS, the parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to the Tenant.

WHEREAS, the Port has been required to respond to an inquiry by the Railroad Retirement Board concerning the Port's liability for pension payments as an railroad operator and the Port wants to avoid classification as a railroad operator.

WHEREAS, the Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities; now therefore it is hereby agreed among the parties as follows:

AGREEMENTS:

1. LEASE. Port hereby leases to Tenant upon the terms, covenants and conditions contained herein, the real and personal property known as the Port of Benton Railroad Southern Connection and the 1171 Building (hereafter the "Property"). The real property is described on Attachment 1.

1.1 The Property consists of approximately 16 miles of railroad trackage and right of way extending from the Richland Connection in Kennewick, Washington to the Port of Benton's Manufacturing Mall in Richland, Washington, and generally bordered by Horn Rapids Road on the north, formerly known as the 1100 Area, including the tracks, bridges, trestles, crossings and maintenance equipment. The equipment and fixtures are more particularly described on Attachment 2 to this Agreement.

1.2 The Tenant has been operating the Port of Benton railroad and has occupied the 1171 Building since October, 1998 and is fully familiar with the Property and agrees to take the Property in its present condition, and subject to the restrictions contained in the Indenture between the United States of America and the Port, the amendments thereto, and the Quit Claim Deed from the United States of America, copies of which has been provided to the Tenant. The Tenant agrees to take the Property in its present condition without warranties. The Tenant is relying upon its own inspections of the Property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease.

1.3 The Port may acquire trackage rights to use additional railroad tracks owned by DOE serving the Hanford Project. To the extent that the Port acquires additional trackage rights from the DOE, the Port will attempt to negotiate an agreement with the Tenant to add the track rights to this agreement, if permitted by the terms of any agreements with the United States and to the extent the terms of the agreement for trackage rights are acceptable to the Tenant. An agreement to add additional track to this agreement, may require the Tenant to pay additional fees to the Port based upon volume of traffic over the tracks. Provided, that the Port may cancel any agreement with the United States for trackage rights without any further obligation to Tenant. Provided, further, in the event the Port terminates its agreement with the United States for trackage rights, the Tenant shall be free to negotiate with the United States for the trackage rights.

1.4 The Port of Benton currently has a Memorandum of Agreement with DOE to use the track north of Horn Rapids Road to the Energy Northwest Generating Station site, which the Port agrees to allow the Tenant to utilize under the terms of this Lease, provided that the Tenant maintains the track as herein required. DOE has proposed a Memorandum of Agreement with the Port of Benton for use of the Hanford Railroad north of the Energy Northwest Generating Station. After the execution of the MOA by the Port and DOE, the Port will permit the Tenant to utilize additional track which is covered by the MOA, provided that the Tenant complies with the terms and conditions of the MOA and subject to the provisions of this Lease.

2. TERM. This lease shall run for a period of ten years commencing on the 1st day of August, 2002 and terminating on the 31st day of March, 2012.

2.1 The Tenant shall have the option to extend this Lease for two additional terms of ten years each after the expiration of the initial term and after the expiration of the first renewal term.

2.2 The option to extend this Lease shall be deemed to have been exercised unless the Tenant shall give the Port written notice of its intent not to exercise an option at least one hundred eighty (180) days prior to termination of the initial term or the expiration of the first renewal term.

2.3 The Tenant may only exercise the right to extend the term of this Lease if the Tenant is not in material default in the performance of the terms of this Lease at the time the Tenant exercises the option or at the time an option is deemed to be exercised under Section 2.2.

2.4 In the event the Tenant elects not to exercise the Lease extension as provided in this Section, then this Lease shall terminate and the Tenant shall have no further rights under the terms of the Lease.

3. RENT. Tenant shall pay rent, in advance on the first day of each month during the term of this lease, in the following amounts:

3.1 During the initial term of the lease, the parties have agreed that the monthly rental for the real property, railroad trackage, right of way and building more particularly described in Attachment 1, shall be \$2,000.00, plus the applicable leasehold tax as hereafter provided.

3.2 In addition to the rent for the real property, the Tenant shall pay \$2,000.00 per month as rent for the railroad maintenance and operation equipment owned by the Port and more particularly described on Attachment 2. The Tenant shall be responsible for the payment of any sales tax which may be payable as a result of the lease of equipment.

3.3 Rent payments shall be made payable to the Port of Benton and shall be paid at the Port offices at 3100 George Washington Way, Richland, Washington, or at such other address as the Port shall direct in writing.

3.4 In addition to the rent provided for herein, the Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold Tax shall be paid with each monthly installment of rent. The current leasehold tax rate is 12.84%.

3.5 Commencing five (5) years from the commencement date of this lease, and on every anniversary thereafter, the minimum rent set forth in sections 3.1 and 3.2 shall be increased in order to reflect the proportionate increase, if any, occurring between the commencement date and such adjustment date in the cost of living as indicated by the Consumer Price Index for Urban Consumers - Western US Average - All Items, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"). Such adjustment shall be accomplished by multiplying the numerator of which shall be the Index level as of the January preceding the date of adjustment, and the denominator of which shall be the Index level as of the January preceding the Lease commencement date. Any adjustment of rent shall become effective immediately. In no event shall the rent be less than that specified in sections 3.1 and 3.2. If the index is discontinued, Landlord shall substitute a similar index of consumer prices.

3.6 Any rent payment not paid within ten days of the date upon which the Tenant receives notice that a payment is past due shall accrue interest on the unpaid rent at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

4. **CONDITION OF PROPERTY.** The Tenant shall take the Property in its present condition, without warranties or representations by the Port except as set forth in this Lease. The Tenant shall be responsible for the maintenance and repair of the railroad maintenance and operation equipment owned by the Port and used by the Tenant pursuant to this Lease. In the event any of the Port equipment becomes inoperable or unusable for any reason the Port shall not be required to provide replacement equipment. If the equipment becomes obsolete or inoperable through no fault of the Tenant, the unusable equipment shall be returned to the Port and the rent shall be adjusted to account for the equipment which is no longer being used by the Tenant. This provision shall not apply to the equipment that becomes inoperable due to the Tenant's failure to properly maintain the equipment.

5. **SECURITY.** The Tenant shall provide a rent security in accordance with RCW 53.08.085 in an amount equal to the rent and Leasehold Tax to be paid during the initial year of this Lease.

6. **TAXES AND ASSESSMENTS.** Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the Property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the Property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided

that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in installments, shall survive the termination or expiration of this Lease.

6.1 Tenant may contest the legal validity or amount of any taxes, assessments or charges which Tenant is responsible for under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the Property from any lien. Port appoints Tenant as Port's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments or charges.

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

7.2.1 If the complaint involves matters which are within the purview of National Surface Transportation Board (NSTB), the Port will, to the extent applicable, utilize the rules of the NSTB to resolve the dispute.

7.2.2 If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

7.2.3 Complaints which can not be referred to the NSTB, shall be resolved pursuant to the terms and conditions of this Lease.

7.3 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

7.4 The Tenant shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the

Port's prior written consent. The Tenant shall continue to provide railroad access to areas currently served by the railroad unless the Port and Tenant mutually agree that such access is no longer practicable.

8. MAINTENANCE OF PROPERTY. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall maintain the Property and all improvements and fixtures then existing thereon in good condition and repair, subject to reasonable wear and tear, and in accordance with all applicable covenants, laws, rules, ordinances, and regulations of governmental agencies applicable to the maintenance and operation of the railroad, provided, however, that the Port shall be responsible for the maintenance of the roof and the exterior walls of the 1171 Building. The Tenant will maintain the equipment described on Attachment 2 in good working condition and repair, ordinary and usual wear and tear excepted.

8.1 Tenant will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad. Tenant will promptly repair any conditions which require repair or replacement in order to comply with applicable rules and regulations. The obligation to maintain the railroad shall include the maintenance, repairs or replacements of the bridges, spans and overpasses and the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. In the event the Port assigns trackage rights to the Tenant pursuant to agreements with DOE, and the Tenant accepts the trackage rights, the Tenant agrees to assume the obligation to maintain the additional track in accordance with the terms and conditions of the agreement which the Port has entered into with DOE.

8.2 Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. Tenant shall promptly report any such conditions to the Port.

8.3 Tenant will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

8.4 Tenant will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract.

8.5 Tenant shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if Tenant determines that the equipment is no longer needed for maintenance of the railroad, Tenant shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

8.6 In the event the equipment becomes unavailable for use due to obsolescence or for any other reason, Tenant shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

8.7 The equipment shall be used only for the maintenance and operation of the railroad and for no other purpose without the prior written consent of the Port and an use agreement which provides for payment for the use of the equipment.

8.8 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad.

9. CONDITIONS OF CONSTRUCTION. Before any construction, reconstruction or alteration of the improvements on the Property, except for interior improvements or non-structural modifications is commenced and before any building materials have been delivered to the Property in connection with such construction, reconstruction or alteration by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Port's written waiver of the following condition or conditions:

9.1 Tenant shall deliver to Port, for its approval, one set of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington including, but not limited to, preliminary grading utility connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable Port to make an informed judgment about the design and quality of construction. All improvements shall be constructed within the exterior property lines of the Property provided that required work beyond the Property on utilities, access, and conditional use requirements will not violate this provision. Tenant shall permit Port to use the plans without payment for purposes relevant to and consistent with this Lease.

9.2 The Port shall examine the plans and specifications for the purpose of determining reasonable compliance with the terms and conditions of this Lease, the Protective Covenants and compatibility with the overall design and use. Approval will not be unreasonably withheld. Approval or disapproval shall be communicated to the Tenant, and disapproval shall be accompanied by specification in reasonable detail of the grounds for disapproval; provided that Port's failure to disapprove the initial construction plans within fourteen (14) days or subsequent construction plans within thirty (30) days after delivery to Port shall be considered to be approval.

9.3 Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by the Port, submit them to the appropriate governmental agencies for approval, and deliver to Port one complete set as approved by the governmental agencies.

9.4 Tenant shall notify Port of its intention to commence the initial construction at least fourteen days before commencement of any such work or delivery of any

materials. The notice shall specify the approximate location and nature of the intended improvements. During the course of construction, Port shall have the right to post and maintain on the Property any notices of non-responsibility provided for under the applicable law, and to inspect the Property at all reasonable times.

9.5 Except as specifically provided in this Lease, Port makes no covenant or warranties respecting the condition of the soil or subsoil or any other condition of the Property.

9.6 Once work is begun, Tenant shall, with reasonable diligence, complete all construction of improvements. Construction required at the inception of the Lease shall be completed and ready for use within eighteen (18) months after commencement of construction, provided that the time for completion shall be extended for so long as the Tenant is prevented from completing the construction due to delays beyond the Tenant's control; but failure, regardless of cause, to commence construction within eighteen (18) months from the commencement date of the Lease shall, at Port's election exercised by thirty days written notice, terminate this Lease. All work shall be performed in a workmanlike manner, substantially comply with the plans and specifications required by this Lease, and comply with all applicable governmental permits, laws, ordinances, and regulations.

9.7 Tenant shall pay the cost and expense of all Tenant's improvements constructed on the Property. Tenant shall not permit any mechanic's, or construction liens to attach to the Property. Tenant shall not permit any mechanics', materialmen's, contractors' or subcontractors' lien arising from any work of improvement performed by or for the Tenant to be enforced against the Property, however it may arise. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Port's Property interests are not jeopardized. Tenant shall defend and indemnify Port against all liability and loss of any type arising out of the construction of improvements on the Property by Tenant. Unless caused by the Port, its agents, contractors, and invitees, Tenant shall reimburse Port for all sums paid according to this paragraph, together with the Port's reasonable attorneys' fees and costs plus interest on those sums at the legal rate.

9.8 On completion of the construction of any improvements, additions or alterations, covered by this Section 9, Tenant shall give Port notice of all structural or material changes in plans or specifications made during the course of the work and shall at that time supply Port with drawings accurately reflecting all such changes. Changes which are non-structural or which do not substantially alter the plans and specifications as previously approved by the Port do not constitute a material change.

10. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the Property by Tenant as permitted by this Lease shall be owned by Tenant until termination of this Lease. Upon the termination of this Lease for any reason, any buildings, improvements or trade fixtures installed on the Property shall become the property of the Port. Provided, however, in the event, the Tenant has failed to maintain the Property as required by this Lease, or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Tenant or its successors, such that in any event the value of the improvements is less than the cost of removal,

remediation or renovation to bring the Property into compliance, then the Port may require the Tenant to remove any improvements or trade fixtures installed by the Tenant. The Tenant shall repair, at Tenant's expense, any damage to the Property resulting from such removal.

10.1 The equipment and fixtures on the property which belong to the Port shall remain the property of the Port and the Tenant shall be required to maintain the Port-owned equipment and fixtures during the term of this Agreement. The equipment and fixtures owned by the Port shall be returned to the Port upon the termination of this Agreement, reasonable wear and tear excepted.

11. ASSIGNMENT AND SUBLETTING. Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written consent. Each sublease for any portion of the premises in addition to the reference to Section 7 of this lease, shall specifically advise the subtenant that the sublease is subject to the reverter contained in the deed and indenture from the United States to the Port of Benton. No assignment or sublease of the Lease shall relieve the Tenant of its obligations under this Lease.

12. INSURANCE. Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form railroad liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, operation, maintenance, occupancy, misuse, or condition of the Property and improvements, with limits of liability of at least \$5,000,000 and with deductibles in such amounts as may be reasonably acceptable to the Port. The Port shall be an additional insured on such policies.

12.1 RAILROAD PROPERTY INSURANCE. Throughout the term of the Lease, at Tenant's sole cost and expense, the Tenant shall keep or cause to be kept in force, for the mutual benefit of the Port and the Tenant, property insurance insuring all of the tracks, bridges, trestles, crossing and other improvements, fixtures, equipment and all of the railroad property subject to this lease against loss or damage from any cause, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port.

12.2 BUILDING PROPERTY INSURANCE. The Port shall maintain property insurance insuring the improvement known as the 1171 Building described in Attachment 1 against loss or damage from fire, flood, wind, or other natural disasters, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port. The Tenant shall maintain insurance coverage on the Tenant's property, fixtures and equipment located on the premises.

12.3 PROOF OF COMPLIANCE. The Tenant shall provide the Port with Certificates of Insurance showing the coverages and deductibles. All property insurance which the Tenant is required to maintain on the Port's property shall name the Port as the owner of the property and shall insure the Port's interest in the property. The Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies required by this

Lease. Tenant shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least ninety (90) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least ninety (90) days prior written notice to Port.

13. INDEMNIFICATION. The Tenant shall indemnify and hold the Port harmless from all liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceedings brought against the Port by any party alleged to have resulted from the Tenant's use, operation, maintenance or occupation of the railroad or any portion of the premises or any of Tenant's activities incidental thereto, or any breach or default in the performance of any of the terms or conditions of the Tenant's obligations under this lease agreement.

14. DEFAULT.

14.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Tenant and a breach of this Lease.

14.1.1 The breach of any of the terms or conditions of the Lease Agreement

14.1.2 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

14.1.3 The appointment of a receiver to take possession of the Property or improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

14.1.4 An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

14.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

14.3 TENANT'S RIGHT TO CURE. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have ten

(10) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

14.4 TIME OF THE ESSENCE. Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

15. PORT'S REMEDIES. If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, subject to the provisions of Section 13, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

15.1 Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

15.2 Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

15.2.1 The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

15.2.2 The loss of rental on the Property accruing until the date when a new tenant has been or with the exercise of reasonable diligence could have been, obtained.

15.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Tenant from any obligations under the Lease. In the event Port re-enters the Property for the purpose of reletting, Port may relet all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any tenant which Port may reasonably consider objectionable.

15.4 In the event Port relets the Property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts.

15.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

15.4.2 The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

15.5 All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any, and the balance shall be remitted to Tenant.

16. WAIVER. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

17. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

18. ACCESS BY PORT. Port, or Port's representatives and agents, shall have access to the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the Property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the Property by Tenant.

19. RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant, and

as long as the information in the memorandum is accurate the other party agrees to sign the memorandum of lease.

20. **HOLDING OVER.** In the event Tenant shall hold over after the expiration or termination of this Lease, or at the expiration of any option term, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the lease except that the rental rate shall be adjusted as provided in Section 3 and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

21. **SECURITY FOR TENANT'S OBLIGATIONS.** In addition to the security provided for in Section 5, in order to secure the prompt, full and complete performance of all of Tenant's obligations under this Lease, including but not limited to, Tenant's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Tenant hereby grants to Port a security interest in and assigns to Port all of Tenant's right, title and interest in and to all rents and profits from the Property, all of the materials stored on the premises, and all permanent improvements constructed thereon, to secure the Tenant's obligations under this Lease. In the event Tenant defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 15.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Tenant's obligations hereunder, including payment to Port of any sums due from Tenant. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease. This security interest will not extend to the Tenant's business receivables other than rents and profits from the property, provided that this exception will not affect the enforcement or collection of any judgment obtained against the Tenant by the Port.

22. **HAZARDOUS MATERIALS.** Tenant shall not take or store upon the Property any hazardous or toxic materials, as defined by the law of the State of Washington or by federal law, except in strict compliance with all applicable rules, regulations, ordinances and statutes. Tenant shall comply with the Port's Hazardous Materials Communications Policy, but shall not be subject to the notice requirements thereof in connection with the installation, use, operation, or removal of usual office equipment including, without limitation, computers and photocopiers.

22.1 Tenant shall not permit any contamination of the Property. The Tenant shall immediately remove any contaminants or pollutants and shall promptly restore the Property, subject to any condition existing prior to the commencement of this Lease, which shall be the responsibility of the Port.

22.2 Tenant shall defend Port and hold it harmless from any cost, expense, claim or litigation arising from hazardous or toxic materials on the Property or resulting from the contamination of the Property, caused by the acts or omissions of the Tenant, its subtenants, employees, agents, invitees, or licensees, during the term of this Lease.

22.3 In the event of the termination of this Lease for any reason, the obligation of the Tenant to restore the Property and the obligation to indemnify the Port set forth above, shall survive the termination.

23. GENERAL CONDITIONS.

23.1 NOTICES. Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

Port: Port of Benton
3100 George Washington Way
Richland, Washington 99352

Tenant: Tri-City Railroad Company, L.L.C.
2355 Stevens Drive
P.O. Box 1700
Richland, WA 99352

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U. S. Postal Service that the mailed notice is available for pick up.

23.2 NONMERGER. If both Port's and Tenant's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

23.3 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

23.4 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" includes matters incorporated by reference.

23.5 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned, or

conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

23.6 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission, or fees claimed by any broker or agent in connection with this Lease.

23.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Tenant each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

23.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Tenant shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

23.9 LEASE CERTIFICATION. Upon the request of the Tenant the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: i) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Tenant is current in the payment of the rent and other charges under the terms of the Lease; iv) whether the Port is aware of any default or breach on the part of the Tenant.

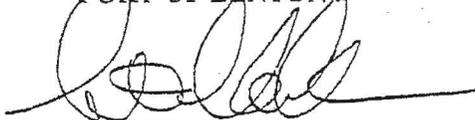
23.10 PARTIAL INVALIDITY. If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

23.11 CONSTRUCTION. The parties lease have reviewed this lease and have the opportunity to consult with their respective counsel. The lease shall not be deemed to be drafted by either party and the lease shall not be construed against either party as the drafter.

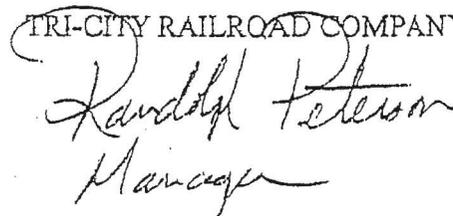
23.12 CONSENT. Whenever the consent or approval of a party to this Lease is required to be given by the terms of this Lease to the other party, such consent or approval shall not be unreasonably withheld or delayed.

DATED this 1st day of April, 2002.

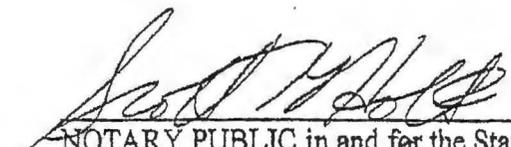
PORT OF BENTON



TRI-CITY RAILROAD COMPANY, L.L.C.



Manager


NOTARY PUBLIC in and for the State of
Washington, residing at Asco, WA
My commission expires: Jan 25, 2003

RAILROAD LEASE

PORT OF BENTON/TRI-CITY RAILROAD COMPANY

ATTACHMENT 1

**REAL PROPERTY:
SOUTHERN CONNECTION, 1171 FACILITY,
OUTBUILDINGS AND LAND**



2004-03038
Pg: 5 of 5
08/25/2004 09:17A

ALSO, including those portions of Sections 14, 15 and 23, Township 9 North, Range 28 East, W.M. depicted on Exhibit "A" of the United States Army Corps of Engineer's permit to the Washington State Department of Transportation dated 20, August 1980.

ALSO, all that part of Block 153, said Plat of Richland, EXCEPT that portion quitclaimed to the State of Washington in aforementioned quitclaim recorded in Volume 482, page 192, records of Benton County, Washington.

ALSO, all of Blocks 341, 342 and 345 of said Plat of Richland

ALSO, Tract 24-A as recorded in Volume 152, page 204, records of Benton County, Washington.

ALSO, including a "Railroad Easement" as written in the "Dedication and Easements" section of the dedication sheet for said Plat of Richland.

DEPARTMENT OF ENERGY RAILROAD, SOUTHERN CONNECTION

LEGAL DESCRIPTION

Beginning at the corner common to sections 29, 30, 31 and 32, Township 9 North, Range 29 East, Willamette Meridian, Benton County, State of Washington; Thence northerly, along the east line of said section 30, 813.0 feet to the centerline of the Union Pacific Railroad; thence S $89^{\circ}06'31''$ W, along said centerline, 1066.8 feet to union Pacific Railroad Engineer's Station 1286+27.6 and the TRUE POINT OF BEGINNING of a strip of land 100 feet wide, 50 feet right and left of the following described centerline;

Thence N $85^{\circ}10'00''$ W, 153.4 feet to the point of curvature of a 2292.01 foot radius curve, the radial bearing to center being N $04^{\circ}50'00''$ E. Thence along the arc of said curve, to the right, through a central angle of $28^{\circ}13'00''$, 1128.00 feet to the point of tangency; thence N $56^{\circ}57'00''$ W, 3268.4 feet to the point of curvature of a 2864.93 foot radius curve, the radial bearing to center being N $33^{\circ}03'00''$ E. Thence along the arc of said curve, to the right, through a central angle of $14^{\circ}59'21''$, 749.50 feet to a point on said curve, said point being the terminus of said 100 foot strip of land and the beginning of a 200 foot strip of land, 100 feet right and left of said centerline. Thence continuing along the arc of said curve, through a central angle of $13^{\circ}42'39''$, 685.57 feet, to the point of tangency. Thence N $28^{\circ}15'00''$ W, 5592.90 feet to a point; said point being the terminus of said 200 foot strip of land and the beginning of a strip of land of variable width, the right margin being common with the southwest right of way of the Richland-Kennewick Road, as it existed in October, 1943 and the left margin being 100 feet left, measured at right angles, from the following described line; from said point, thence continuing N $28^{\circ}15'00''$ W, 630.00 feet to the line of ordinary high water of the right bank of the Yakima River and the terminus of said strip of land.

ALSO, including a easement crossing the Yakima River granted by the State of Washington, Department of Public Lands by Order and Certificate of Right of Way, application No. 20674, executed September 22, 1955 described as follows; Beginning at the northwest corner of Section 24, Township 9 North, Range 28 East, W.M.; thence S $53^{\circ}21'00''$ E, 2405.68 feet; thence S $80^{\circ}00'00''$ W, 499.85 feet; thence N $28^{\circ}15'00''$ W, 165.99 feet; to THE TRUE POINT OF BEGINNING. Thence S $55^{\circ}45'00''$ W, 100.55 feet; thence N $28^{\circ}15'30''$ W, 349.79 feet; thence N $75^{\circ}43'45''$ E, 103.05 feet; thence N $51^{\circ}42'30''$ E, 123.83 feet; thence S $32^{\circ}47'15''$ E, 336.98; thence S $61^{\circ}45'00''$ W, 148.58 feet; to the True Point of Beginning.

ALSO, including all of Blocks 570 and 160, Plat of Richland, as recorded in Volumes 6 and 7 of Plats; records of Benton County, Washington, EXCEPT that portion quit claimed to the State of Washington in that certain deed recorded in Volume 482, page 192, records of Benton County, Washington, TOGETHER with all those portions of Sections 13, 14, 15, 23 and 24, Township 9 North, Range 28 East, W.M., shown hachured on Exhibit "A" of Quitclaim Deed recorded in Volume 470, page 690 (Auditor's file No. 86-1411, dated Jan. 31, 11:11AM '86).



TRI CITY RAILROAD CO LEASE

23.80

2004-030381

Pg: 4 of 5

08/25/2004 09:17A

Benton County



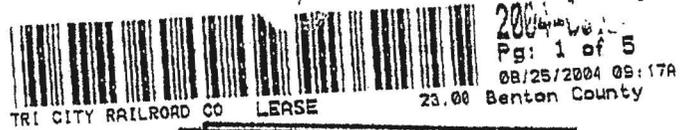
Exhibit A

RAILROAD LEASE

PORT OF BENTON/TRI-CITY RAILROAD COMPANY

ATTACHMENT 1

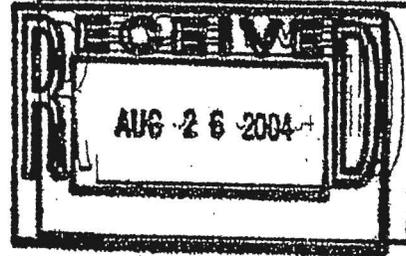
**REAL PROPERTY:
SOUTHERN CONNECTION, 1171 FACILITY,
OUTBUILDINGS AND LAND**



Filed for Record at Request of:

AFTER RECORDING MAIL TO:

Randolph Peterson
Tri-City Railroad Company, LLC
2579 Stevens Drive
Richland, WA 99352



Reference numbers of related documents:

Lessor: Port of Benton, a municipal corporation of the State of Washington

Tenant: Tri-City Railroad Company, LLC, a Washington Limited Liability Company

Legal Description: E 1/2 of the NE 1/4 of Section 24, T10N, R28E, W.M., Benton County

Additional Legal: Attached as Exhibit A

Assessor's Tax Parcel ID Number: 1-27081000002000

MEMORANDUM OF LEASE

NOTICE IS HEREBY GIVEN that on August 1, 2002, THE PORT OF BENTON, as Lessor, and TRI-CITY RAILROAD COMPANY, LLC, a Washington Limited Liability Company, as Tenant, executed a Railroad Lease; and

NOTICE IS HEREBY GIVEN that the Term of the Railroad Lease is from August 1, 2002 through March 31, 2012, with the Tenant having the option to extend the term of the lease for two additional terms of ten (10) years each after the expiration of the initial term and after the expiration of the first renewal term; and

NOTICE IS HEREBY GIVEN that the Railroad Lease includes those premises described in Exhibit A attached hereto and incorporated herein by this reference.

///

///

DEPARTMENT OF ENERGY RAILROAD, SOUTHERN CONNECTION

LEGAL DESCRIPTION

Beginning at the corner common to sections 29, 30, 31 and 32, Township 9 North, Range 29 East, Willamette Meridian, Benton County, State of Washington; Thence northerly, along the east line of said section 30, 813.0 feet to the centerline of the Union Pacific Railroad; thence S $89^{\circ}06'31''$ W, along said centerline, 1066.8 feet to union Pacific Railroad Engineer's Station 1286+27.6 and the TRUE POINT OF BEGINNING of a strip of land 100 feet wide, 50 feet right and left of the following described centerline;

Thence N $85^{\circ}10'00''$ W, 153.4 feet to the point of curvature of a 2292.01 foot radius curve, the radial bearing to center being N $04^{\circ}50'00''$ E. Thence along the arc of said curve, to the right, through a central angle of $28^{\circ}13'00''$, 1128.00 feet to the point of tangency; thence N $56^{\circ}57'00''$ W, 3268.4 feet to the point of curvature of a 2864.93 foot radius curve, the radial bearing to center being N $33^{\circ}03'00''$ E. Thence along the arc of said curve, to the right, through a central angle of $14^{\circ}59'21''$, 749.50 feet to a point on said curve, said point being the terminus of said 100 foot strip of land and the beginning of a 200 foot strip of land, 100 feet right and left of said centerline. Thence continuing along the arc of said curve, through a central angle of $13^{\circ}42'39''$, 685.57 feet, to the point of tangency. Thence N $28^{\circ}15'00''$ W, 5592.90 feet to a point; said point being the terminus of said 200 foot strip of land and the beginning of a strip of land of variable width, the right margin being common with the southwest right of way of the Richland-Kennewick Road, as it existed in October, 1948 and the left margin being 100 feet left, measured at right angles, from the following described line; from said point, thence continuing N $28^{\circ}15'00''$ W, 630.00 feet to the line of ordinary high water of the right bank of the Yakima River and the terminus of said strip of land.

ALSO, including a easement crossing the Yakima River granted by the State of Washington, Department of Public Lands by Order and Certificate of Right of Way, application No. 20674, executed September 22, 1955 described as follows; Beginning at the northwest corner of Section 24, Township 9 North, Range 28 East, W.M.; thence S $58^{\circ}21'00''$ E, 2405.68 feet; thence S $80^{\circ}00'00''$ W, 499.85 feet; thence N $28^{\circ}15'00''$ W, 165.99 feet to THE TRUE POINT OF BEGINNING. Thence S $55^{\circ}45'00''$ W, 100.55 feet; thence N $28^{\circ}16'30''$ W, 349.79 feet; thence N $75^{\circ}43'45''$ E, 103.05 feet; thence N $51^{\circ}42'30''$ E, 123.83 feet; thence S $32^{\circ}47'15''$ E, 336.98; thence S $61^{\circ}45'00''$ W, 148.58 feet to the True Point of Beginning.

ALSO, including all of Blocks 570 and 160, Plat of Richland, as recorded in Volumes 6 and 7 of Plats, records of Benton County, Washington, EXCEPT that portion quit claimed to the State of Washington in that certain deed recorded in Volume 482, page 192, records of Benton County, Washington, TOGETHER with all those portions of Sections 13, 14, 15, 23 and 24, Township 9 North, Range 28 East, W.M., shown hachured on Exhibit "A" of Quitclaim Deed recorded in Volume 470, page 690 (Auditor's file No. 86-1411, dated Jan. 31, 11:11AM '86).

EXHIBIT 9

Temporary Service Agreement

This Agreement ("Agreement") made this 7th day of December, 2001, between the TRI-CITY RAILROAD COMPANY, a *limited liability corporation* ("Railroad"), and the CITY OF RICHLAND, a municipality of the State of Washington ("City").

22

WHEREAS, City is owner of the Horn Rapids Spur ("HRS"), an industrial lead track designed to offer the opportunity of rail service to a number of current and potential users, which connects to trackage (Station Number 00400) owned by the Port of Benton County ("POB"); and

WHEREAS, City desires to enter into a Temporary Service Agreement ("TSA") with Railroad, the operator of POB's trackage, to provide rail service as required as soon as possible between customers located on HRS and the line lead center, The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP"); and

WHEREAS, Railroad desires to provide such service, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to be governed by the following terms and conditions:

1. The purpose of this TSA is to permit rail service to begin for City's HRS customers on or before December 20, 2001. This Agreement shall be for thirty (30) days and continuing thereafter until terminated upon ten (10) days written notice by either party.
2. Railroad shall inspect the trackage to be utilized during the term of this Agreement prior to operating crew runs to ensure that it is in a safe operating condition. This inspection shall include the grade crossing signal system to the extent it is to be utilized. This inspection shall be done within two business days of the effective date of this Agreement so that there will be time to correct any deficiencies prior to December 20, 2001. Railroad shall immediately advise City with respect to any repairs required prior to operation, including an estimate of time and expense to make said repairs. During the term of this Agreement, Railroad shall make any additional inspection(s) required by the Federal Railroad Administration ("FRA"), the State of Washington, other competent authority or prudent judgment. Railroad shall bear the expense of all inspections.
3. City may ask Railroad to make any required repairs based on Railroad's estimate of time and expense. City shall pay for any repairs it requests Railroad to make.
4. City shall permit Railroad to operate over the HRS to serve City's customers requesting rail service by Railroad for any cars between said customers and BNSF and/or UP. Railroad's service shall be prompt and efficient as well as essentially

Wx 22

equivalent as between BNSF and UP. Railroad's current tariff (Supplement 1 to Freight Tariff TCRY 8000, Effective December 1, 2001) charges shall provide its compensation for this service. The tariff charge for Railroad's service to the HRS will be as provided for in Supplemental 1 to Freight Tariff TCRY 8000 for rail service to Station Number 00400, the City of Richland Lead, described in item 5 of applicable charges and in Section 3, Station Names and Numbers. Railroad shall not assess any additional charges to the City or customers located on the HRS who utilize Railroad's services except as provided for in paragraph 3 above.

5. Each party hereto shall release, indemnify, defend and hold the other harmless from all claims, liabilities, costs or damages arising out of this Agreement to the extent caused by said party.
6. City and Railroad shall negotiate on a good faith basis to agree on an Industrial Track Agreement ("ITA") to replace this TSA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective in duplicate the day and year first herein above written.

THE TRI-CITY RAILROAD COMPANY

Mailing address...

Randolph Peterson
name...

CEO + Managing Partner
title...

CITY OF RICHLAND

Mailing address....

William King
name...

DCM - C&DS
title...

WK FP

EXHIBIT 10

WESTLAW

 Original Image of 835 F.Supp.2d 1056 (PDF)

835 F.Supp.2d 1056

United States District Court,

E.D. Washington

BNSF Ry. Co. v. Tri-City & Olympia R. Co. LLC

United States District Court, E.D. Washington. December 14, 2011. 835 F.Supp.2d 1056 (Approx. 11 pages)

BNSF RAILWAY COMPANY, Plaintiff,**Union Pacific Railroad Company, and Port of Benton, Plaintiff-
Intervenors,**

v.

TRI-CITY & OLYMPIA RAILROAD COMPANY LLC, Defendant.

No. CV-09-5062-EFS.

Dec. 14, 2011.

Synopsis

Background: Railroad brought action alleging that rail and track maintenance service provider breached railroad lease agreement when it blocked railroad's access to trackage and seeking declaratory judgment recognizing its operating rights over trackage and permanent injunction compelling lessee to afford it equal access to trackage. Another railroad and rail owner intervened, and provider filed counterclaims against owner for inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, quantum meruit, and tortious interference with contract. Plaintiff and provider filed cross-motions for summary judgment.

Holdings: The District Court, Edward F. Shea, J., held that:

- 1 railroads had right to access entirety of trackage in question, and
- 2 permanent injunction barring rail and track maintenance service provider from interfering with railroads' rights to operate on trackage was warranted.

Plaintiff's motion granted.

West Headnotes (7)**Attorneys and Law Firms**

*1057 Leland Barrett Kerr, Patrick J. Galloway, Kerr Law Group, Kennewick, WA, Matthew R. Brodin, Timothy R. Thornton, Briggs and Morgan, PA, Minneapolis, MN, for Plaintiff.

Tim D. Wackerbarth, Lane Powell, P.C., Rob J. Crichton, Keller Rohrback, LLP, Seattle, WA, Lucinda Jean Luke, Thomas A. Cowan, Jr., Cowan, Moore, Stam, Luke & Petersen, Richland, WA, for Intervenors Plaintiffs.

David Lawrence Meyer, Morrison & Foerster, LLP, Washington, DC, Derek F. Foran, Morrison & Foerster, LLP, San Francisco, CA, Nicholas D. Kovarik, Dunn & Black, PS, Spokane, WA, Paul J. Petit, Kennewick, WA, Robert A. Dunn, Dunn & *1058 Black, PS, Spokane, WA, Brandon L. Johnson, Minnick Hayner, P.S., Walla Walla, WA, for Defendant.

**ORDER GRANTING BNSF'S MOTION FOR SUMMARY JUDGMENT, DENYING TCRY'S
MOTION FOR SUMMARY JUDGMENT, AND DENYING ALL OTHER PENDING
MOTIONS AS MOOT**

EDWARD F. SHEA, District Judge.

Before the Court, without oral argument, are Plaintiff BNSF Railway Company's (hereinafter "BNSF") Motion for Summary Judgment, ECF No. 267, and Defendant Tri-City & Olympia Railroad Company LLC's (hereinafter "TCRY") Motion for Summary

SELECTED TOPICS**Injunction**

Nature and Grounds

Extraordinary Power of Injunctive Relief

Grounds of Relief

Track Railroad Company

General Rules of Construction

Parties Construction of Ambiguous Written Contract

Secondary Sources

**APPENDIX II: FAIR LABOR
STANDARDS ACT REGULATIONS
TITLE 29 CODE OF FEDERAL
REGULATIONS**

Fair Labor Stds. Hdbk. for States, Local Govs. and Schools Appendix II

...The U.S. Department of Labor published rule changes in October 2013 that will modify the companionship and live-in domestic services exemptions (but not the babysitting exemption) effective on Jan. 1, ...

APPENDIX I: FEDERAL STATUTE

Public Employer's Guide to FLSA Enr Appendix I

...(a) Creation of Wage and Hour Division in Department of Labor; Administrator. (b) Appointment, selection, classification, and promotion of employees by Administrator. (c) Principal office of Administrator...

APPENDIX I: FEDERAL STATUTE

FLSA Emp. Exemption Hdbk. Appen

...(a) Creation of Wage and Hour Division in Department of Labor; Administrator. (b) Appointment, selection, classification, and promotion of employees by Administrator. (c) Principal office of Administrator...

See More Secondary Sources

Briefs

**Brief for the Respondent The Utah
Idaho Central Railroad Company**

1938 WL 63929

Dan B. SHIELDS, Individually and as United States Attorney for the District of Utah, and the Interstate Commerce Commission, Petitioners, v. THE UTAH IDAHO CENTRAL RAILROAD COMPANY, Respondent. Supreme Court of the United States Oct Term 1938

...As stated by counsel for petitioners in their brief, the respondent brought an action against the petitioner Dan B. Shields, Individually and as United States Attorney for the District of Utah, praying...

**Brief of American Transit Association
as Amicus Curiae**

1938 WL 39367

Dan B. SHIELDS, Individually and as United States Attorney for the District of Utah, and Interstate Commerce Commission, Petitioners, v. THE UTAH-IDAHO CENTRAL RAILROAD COMPANY, A Corporation, Respondent. Supreme Court of the United States Oct. 10, 1938

...The American Transit Association is a voluntary, nation-wide organization comprising

Judgment, ECF No. 273. Also before the Court are BNSF's Motion to Compel Discovery Propounded to Defendant Tri-City & Olympia Railroad Company, L.L.C., ECF No. 305, and TCRY's Motion for Protective Order, ECF No. 316. After reviewing the submissions of the parties and applicable authority, the Court is fully informed. For the reasons discussed below, the Court grants BNSF's Motion for Summary Judgment, denies TCRY's Motion for Summary Judgment, and denies all other pending motions as moot.

I. BACKGROUND¹

A. 1947 Agreement

On November 6, 1947, the United States, acting through the U.S. Atomic Energy Commission ("Commission"), entered into an agreement ("1947 Agreement") with several railroads to establish service to the Hanford Nuclear Reservation ("Hanford site"). BNSF and Union Pacific Railroad Company ("UP"), the undisputed successors-in-interest to the 1947 Agreement, were granted "equal joint" operating rights over trackage beginning near Kennewick and extending north of Richland to the Hanford site ("Richland Trackage").

The 1947 Agreement identifies the rights of the parties to railway lines as shown on an August 25, 1947 map attached to the Agreement as "Exhibit A." The 1947 Agreement acknowledges that "the Government has constructed on its property a line of railway ... extending from Hanford, Washington, southerly to a point near the north bank of the Yakima River," and states as its purpose that "the Government desires to have a direct rail connection to the south so as to interchange business with [BNSF and UP's predecessors in interest]." To this end, Article V of the 1947 Agreement grants BNSF and UP's predecessors in interest the "equal joint right" to operate on the rail line and "to use said interchange facilities and wye for the purpose of interchanging business with the Government." Article VII of the Agreement states that BNSF and UP's predecessors in interest "each of itself agrees to deliver and receive at said interchange facilities all business which either is obligated to transport as a common carrier railroad." Article IX of the Agreement imposes an obligation on BNSF and UP's predecessors to "agree from time to *1059 time upon rules and regulations covering the movement of engines, cars and trains over the line B-E and on said interchange facilities."

The map attached to the 1947 Agreement identifies several points, labeled A through E. Point A is in Kennewick, and points B, C, and D extend along the rail line in a northwesterly direction toward the Hanford site. The map identifies point E as a location to the north of Richland upon which interchange tracks were to be built. The government later constructed an interchange facility at Point E, and today, Point E is TCRY's rail yard and is still operated as an interchange facility. Though the 1947 map identified a location to the south of the interchange tracks for the wye, the wye was in fact later built to the north of the interchange tracks.²

In 1948, the 1947 Agreement was the subject of a ruling by the Interstate Commerce Commission (ICC). Because the government was the only "customer" served by BNSF and UP's predecessors, the railroads sought exemption from the required public convenience and necessity certifications for common rail carriers. The ICC's Order held that a certificate was required because the railroads would also provide common carrier services to businesses in and around Richland. The ICC's Order modified terms in the 1947 Agreement regarding payment and rights to termination, but left the remainder of the Agreement undisturbed.

B. 1961 Agreement

In 1961, the Commission entered into a second agreement ("1961 Agreement") with the Railroads. Section 1 of the 1961 Agreement leased three specified areas of track to the railroads. Section 2 of the Agreement granted "the Railroads, and the industries served by them, the right to construct additional industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards as may be required to provide rail service for industries." Section 3 of the 1961 Agreement states as follows:

The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government's tracks shown on Exhibit "A" as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

Section 3's grant of authority was consistent with the agreement's stated purpose of allowing the railroads to operate on the United States' tracks "for the sole purpose of

in its membership the major portion of all independently operated electric railway mileage in the United States, mot...

Brief for the Respondents, Other Than the Interstate Commerce Commission

1932 WL 33367
PIEDMONT & NORTHERN RAILWAY COMPANY, Petitioner, v. INTERSTATE COMMERCE COMMISSION, Southern Railway Company, Charleston & Western Carolina Railway Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Carolina, Clinchfield & Ohio Railway, Carolina, Clinchfield & Ohio Railway of South Carolina, and Clinchfield Northern Railway of Kentucky, Respondents. Supreme Court of the United States Apr. 18, 1932

...The petition for certiorari, and petitioner's briefs, bring the case down to a narrow compass, the question involved being accurately stated on page 6 of petitioner's supplemental brief. That question ...

See More Briefs

Trial Court Documents

In re Energy Future Holdings Co

2014 WL 1869403
In re: ENERGY FUTURE HOLDING COMPANY, et al., Debtors.
United States Bankruptcy Court, D. Delaware. May 02, 2014

...Upon the motion (the "Motion") of Texas Competitive Electric Holdings Company LLC ("TCEH"), Energy Future Competitive Holdings Company LLC ("EFCH"), and each of the Subsidiary Guarantors (as defined b...

In re TXCO Resources Inc.

2010 WL 8032975
In re: TXCO RESOURCES INC., et al., Debtors.
United States Bankruptcy Court, W.D. Texas. Jan. 27, 2010

...Chapter 11 The relief described hereinbelow is SO ORDERED. Signed January 27, 2010. Jointly Administered A HEARING HAVING BEEN COMMENCED BEFORE THE COURT on January 25, 2010, and continuing on January ...

In re Montreal Maine & Atlantic Ry., Ltd.

2014 WL 575551
In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Debtor.
United States Bankruptcy Court, D. Maine. Jan. 24, 2014

...This matter having come before the Court on the Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.E. 490...

See More Trial Court Documents

receiving and delivering shipments routed via the Railroads and consigned by or to shippers and receivers located on said spur or side tracks.”

The rail line depicted in a 1960 map attached as Exhibit A to the 1961 Agreement begins south of Richland at the Yakima River Bridge, and extends to a Department of Energy (DOE) “barricade” roughly one thousand feet north of the wye tracks. The three segments of track leased in the 1961 Agreement are all south of the interchange facility and wye.

In 1979, the United States entered into an agreement with the railroads converting the 1961 lease agreement into a permit so that the tracks could be classified as surplus under the Federal Property and Administrative Services Act of 1949. This agreement deleted Sections 1 and 4 of the 1961 Agreement, which detailed the terms of the lease and the railroads' maintenance obligation, but left the 1961 Agreement's other provisions “in full force and effect.”

***1060 C. 1998 Indenture**

In 1998, the United States, acting through the DOE, conveyed ownership of a six-mile section of track to the Port of Benton (“Port”) through an Indenture, thereby assigning the DOE and Commission's rights under the 1947 and 1961 Agreements to the Port. The indenture stated that the 1947 and 1961 Agreements and the 1979 permit agreement governed access to the Railroad. The Indenture also stated that the Port, as assignee, agreed to be bound by the obligations and considerations in the United States' permit. As a result of these agreements, the Port has the right to terminate BNSF and UP's rights to use the Richland Trackage upon six months notice.

D. Interchange Agreement

On October 1, 1998, the Port entered into a Maintenance and Operation Agreement with TCRY's predecessor, Livingston Rebuild Center, Inc. (“Livingston”), under which it agreed to pay Livingston \$325, 000 per year for the maintenance of the Richland Trackage. These contractual rights and obligations were subsequently assigned to TCRY.

In May 2000, BNSF and TCRY contracted to interchange cars going into the Richland Trackage (“Interchange Agreement”). They exchanged cars at the Richland Junction, and TCRY served BNSF's customers along the Richland Trackage. TCRY maintained the trackage at its own expense and began charging a per-car fee for its services. This contract specifically reserved BNSF's rights under the 1947 and 1961 Agreements.

In a September 12, 2000 letter to then-TCRY President John Haakenson, the Port's Assistant Executive Director Scott Keller acknowledged that the Port was paying TCRY to maintain the railroad under a contract that allowed TCRY to charge a fee for its railroad operations, the revenue from which would offset the cost of maintenance. Recognizing that UP was using the Richland Trackage without paying a fee, the Port directed TCRY “to give written notice to [UP] terminating its rights to use the Port of Benton track.” Beginning November 14, 2000, UP could no longer continue its unauthorized use of the Richland Trackage: it would need to establish an interchange agreement with TCRY.

From approximately April 2001 through November 2001, TCRY and BNSF continuously disagreed about BNSF's right to operate on the Richland Trackage. BNSF claimed the 1947 and 1961 Agreements allowed it to directly operate on the Richland Trackage without interchanging; TCRY maintained that BNSF could only operate on the Richland Trackage if it operated under the Interchange Agreement. This disagreement about BNSF's rights to operate on the Richland Trackage forms the essential controversy before the Court today.

E. Railroad Lease

In 2002, TCRY and the Port negotiated a lease agreement (“Railroad Lease”) that authorized TCRY to provide rail and track maintenance services on the Richland Trackage. Paragraph 7.4 of the lease agreement states that TCRY “shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the Port's prior written consent.”

F. Legal Action

In 2009, BNSF informed TCRY that it intended to exercise its rights to directly operate on the Richland Trackage. TCRY objected, and on July 20 and 21, 2009, TCRY erected a barrier which physically prevented a BNSF locomotive from reaching *1061 BNSF customers along the Richland Trackage. A few days later, TCRY requested that the Port terminate the Richland Trackage agreements with BNSF. The Port refused.

BNSF filed this suit on July 20, 2009. ECF No. 1. UP moved to intervene on August 4, 2009, ECF No. 26, and the Court granted UP's motion. ECF No. 46. On August 12, 2009, 2009 WL 2486170, the Court granted BNSF's motion for a preliminary injunction, prohibiting TCRY from blocking BNSF's access to the Richland Trackage and requiring TCRY to charge its customary fee. ECF No. 46 & 93. TCRY filed an interlocutory appeal on September 9, 2009, which was voluntarily dismissed. ECF Nos. 67, 101, 108 & 109. Since August 15, 2009, BNSF and TCRY have been operating under the Proposed Operating Plan created to comply with the Court's preliminary injunction. ECF No. 52.

On March 8, 2010, the Court granted the Port of Benton's request to intervene. ECF No. 121. On June 2, 2010, TCRY filed a separate but related action in Benton County Superior Court against the Port, asserting claims for inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, and quantum meruit. ECF No. 209-1. By order dated August 20, 2010, the Superior Court stayed the state court action pending resolution of the federal claims in this Court. ECF No. 209-2.

On September 29, 2010, the Port amended its complaint, asserting that TCRY breached Railroad Lease Paragraph 7.4, which prohibits TCRY from "amend[ing], modify[ing], terminat[ing], or invalidat[ing]" other railroads' existing contractual relationships with the Port, when it temporarily blocked BNSF Railroad Company (BNSF)'s access to the Richland Trackage in July 2009. ECF No. 136. TCRY asserted several counterclaims against the Port, including inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, quantum meruit, and tortious interference with contract. ECF No. 165, ¶¶ 18-24.

TCRY filed a motion for summary judgment on October 20, 2010, seeking dismissal of the Port's Amended Complaint. ECF No. 142. On November 24, 2010, the Port moved for summary dismissal of TCRY's counterclaims. ECF No. 171. TCRY then moved on December 17, 2010, to remand the inverse condemnation claims to state court for determination where they were originally asserted. ECF No. 200. On July 1, 2011, 2011 WL 2607162, the Court denied TCRY's Motion for Summary Judgment and Motion for Remand. ECF No. 264. The Court's Order granted the Port's Motion for Partial Summary Judgment, dismissing TCRY's counterclaims against the Port. *Id.* In denying TCRY's Motion for Summary Judgment, the Court found that under the 1947 and 1961 Agreements, BNSF and UP have "equal joint" rights to operate directly upon the Richland Trackage, and that TCRY took its lease of the Richland Trackage subject to BNSF and UP's rights. *Id.*

TCRY and BNSF now both move for summary judgment regarding the nature and extent of BNSF and UP's rights to operate on the Richland Trackage. ECF Nos. 267 & 273. TCRY asserts that BNSF and UP's rights under the Agreements are limited to use of the trackage only up to the interchange, or alternatively, the wye, and that BNSF may use those portions of track for interchange purposes only. BNSF argues that their right to operate directly extends to all Richland Trackage south of the old Department of Energy barricade, and is subject only to ~~1062~~ the limitation that it be used "for the purpose of moving freight shipments." After reviewing the record in this matter, the arguments of the parties, and applicable authority, the Court is fully informed. Because the 1947 and 1961 Agreements give BNSF and UP the right to operate directly on the entirety of the Richland Trackage, the Court denies TCRY's motion and grant BNSF's motion.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate if the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Once a party has moved for summary judgment, the opposing party must point to specific facts establishing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the nonmoving party fails to make such a showing for any of the elements essential to its case for which it bears the burden of proof, the trial court should grant the summary judgment motion. *Id.* at 322, 106 S.Ct. 2548. When considering a motion for summary judgment, the Court does not weigh the evidence or assess credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505. When ruling on cross-motions for summary judgment, the Court has a duty to review the record supporting the parties' motions and to determine

whether there are issues of material fact precluding summary judgment. *Fair Housing Council of Riverside Cnty., Inc.*, 249 F.3d at 1136.

Here, both TCRY and BNSF have moved for summary judgment. Both parties agree that there are no genuine issues of material fact, and after reviewing the record in this matter, the Court finds that there are none. Summary judgment is thus appropriate if either party is entitled to judgment as a matter of law.

B. Applicable Law

1 2 When interpreting a contract under Washington law, the Court attempts to "ascertain the parties' intentions and give effect to their intentions." *Taylor-Edwards Warehouse & Transfer Co. of Spokane, Inc. v. Burlington N., Inc.*, 715 F.2d 1330, 1334 (9th Cir.1983) (citing *Jones v. Hollingsworth*, 88 Wash.2d 322, 326, 560 P.2d 348 (1977)). Under Washington law, extrinsic evidence is only admissible "as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties' intent." *Berg v. Hudesman*, 115 Wash.2d 657, 667, 801 P.2d 222 (1990). When a contract is unambiguous and its formation is undisputed, the interpretation of the contract is a question of law that is appropriate for resolution on summary judgment. *See, e.g., Mfg'd Hous. Cmty. of Wash. v. St. Paul Mercury Ins. Co.*, 660 F.Supp.2d 1208, 1212 (W.D.Wash.2009) (citing *Mayer v. Pierce Cnty. Med. Bureau*, 80 Wash.App. 416, 420, 909 P.2d 1323 (1995)).

C. The Parties' Positions

TCRY concedes that BNSF has the right to directly on a portion of the Richland Trackage, but argues that language in the 1947 Agreement geographically restricts the United States' grant to BNSF and UP's predecessors to direct service between points "C" and "E" on the map attached as Exhibit A to the 1947 Agreement. Because point "E" on Exhibit A to the 1947 Agreement is the present-day site of TCRY's interchange facility, TCRY argues that BNSF and UP should be enjoined *1063 from directly serving points north of the interchange facility, and should be required to interchange with TCRY in order to serve customers north of the interchange facility. Alternatively, TCRY argues that BNSF and UP's operating rights should terminate at the wye built a short distance north of the interchange facility.

TCRY also asserts, in an argument developed primarily in its reply memorandum, that the 1947 Agreement only grants the railroads rights to use trackage between points "C" and "E" on Exhibit A for the purpose of interchanging rail traffic with the government, and not to provide direct rail service to customers along that track. Finally, TCRY argues that it would be unfair to allow BNSF and UP to directly service customers north of the interchange facility because pursuant to the 1998 Maintenance and Operation Agreement, it is charged with the sole responsibility for maintaining the Richland Trackage. TCRY requests a permanent injunction prohibiting BNSF and UP from traveling north of its interchange facility.

BNSF argues that because the wye pictured in Exhibit A to the 1947 Agreement was later built to the north of the interchange facility (instead of to the south as represented in Exhibit A), the 1947 Agreement does in fact grant the railroads operating rights north of the interchange facility. BNSF further argues that Sections 2 and 3 of the 1961 agreement extended the Railroads' operating rights to the entirety of the Richland Trackage, limited only by the broad requirement that their operations be for the purpose of "moving freight shipments."³ BNSF requests a declaratory judgment recognizing its operating rights over the Richland Trackage and a permanent injunction compelling TCRY to afford it equal access to the Richland Trackage.

Intervenor-Plaintiff UP does not oppose BNSF's motion, but asks that any ruling on the motion protect the "equal, just, and fair" operating rights to the Richland Trackage that it was granted by the 1947 Agreement. UP also asserts that BNSF does not have the right to provide direct rail service to the Hanford site, but that BNSF's direct rail service rights instead terminate somewhere between TCRY's interchange facility and Hanford.

D. Analysis

i. BNSF's Operating Rights on the Richland Trackage

3 On close review of the underlying agreements, it is apparent that BNSF's reading of the 1947 and 1961 Agreements is the correct one. While the 1947 Agreement's grant to BNSF and UP's predecessors in interest is explicitly limited to the "right to operate ... between points B and E, and to use said interchange facilities and wye for the purpose of interchanging business with the government," ECF No. 32-2 at 13, this agreement was

speculative and referenced trackage that had yet to be *1064 built. See *id.* at 12 (the Commission shall lay track in "approximately the location shown in yellow on said exhibit," and shall build an interchange and wye "in the vicinity of point E." (emphasis added)). At the time the 1947 Agreement was drafted, the United States was the only shipper on this section of track, and security concerns prevented private access to the Hanford site; thus, the Agreement's reference to point "E" appears to be intended to demarcate a convenient place for interchange, rather than to provide an affirmative limitation on the railroads' later ability to service rail customers. But regardless of the exact intent behind the 1947 Agreement, the 1961 Agreement greatly expands the United States' grant to BNSF and UP.

The 1961 Agreement has the stated purpose of allowing the railroads to "receiv[e] and deliver[] shipments routed via the Railroads and consigned by or to shippers and receivers" located on spur or side tracks connecting to the United States' tracks. ECF No. 32-3 at 62. As noted above, Section 3 of the 1961 Agreement states as follows:

The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government's tracks shown on Exhibit "A" as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

Id. at 63. Exhibit A to the 1961 Agreement is a detailed map depicting the entirety of the Richland Trackage, minus the subsequently-built Port trackage and spurs extending west from the wye. The above-quoted language grants BNSF and UP broad operating rights over the Richland Trackage, and bulwark's BNSF's position.

TCRY makes much of Section 3's limitation that the railroads may only use such segments of the tracks as may be necessary to access "the tracks covered by this agreement." TCry argues that because Section 1 of the agreement, which contains the operative language of the lease, lists only sections of track south of the interchange facility, the "tracks covered by this agreement" are all south of the interchange, and thus Section 3's grant does not extend north of the interchange or wye. Section 2 of the agreement, however, also grants "the Railroads, and industries served by them," the right to construct additional "industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards as may be required to provide rail service for industries." *Id.* It seems readily apparent that the Port's spur tracks are "industrial spur, set-out, and such other tracks" that were constructed by "the industries served by [the railroads]" as the phrase is used in the 1961 Agreement. These subsequently-built tracks are thus "tracks covered by" the 1961 Agreement, and it follows logically that Section 3 also grants BNSF and UP the right to serve customers on these later-built sections of Port trackage and spurs extending west of the wye.

TCRY also argues that Section 3's reference to "tracks shown on Exhibit 'A'" precludes a reading of the 1961 Agreement that grants BNSF and UP rights relating to tracks built after the Agreement, because they by definition could not be shown on Exhibit A. But Section 3's reference to "tracks shown on Exhibit 'A'" relates to the section of track over which BNSF and UP are afforded rights, not the Section's later use of the phrase "tracks covered by this agreement;" these tracks are precisely the tracks over which BNSF and UP seek access. This interpretation of the 1961 Agreement is supported by its stated purpose of opening up the Richland Trackage to common carrier rail service in order to promote industrial development in *1065 the Richland area. Of course, BNSF and UP's right to use the Richland Trackage may only be "for the purpose of moving freight shipments."

Accordingly, the Court finds that the 1961 Agreement grants BNSF and UP the right to operate directly on the Richland Trackage. This right extends north of the TCry interchange facility, and includes both the spur tracks to the west of the wye and the main-line tracks north to Horn Rapids Road. Neither BNSF nor UP has a right to serve the Hanford site directly.

ii. UP's Operating Rights on the Richland Trackage

UP's position is clearly supported by the 1947 Agreement. The 1947 Agreement grants both BNSF and UP's predecessors in interest "the equal joint right" to operate on the relevant section of track. ECF No. 32-2 at 13. This grant includes the future-looking assurance that "any right or privilege at any time granted by the Commission to one of said companies in respect to its operations shall be a right or privilege which the other company may at its option exercise in respect to its operations." *Id.* Furthermore, the

Agreement requires BNSF and UP's predecessors to "agree from time to time upon rules and regulations" for the use of the Richland Trackage, and requires that such rules and regulations "shall be equal, just, and fair," and "shall not unjustly discriminate against either." *Id.* at 14. These portions of the 1947 Agreement have not been modified by later agreement, and remain in force today. As such, the Court includes UP in any declaratory or injunctive relief it affords BNSF.

E. Relief Granted

i. Declaratory Judgment

4 Under the Declaratory Judgment Act, 28 U.S.C. § 2201, declaratory judgment is proper when one party has established that "there is a substantial controversy, between parties having adverse interest, of sufficient immediacy and reality to warrant issuance of a declaratory judgment." *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 658 (9th Cir.2002) (quoting *Western Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir.1981)). Here, the factual background of this case unquestionably demonstrates that such a controversy exists and that declaratory judgment is proper.

BNSF requests a declaratory judgment recognizing its rights to provide direct rail service over the Richland Trackage.⁴ For the reasons discussed above, the Court grants BNSF's request in this regard, and issues a declaratory judgment recognizing both BNSF and UP's rights to provide direct rail service over the Richland Trackage.

ii. Permanent Injunction

BNSF also requests a permanent injunction compelling TCRY to allow it access over the Richland Trackage and requiring TCRY to coordinate train scheduling and dispatching with BNSF and UP.

5 6 Permanent injunctive relief is proper when a party can show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest ¹⁰⁶⁶would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006). The first factor, the existence of irreparable injury, is also satisfied by a continuing and imminent threat of harm. *See, e.g., Bowler v. Home Depot USA Inc.*, No. C09-5523 JCS, 2011 WL 166140, at *3 (N.D.Cal. January 19, 2011) (citing *Monsanto Co. v. Geertson Seed Farms*, — U.S. —, 130 S.Ct. 2743, 2760, 177 L.Ed.2d 461 (2010)). The decision to grant or deny permanent injunctive relief is within the Court's discretion. *See eBay Inc.*, 547 U.S. at 391, 126 S.Ct. 1837 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982)).

7 Here, BNSF fulfills the first two factors because the percipient loss of customer goodwill that will occur if TCRY again blocks it from accessing the Richland Trackage is imminent; the loss of consumer goodwill is an irreparable injury, and legal remedies are inadequate to compensate for that injury. *See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991); *Regents of Univ. of Cal. v. Am. Broad. Cos.*, 747 F.2d 511, 519-20 (9th Cir.1984). The balance of hardships between BNSF and TCRY also runs in BNSF's favor: While TCRY is currently tasked with maintaining the Richland Trackage under the 1998 Maintenance and Operation Agreement and the 2002 Lease, as the Court has already found, TCRY took possession of the Richland Trackage subject to BNSF and UP's pre-existing rights; the temporary hardship TCRY will suffer under its contract with the Port is outweighed by the long-term hardship BNSF and UP would suffer if their rights under the 1947 and 1961 Agreements were permanently abrogated. Finally, as the Court found in its Order granting BNSF's motion for a preliminary injunction, ECF No. 93 at 10-11, it is in the public interest to encourage competition among the railroads and to ensure that railroad service remains efficient. Accordingly, a permanent injunction is proper.

TCRY argues that if such relief is granted, the injunction should not be "asymmetrical." TCRY cites *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir.2010), in support of this position, but this case mentions no such consideration, and simply affirms a district court's preliminary injunction issued under the *Winter* framework. TCRY asserts that an order enjoining only it would be unfair because it would "give[] only one party the asymmetric right to seek an order of contempt over any claim of contract breach." ECF No. 283 at 15. However, only TCRY is in breach of the 1947 and 1961 Agreements, and BNSF has committed no harm that need be redressed with equitable relief. Furthermore, the Court's contempt power will only be available for breach of the *injunction*, and both

parties will retain the ability to seek legal relief for breach of the underlying contract. As such, the Court denies TCRY's request for a "symmetrical" injunction.

For the reasons discussed above, the Court grants BNSF's request and issues a permanent injunction requiring TCRY 1) to allow both BNSF and UP to directly serve customers along the Richland Trackage, and 2) to coordinate train scheduling and dispatching with both BNSF and UP. The parties shall meet and confer to develop a comprehensive operational plan as detailed below.

F. Conclusion

For all of the historical complexity surrounding the Richland Trackage, the relative rights of the parties are actually quite simple: The United States granted BNSF and UP's predecessors in interest full rights to operate on the Richland Trackage, and TCRY took possession of the ~~1067~~ Richland Trackage subject to these rights. Accordingly, the Court issues a declaratory judgment recognizing BNSF and UP's operating rights, and issues a permanent injunction protecting these rights.

Accordingly, **IT IS HEREBY ORDERED:**

1. BNSF's Motion for Summary Judgment, **ECF No. 273**, is **GRANTED**. Both BNSF and UP shall have the right to operate directly on the Richland Trackage. Representatives from BNSF, TCRY, and UP shall meet and confer at a mutually-convenient time and place—either by phone or in person—and draft a comprehensive operational plan (COP), consistent with the Court's ruling, that is signed and agreed upon by all three parties. A representative of the Port shall be permitted to attend and offer comments. The COP shall cover trackage from the Richland junction to Horn Rapids Road (and all spurs that spring therefrom). The proposed COP shall be filed for Court approval **no later than 5:00 p.m. on December 23, 2011** unless on or before that date, BNSF, TCRY, and UP file with the Court a joint stipulation to a later date. The Port shall have seven (7) days after the filing of the proposed COP in which to file a statement with the Court stating its comments or objections to the proposed COP. The parties shall have seven (7) days after the filing of the Port's statement in which to file individual or joint reply to the Port's statement. No other responsive or reply memoranda will be considered.

2. All pending motions are **DENIED as moot**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

All Citations

835 F.Supp.2d 1056

Footnotes

- 1 In connection with their motions, the parties submitted Joint Statements of Uncontroverted Facts. ECF Nos. 281 & 294. The Court treats these facts as established consistent with Federal Rule of Civil Procedure 56(d), and sets these forth in this "Factual Background" section without reference to an ECF number. Any disputed facts are supported by a citation to the record. The Court has reviewed the record supporting the parties' cross-motions for summary judgment, and finds that there are no issues of material fact precluding summary judgment. *See Fair Housing Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir.2001) (discussing district court's duty to review the record when ruling on cross-motions for summary judgment).
- 2 A wye is a triangular arrangement of rail tracks designed to allow railway equipment to change direction by performing a "three-point turn."
- 3 BNSF also argues that TCRY's argument is foreclosed by the law of the case. However, the Court's September 28, 2009, 2009 WL 3149569, Order Granting BNSF's Motion for Preliminary Injunction expressly stated that the Court's preliminary injunction ruling was "not binding on the Court in future proceedings in this case." ECF No. 93 at 2; *see also Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1423 (9th Cir.1984) (recognizing that trial court's findings regarding a party's probability of success on the merits are not binding on future stages of the case). Furthermore, while the

Court's July 1, 2011 Order held that TCRY leasehold rights were "subject to UP and BNSF's continued use of the Richland Trackage, as secured by the 1947 and 1961 Agreements," ECF No. 264 at 23, the question of the exact nature and extent of the parties' rights over the Richland Trackage was not then before the Court.

- 4 TCRY argues that BNSF's requested relief must be denied because BNSF failed to name the Port and UP, who are necessary parties under Federal Rule of Civil Procedure 19. However, any argument that BNSF has improperly failed to join the Port and UP was rendered moot when they intervened in this lawsuit.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 11



OFFICE OF THE CITY ATTORNEY MS-07

Telephone (509) 942-7385

Fax (509) 942-7689

P.O. Box 190 Richland, WA 99352

www.ci.richland.wa.us

December 22, 2010

RECEIVED

DEC 28 2010

Paul Petit
P.O. Box 1700
Richland, WA 99354

Dear Paul:

Your December 10, 2010, letter suggests that Tri-City Railroad may continue to use the track on "*terms equivalent to those under which BNSF currently operates*" until TCRY reaches an agreement, either temporary or permanent, with the City for use of the track. Richland disagrees.

Richland will likely enter into a Standard Form Track Use Agreement with BNSF in January. A copy of the agreement is attached. At that time, Richland will expect Tri-City Railroad to enter the same agreement. If it does not, its usage of the track will be terminated. Richland also reserves the right to terminate Tri-City Railroad's use of the track in accordance with law and prior agreement.

Sincerely,

Thomas O. Lampson
City Attorney

Cc: Pete Rogalsky
George Fearing

Enclosure

CITY OF RICHLAND
STANDARD FORM RAILROAD TRACK USE AGREEMENT

THIS RAILROAD TRACK USE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of this ____ day of _____, 20____ (hereinafter referred to as the "Effective Date") by and between the **CITY OF RICHLAND**, a municipal corporation in the State of Washington (hereinafter referred to as "City") and _____, a _____ corporation and a duly licensed corporation in the State of Washington (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, City is the owner of a railroad industrial spur track, commonly known as the Horn Rapids Rail Spur, located at the Horn Rapids Industrial Park in the City of Richland and connected to the Southern Connection of the Hanford Railroad (owned by the Port of Benton, Washington (hereinafter referred to as the "Port"), successor in interest to the United States Department of Energy), as shown on Exhibit A attached hereto (hereinafter referred to as the "Track");

WHEREAS, Railroad operates pursuant to separate agreement(s) over tracks owned by the Port which tracks connect with the Track near Milepost B 37 on the Port's trackage and a portion of which tracks have been used for the interchange of traffic between rail carriers at or near Richland Junction, Washington (hereinafter referred to as "Richland Junction");

WHEREAS, Railroad desires to use the Track for the purpose of providing railroad freight service thereon and thereover to industries located on or adjacent to the Track (hereinafter referred to individually as "Industry" and collectively as "Industries");

WHEREAS, City desires that all railroad interchange operations at Richland Junction be permanently eliminated to facilitate commercial development and improve vehicular traffic movement in the area; and

WHEREAS, City is willing to allow Railroad to use the Track on a non-exclusive basis but only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties, intending to be bound, do hereby agree as follows:

SECTION 1
GRANT OF USE

Section 1.1. City hereby grants to Railroad non-exclusive permission to operate its trains, locomotives, cars and equipment with its own crews over the Track for the purposes set forth herein. Railroad's use of the Track shall be in common with such other user or users of the Track as City has heretofore admitted, or may at any time in the future admit, to use of all or any

portion of the Track, provided that City shall require such user or users to comply with all Legal Requirements (as defined in Section 9.1) applicable to such user's or users' use of the Track. Subject to the foregoing, City shall retain the exclusive right to grant to other persons the right to use all or any portion of the Track, provided that such use does not unreasonably interfere with the rights granted to Railroad herein.

Section 1.2. The Track shall include, without limitation, the right-of-way, tracks, rails, ties, ballast, other track materials, switches, bridges, grade crossings and any and all other improvements or fixtures affixed to the right-of-way.

Section 1.3. Railroad shall take the Track in an "AS IS, WHERE IS" condition subject to all rights, interests and estates of third parties in and to the Track.

Section 1.4. City represents that it owns or controls the land underlying the Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement.

SECTION 2 **PERMITTED USE**

Section 2.1. Railroad's use of the Track shall be limited to the movement of goods by rail to and from an Industry via tracks of such Industry that connect to the Track.

Section 2.2. Railroad shall not knowingly and intentionally permit the loading or unloading of railcars on the Track by any party within its control, and shall not enter into agreements or arrangements with any person for the storage of empty or loaded railcars on the Track or any portion thereof, without the prior written consent of City.

Section 2.3. Neither party shall use the Track or any portion thereof, for the storage, transload or disposal of any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (hereinafter referred to as "CERCLA"), or petroleum or oil as defined by CERCLA, the Resource Conservation and Recovery Act, as amended (hereinafter referred to as "RCRA"), the Clean Water Act, the Oil Pollution Act, and the Hazardous Materials Transportation Act (hereinafter collectively referred to herein as the "Environmental Laws"), provided however, that nothing herein shall preclude Railroad or any other admittee of City from using the Track for the movement of hazardous substances in railcars in the normal course of providing rail transportation service to or from an Industry.

Section 2.4. Neither party shall use nor allow the use of the Track for the transportation of passengers thereon or thereover, provided however, that nothing herein shall preclude Railroad or any other admittee of City from operating a hi-rail vehicle over the Track for the purpose of inspecting the Track.

Section 2.5. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Track. In the event any such liens are filed, Railroad shall cause such liens to be released within fifteen (15) days.

Section 2.6. Railroad shall not create or store any waste or nuisance on the Track. Railroad shall neither use nor occupy the Track or any part thereof in violation of Legal Requirements (as defined in Section 9.1). City shall not cause or allow the Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad's ability to use the Track for the purposes set forth in this Agreement, provided however, that use of the Track by any user in the ordinary course of providing rail service to any industry on the Track, shall not be deemed a violation of the requirements of this sentence.

SECTION 3 **MAINTENANCE**

Section 3.1. City, at its cost and expense, shall be solely responsible for, and shall have exclusive direction and control over, the maintenance of the Track which shall include, but not be limited to, maintenance of tracks, subgrade, track drainage, grade crossings, grade crossing warning signs and devices, signal boxes, bridges and abutments, culverts, drainage ditches, retaining walls and any fences or barriers that City may erect. City shall also be solely responsible for litter and vegetation control and for keeping the Track sufficiently free and clear of snow and ice to permit railroad operations thereover.

Section 3.2. City shall maintain the Track to not less than Federal Railroad Administration (hereinafter referred to as "FRA") Class 2 track safety standards with a maximum gross weight limitation of not less than 286,000 lbs. per car and City shall maintain the Track in such condition and in compliance with all Legal Requirements (as hereinafter defined below). City shall also maintain all grade crossing signal equipment on the Track in accordance with all applicable Legal Requirements (as defined in Section 9.1).

Section 3.3. City, in its sole discretion, may contract with a third party to perform City's maintenance obligations hereunder, provided, however, City shall remain responsible for any obligations of City under this Agreement that may be performed by any such contractor.

Section 3.4. Railroad shall notify City in writing of any deficiencies in City's maintenance of the Track when such deficiencies are reasonably discovered by Railroad, and City shall, as soon as practicable, but in any event not more than thirty (30) days after its receipt of such notice, or in the case of an imminent safety hazard and/or condition which renders the Track impassable, within forty-eight (48) hours, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

Section 3.5. If the use of the Track is at any time interrupted or traffic thereover is delayed for any cause whatsoever, City shall, with reasonable diligence, restore the Track for the passage of trains. Railroad shall not have nor make any claim against City for loss, damage, loss of business or expenses of any kind resulting from such interruption or delay.

Section 3.6. City shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Track and, subject to the provisions of Section 4.1 of this Agreement, Railroad shall not, by reason of City's performing

or failing, or neglecting to perform any maintenance, repair or renewal of the Track, have or make against City, its officers, agents or employees, any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from any defect in the Track or City's performance, failure or neglect, except as provided otherwise in Section 11 herein.

Section 3.7. Subject to the provisions of Section 8.1 herein, Railroad shall have the right to enter upon the Track and make inspections to determine compliance with the terms of this Agreement. In no event shall Railroad be obligated to make any such inspections, and Railroad shall not be liable for any failure to make any such inspections or failure to identify any matters that are not in compliance with this Agreement. In no event shall Railroad's conducting of inspections be deemed to result in a waiver of City's compliance with any terms of this Agreement.

Section 3.8. City shall be responsible for reporting of grade crossings and structures inventory and any other similar information as may be required by the FRA or any other governmental body having jurisdiction over such matters.

SECTION 4 **COMPENSATION**

Section 4.1. For so long as City permits Railroad reasonable use of the Track, as compensation for Railroad's use of the Track, Railroad shall pay to City annually at the beginning of each calendar year a fee of Fifteen Thousand Dollars (\$15,000) (hereinafter referred to as the "Annual Fee") which shall be payable regardless of Railroad's use of the Track during that year.

Section 4.2.

A. The Annual Fee shall be subject to adjustment on January 1 of each year beginning January 1, 2011 in accordance with changes in the Consumer Price Index for Wage Earners and Clerical Workers, series CWUR0000SA0 (hereinafter referred to as "CPI-W"). The Annual Fee set forth in Section 4.1 shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recent July as related to the final index of the previous July and applying this percentage of increase or decrease to the current Annual Fee to be revised. The resulting adjusted Annual Fee shall hereinafter be referred to as "the Revised Annual Fee."

By way of example, assuming "A" to be the CPI-W final index figure for July 1, 2009; "B" to be the CPI-W final index figure for July, 2010; and "C" to be the current Annual Fee to be escalated; the Revised Annual Fee effective January 1, 2011 would be determined by the following formula:

$$B/A \times C = \text{Revised Annual Fee, Rounded to Nearest Whole Cent}$$

B. In the event that publication of the CPI-W is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the

parties hereto. In the absence of agreement, the matter shall be submitted to arbitration in accordance with Section 16 herein.

C. Under no circumstances shall the Revised Annual Fee paid by Railroad to City be less than the Annual Fee in effect on the date of this Agreement.

Section 4.3.

A. Railroad agrees that as part of the consideration for obtaining City's permission to use the Track herein, Railroad shall, subject to Legal Requirements, as of the Effective Date and during the term of this Agreement, permanently relocate any interchange receipt operations between Railroad and another rail carrier at Richland Junction to an alternate interchange location except that Railroad may, in emergency situations only, interchange cars at Richland Junction. For purposes of this provision, an emergency situation includes, but is not limited to, the following: Force Majeure events or other Acts of God; movement of High or Wide loads; movement or handling of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) in compliance with Legal Requirements or other safety requirements; track or other mechanical conditions necessitating a change in interchange location. Except as required by law or as provided in this Section 4.3.A, Railroad shall not, during the term of this Agreement, enter any agreement to deliver cars in interchange to any other railroad at Richland Jct.

B. The City intends to construct a public street, called Center Parkway, at the location of Richland Junction. Railroad further agrees to provide easements and rights of way necessary to complete Center Parkway in exchange for fair market value compensation as determined by an independent appraisal obtained by the City at the City's sole cost and expense performed in compliance with City and Washington State Department of Transportation right of way acquisition policies and procedures.

C. Railroad further agrees that if the design of Center Parkway requires an at-grade crossing of a track owned or used by Railroad, Railroad shall not oppose installation of a crossing designed in compliance with the current version of the Manual on Uniform Traffic Control Devices or any other applicable Legal Requirements, with the appropriate traffic control system to be used at the crossing to be determined by an engineering study involving both the City and Railroad representatives. In the event that both City and Railroad representatives jointly agree as to the appropriate traffic control system to be used at the crossing, Railroad shall execute a waiver of hearing document to the Washington State Utilities and Transportation Commission regarding the proposed crossing.

Section 4.4. City acknowledges that the compensation provided for in this Section 4 shall be the sole consideration for the right to use the Track, and in no event shall City impose any additional charges tariffs, or surcharges on Railroad or any customer or receiver of Railroad as a condition of use of the Track for the provision of rail transportation service except to the extent expressly set forth below. Notwithstanding the foregoing, City may assess additional charges, tariffs, or surcharges for maintenance, operating and dispatching costs associated with the Track if all of the following conditions are satisfied: (i) City provides Railroad with advance written notice of the proposed charges, tariffs or surcharges and detailed

information concerning City's costs, including the deficit not covered by the then current Annual Fee; and (ii) City, Railroad and any other users of the Track are not able to negotiate, within 60 days of City providing notice in (i) above, an updated Annual Fee in lieu of the proposed charges to the mutual satisfaction of the parties.

SECTION 5
BILLING AND PAYMENT

Section 5.1. City shall render to Railroad a bill for the Annual Fee.

Section 5.2. Upon reasonable request by City, Railroad shall furnish to City, within sixty (60) days of receiving such request, a statement of the number of loaded and empty cars handled by Railroad over all or any portion of the Track during the previous twelve (12) months. Notwithstanding the foregoing, City shall only be entitled to make one request for such car information each calendar year during the term of this Agreement.

Section 5.3. All payments called for under this Agreement shall be made by Railroad within thirty (30) days after receipt of a bill therefor except for any claims or demands for payment pursuant to Section 11 of this Agreement. No payment shall be withheld because of any dispute as to the correctness of items in any bill rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. In the event that Railroad shall fail to pay any monies due to City within thirty (30) days after the invoice date, Railroad shall pay interest on such unpaid sum of twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 5.4. The records of Railroad, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by City for a period of two (2) years from the date of billing.

Section 5.5. For purposes of this Agreement, the terms "cost," "costs," "expense" and "expenses" shall include actual labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed for Railroad, which surcharges, overhead percentages and equipment rentals shall be reasonable and consistent with City's then-current standard billing practice, procedures, rates and schedules.

SECTION 6
ADDITIONS, RETIREMENTS AND ALTERATIONS

Section 6.1. City, from time to time, and at its sole cost and expense, may make such changes in, additions and improvements to, and retirements from the Track as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof, or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and improvements shall become part of the Track and such retirements shall be excluded from the Track.

Section 6.2. If Railroad requests City to make changes in or additions or improvements to the Track required to accommodate Railroad's operations thereover, and Railroad agrees to reimburse City therefor, City shall make such changes, additions or improvements to the Track and Railroad shall pay to City the cost thereof, including the annual expense, if any, of maintaining, repairing and renewing such additional or altered facilities.

SECTION 7 **TERM**

Section 7.1. This Agreement shall take effect on the date hereof and shall continue in full force and effect for three (3) years from the date hereof (hereinafter referred to as the "Initial Term") and shall automatically renew for successive one (1) year periods thereafter, absent written notice of termination by either party made at least one hundred eighty (180) days prior to expiration of the Initial Term or prior to any expiration of any such one-year renewal term unless earlier terminated pursuant to the terms of this Agreement.

SECTION 8 **OPERATIONS**

Section 8.1. Railroad agrees that entry to and exit from the Track shall be controlled by City or any contractor or admittee designated by City. City shall require that any entity allowed by City to control operations thereover shall be required to ensure that the trains, locomotives and cars of all users of the Track shall be operated thereon and thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track. City reserves the right at any time by written notice to Railroad and any other user or users of the Track to assume management and control of all operations over the Track consistent with the terms of this Section 8.1.

Section 8.2. Railroad shall provide, at its sole cost and expense, all locomotives, railcars, other rolling stock and transportation equipment, personnel, fuel and train supplies necessary for Railroad to provide safe and adequate rail transportation to the Industries. Railroad shall also provide, at its sole cost and expense, all radios and other communication facilities as necessary to comply with the regulations of the FRA. Railroad shall be solely responsible for all car hire charges and mileage allowances on cars in Railroad's account handled over the Track.

Section 8.3. City, at its sole cost and expense, shall provide all necessary switchlocks for use in the operation of the Track. City shall provide at no charge a reasonable number of keys for such switchlocks to Railroad and any other user or users of the Track.

Section 8.4. Railroad, at its sole cost and expense, shall perform or cause to be performed any repairs required to make locomotives, cars or other equipment in the custody or control of Railroad on the Track comply with Legal Requirements (as defined in Section 9.1).

Section 8.5. City shall not place, permit to be placed or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within eight and one-half (8-1/2) feet laterally from the centerline of straight track (nine and one-half (9-1/2) feet on either

side of the centerline of curved track) or within twenty-three (23) feet vertically from the top of the rail of any track (hereinafter referred to as "Minimal Clearances"), provided that if any Legal Requirements (as defined in Section 9.1) require greater clearances than those provided for in this Section 8.5, City shall comply with such Legal Requirements. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements shall not be a violation of this Section, so long as City complies with the terms of any such Legal Requirements.

Section 8.6. Railroad shall not place or allow to be placed any rail car within two hundred fifty (250) feet of either side of any at-grade crossing on the Track. Railroad shall not place or permit to be placed on the City's right-of-way any permanent or temporary structure of any kind whatsoever without the prior written consent of City, which consent may be withheld at City's sole discretion. City shall require any other user or users of the Track to comply with the requirements of this Section 8.6.

Section 8.7. Railroad and City agree that with respect to the at-grade road crossings on the Port of Benton County's track between the proposed Center Parkway crossing at Richland Junction and SR 240 (Vantage Highway) inclusive, Railroad shall use reasonable efforts to minimize its operations over such crossings during peak highway traffic times Monday through Friday. City acknowledges and understands that Railroad's compliance with its common carrier obligations may, from time to time, require operations over such crossings during peak highway traffic times. Railroad agrees to use reasonable efforts to meet its obligations under this Section 8.7.

Section 8.8. In the event that any user of the Track, including Railroad, provides notice to the City of any violation of Legal Requirements by any user of the Track, including Railroad, or any violation of the terms of this Agreement or the applicable agreement between such user and City (including without limitation, any applicable obligation to control entry to and exit from the Track or operations thereon or thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track), City shall conduct an investigation into such alleged violation, and if, in the reasonable judgment of City, Railroad or such user shall be in violation of applicable Legal Requirements or the terms of this Agreement or such user's agreement with the City, City shall require Railroad or such user as the case may be to cure such conduct in accordance with this Agreement or the applicable agreement, and unless and until same shall be cured in compliance with this Agreement or the applicable agreement, City shall bar Railroad or such user as the case may be from use of the Track.

SECTION 9

COMPLIANCE WITH LAWS

Section 9.1. The parties agree to comply with all applicable provisions of law, statutes, regulations, ordinances, orders, covenants, restrictions and decisions of any governmental body or court having jurisdiction (hereinafter collectively referred to as "Legal Requirements") relating to this Agreement or use of the Track. Each party hereto shall indemnify, protect, defend and hold harmless the other party and its officers, agents and employees from and against all fines, penalties, and liabilities imposed on the other party under

such laws, rules and regulations by any such public authority or court having jurisdiction when attributable to the failure of the first party to comply with its obligations in this regard.

Section 9.2. City and Railroad agree that the Track is excepted trackage under 49 U.S.C. Section 10906 and that no approval, authorization or exemption from the Surface Transportation Board (hereinafter referred to as the "STB") is required for Railroad to use the Track or to discontinue its use of the Track. Railroad agrees that it will not seek or obtain any approval, authorization or exemption from the STB for its use or discontinuance of use of the Track.

SECTION 10 **CLEARING OF WRECKS**

Section 10.1. If trains, locomotives, cars or equipment of Railroad are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, Railroad shall be responsible for the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if Railroad fails to restore the Track to service within a reasonable period of time, not to exceed forty-eight (48) hours, after such wreck or derailment, City, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and Railroad shall reimburse City for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.

Section 10.2. If trains, locomotives, cars or equipment of any admittee of City, other than Railroad, are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, City shall ensure the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if City fails to have the Track restored to service within a reasonable period of time, not to exceed seventy-two (72) hours, after such wreck or derailment, Railroad, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and City shall reimburse Railroad for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provision of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by City or its admittee at the time of such wreck shall be promptly delivered to City or its admittee, as the case may be.

SECTION 11
LIABILITY

Section 11.1

A. TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "**CITY INDEMNITEES**"), FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATHS, DAMAGE OR DESTRUCTION OF PROPERTY AND DAMAGE TO OR DESTRUCTION OF THE ENVIRONMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION LAND, AIR, WATER, WILDLIFE, AND VEGETATION (HEREINAFTER COLLECTIVELY REFERRED TO AS "**CLAIMS**"), TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY RAILROAD AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

B. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "**RAILROAD INDEMNITEES**"), FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY CITY AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

C. UPON WRITTEN NOTICE FROM RAILROAD OR CITY, THE OTHER PARTY AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE OF THE OTHER PARTY BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE OTHER PARTY HAS AN OBLIGATION TO ASSUME LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS SUCH INDEMNITEE. THE OTHER PARTY SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

D. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES, AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.

SECTION 12
INSURANCE

Section 12.1.

A. Railroad shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

1. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post-1998 ISO occurrence form or equivalent and include coverage for, but not limited to:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation-related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of the Track.
- Any exclusion related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy with regard to Railroad's use of the Track under this Agreement.

2. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

3. Workers' Compensation and Employers Liability insurance including coverage for, but not limited to:

- Railroad's statutory liability under the worker's compensation laws of the State of Washington. If optional under State law, the insurance must cover all employees anyway.
- Employers' liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

4. Excess Liability insurance in an amount not less than \$10,000,000 each occurrence and \$10,000,000 aggregate limit.

B. Railroad shall also comply with the following requirements:

1. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
2. Railroad agrees to waive its right of recovery against City and Indemnitees under its Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers Liability insurance coverages.
3. Railroad's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.
4. All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name City as an additional insured by endorsement using additional insured form CG 26 07 04 with respect to Railroad's use of the Track under this Agreement. Severability of interest and naming City as an additional insured shall be indicated on the certificate of insurance.
5. Except if Railroad is a Class I rail carrier as defined under the regulations of the STB, Railroad is not allowed to self-insure without the prior written consent of City. If granted by City, any deductible, self insured retention or other financial responsibility for claims shall be paid directly by Railroad. Any and all City liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Railroad's insurance shall be paid by Railroad as if Railroad elected not to include a deductible, self-insured retention or other financial responsibility for claims.

6. Prior to entering upon the Track, Railroad shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving City arising out of this Agreement, Railroad will make available any required policy covering such claim or lawsuit.
7. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the State of Washington.
8. Railroad represents that this Agreement has been thoroughly reviewed by Railroad's insurance agent(s)/broker(s), who have been instructed by Railroad to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
9. Not more frequently than once every five (5) years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
10. Failure to provide evidence as required by this section shall entitle, but not require, City to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Railroad's obligations hereunder.
11. The fact that insurance (including, without limitation, self-insurance) is obtained by Railroad shall not be deemed to release or diminish the liability of Railroad including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

C. City shall waive in writing the above insurance requirements if Railroad is a Class I rail carrier as defined in the regulations of the STB.

SECTION 13
ENVIRONMENTAL

Section 13.1

A. Railroad shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Track, including, but not limited to Environmental Laws. Railroad shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, anywhere on the Track. Railroad shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, anywhere on the Track.

B. Railroad shall provide immediate notice to City's Contract Officer at (509) 942-7327 of any release of hazardous substances on or from the Track, violation of Environmental Laws, or inspection or inquiry by government authorities charged with enforcing Environmental Laws with respect to Railroad's use of the Track. Railroad shall use reasonable efforts to promptly respond to any release on or about the Track. Railroad also shall give City immediate notice of all measures undertaken on behalf of Railroad to investigate, remediate, respond to or otherwise cure such release or violation.

C. In the event that City receives notice from Railroad or otherwise learns of a release or violation of Environmental Laws on the Track which occurred or may occur during the term of this Agreement for which Railroad is responsible pursuant to this Agreement, City may require Railroad, at Railroad's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure or prevent such release or violation affecting the Track.

D. Railroad shall promptly report to City in writing any known conditions or activities on the Track 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 Railroad's reporting to City shall not relieve Railroad of any obligation whatsoever imposed on it by this Agreement. Railroad shall promptly respond to City's request for information regarding said conditions or activities.

SECTION 14
TERMINATION

Section 14.1. Railroad may terminate this Agreement at any time after one year from the Effective Date, by giving City not less than six (6) months' written notice of termination. Upon expiration or termination of this Agreement consistent with the terms herein, all rights of Railroad to use the Track shall cease.

Section 14.2. Notwithstanding any other provision of this Agreement except Section 14.3, at any time after the Effective Date, City may terminate this Agreement if Railroad shall default on or breach any of its obligations hereunder, including but not limited to timely payment of compensation to City pursuant to Section 4.1, and Railroad fails to cure such default or breach within twenty (20) days of receipt of written notice from City specifying such default or breach.

Section 14.3. Notwithstanding any other provision of this Agreement, at any time after the Effective Date, City may terminate this Agreement if Railroad fails to comply with its obligations under Section 4.3 herein and Railroad does not cure such failure within thirty (30) days of receipt of written notice from City specifying such failure.

Section 14.4. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The Annual Fee paid by Railroad to City pursuant to Section 4.1 shall be non-refundable if termination of this Agreement becomes effective after June 1 of the year to which the Annual Fee applies.

SECTION 15 **NOTICES**

Section 15. 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 for such change in address:

If to City: Community Development Services
 Attn: Horn Rapids Rail Spur
 City of Richland
 975 George Washington Way
 P.O. Box 190, MS #18
 Richland, WA 99352
 (509) 942-7593

If to Railroad: AVP Contracts and Joint Facilities
 2600 Lou Menk Drive
 P.O. Box 961034
 Fort Worth, TX 76161-0034
 (817) 352-2354

SECTION 16 **ARBITRATION**

Section 16.1. Any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules may be amended from time to time, and as shall be applied with reference to the customs and practices of the railroad industry. Any such arbitration shall be held in Richland, Washington or at such other location as may be mutually acceptable to the parties

hereto. The decision of the arbitrator or arbitration panel shall be final and conclusive upon the parties hereto. A final decision and award of the arbitration panel shall be enforceable in any court of competent jurisdiction in the United States of America. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator or panel, if any, shall be borne equally by the parties hereto. The arbitration panel shall not have the power to (a) award punitive or consequential damages, (b) determine violations of antitrust or criminal laws, or (c) reform the terms of this Agreement, in whole or in part.

SECTION 17 **MISCELLANEOUS**

Section 17.1. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, provided however, no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 17.2. This Agreement shall be binding upon and inure to the benefit of City and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth. Railroad may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations in whole or in part under this Agreement, without the prior written consent of City, which consent may be withheld in City's sole discretion; provided, however, no such consent shall be required where assignment occurs as a result of a sale or transfer of all or substantially all of the assets of Railroad pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 17.3. If fulfillment of any provision hereof shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 17.4. Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

Section 17.5. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in state court in Washington.

Section 17.6. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties hereto. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 17.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17.8. The parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this Section 17.9, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

Section 17.9. The failure of either of the parties hereto in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof, or to exercise any remedy, privilege, or option herein conferred upon or reserved to such party, shall not operate and shall not be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

Section 17.10. Railroad shall, on the last day of the term, or upon any earlier termination of this Agreement, peaceably and in an orderly manner vacate the Track free of any property of Railroad or third parties placed by Railroad thereon. Railroad shall, if not in default hereunder, remove its equipment, goods, trade fixtures and effects and those of all persons claiming by, through or under it, provided that such removal does not cause irreparable damage to the Track. Any personal property not used in connection with the operation of the Track and belonging to Railroad, if not removed at the termination hereof, and if City shall so elect, shall be deemed abandoned and become the property of City without any payment or offset therefor. City may remove such property from the Track and store it at the risk and expense of Railroad if City shall not so elect. Railroad shall repair and restore all damage to the Track caused by the removal of any of Railroad's equipment and personal property. Railroad, if requested by City, shall remove all signs placed on the Track by Railroad and restore the portion of the Track on which they were placed substantially to the same condition as immediately prior to installation thereof.

Section 17.11. The failure of Railroad to vacate the Track on the expiration or termination of this Agreement as required pursuant to the terms of this Agreement and the subsequent holding over by Railroad, with or without the consent of City, shall result in the creation of a tenancy at will at a monthly fee equal to one hundred fifty percent (150%) of the then-applicable Annual Fee divided by twelve (12), for each month or portion thereof in which the Railroad holds over, payable on the tenth (10th) day of the following month. This provision does not give Railroad any right to hold over at termination of this Agreement, and all other terms and conditions of this Agreement shall remain in force during any tenancy at will created by any holding over by Railroad.

Section 17.12. The parties expressly agree that this Agreement and any rights and obligations under this Agreement shall not be deemed an "interchange commitment" as such

term is defined in Bill No. S-2889 dated December 9, 2009 entitled "the Surface Transportation Board Reauthorization Act of 2009."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

CITY OF RICHLAND, WASHINGTON

RAILROAD

CYNTHIA D. JOHNSON
City Manager

ATTEST:

APPROVED AS TO FORM:

DEBRA C. BARHAM
Deputy City Clerk

THOMAS O. LAMPSON
City Attorney

EXHIBIT 12

COPY

Contract No. 22-11

CITY OF RICHLAND
STANDARD FORM RAILROAD TRACK USE AGREEMENT

THIS RAILROAD TRACK USE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of this 5 day of January, 2011 (hereinafter referred to as the "Effective Date") by and between the **CITY OF RICHLAND**, a municipal corporation in the State of Washington (hereinafter referred to as "City") and **BNSF RAILWAY COMPANY**, a Delaware corporation and a duly licensed corporation in the State of Washington (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, City is the owner of a railroad industrial spur track, commonly known as the Horn Rapids Rail Spur, located at the Horn Rapids Industrial Park in the City of Richland and connected to the Southern Connection of the Hanford Railroad (owned by the Port of Benton, Washington (hereinafter referred to as the "Port"), successor in interest to the United States Department of Energy), as shown on Exhibit A attached hereto (hereinafter referred to as the "Track");

WHEREAS, Railroad operates pursuant to separate agreement(s) over tracks owned by the Port which tracks connect with the Track near Milepost B 37 on the Port's trackage and a portion of which tracks have been used for the interchange of traffic between rail carriers at or near Richland Junction, Washington (hereinafter referred to as "Richland Junction");

WHEREAS, Railroad desires to use the Track for the purpose of providing railroad freight service thereon and thereover to industries located on or adjacent to the Track (hereinafter referred to individually as "Industry" and collectively as "Industries");

WHEREAS, City desires that all railroad interchange operations at Richland Junction be permanently eliminated to facilitate commercial development and improve vehicular traffic movement in the area; and

WHEREAS, City is willing to allow Railroad to use the Track on a non-exclusive basis but only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties, intending to be bound, do hereby agree as follows:

SECTION 1
GRANT OF USE

Section 1.1. City hereby grants to Railroad non-exclusive permission to operate its trains, locomotives, cars and equipment with its own crews over the Track for the purposes set forth herein. Railroad's use of the Track shall be in common with such other user or users of the Track as City has heretofore admitted, or may at any time in the future admit, to use of all or any

portion of the Track, provided that City shall require such user or users to comply with all Legal Requirements (as defined in Section 9.1) applicable to such user's or users' use of the Track. Subject to the foregoing, City shall retain the exclusive right to grant to other persons the right to use all or any portion of the Track, provided that such use does not unreasonably interfere with the rights granted to Railroad herein.

Section 1.2. The Track shall include, without limitation, the right-of-way, tracks, rails, ties, ballast, other track materials, switches, bridges, grade crossings and any and all other improvements or fixtures affixed to the right-of-way.

Section 1.3. Railroad shall take the Track in an "AS IS, WHERE IS" condition subject to all rights, interests and estates of third parties in and to the Track.

Section 1.4. City represents that it owns or controls the land underlying the Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement.

SECTION 2 **PERMITTED USE**

Section 2.1. Railroad's use of the Track shall be limited to the movement of goods by rail to and from an Industry via tracks of such Industry that connect to the Track.

Section 2.2. Railroad shall not knowingly and intentionally permit the loading or unloading of railcars on the Track by any party within its control, and shall not enter into agreements or arrangements with any person for the storage of empty or loaded railcars on the Track or any portion thereof, without the prior written consent of City.

Section 2.3. Neither party shall use the Track or any portion thereof, for the storage, transload or disposal of any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (hereinafter referred to as "CERCLA"), or petroleum or oil as defined by CERCLA, the Resource Conservation and Recovery Act, as amended (hereinafter referred to as "RCRA"), the Clean Water Act, the Oil Pollution Act, and the Hazardous Materials Transportation Act (hereinafter collectively referred to herein as the "Environmental Laws"), provided however, that nothing herein shall preclude Railroad or any other admittee of City from using the Track for the movement of hazardous substances in railcars in the normal course of providing rail transportation service to or from an Industry.

Section 2.4. Neither party shall use nor allow the use of the Track for the transportation of passengers thereon or thereover, provided however, that nothing herein shall preclude Railroad or any other admittee of City from operating a hi-rail vehicle over the Track for the purpose of inspecting the Track.

Section 2.5. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Track. In the event any such liens are filed, Railroad shall cause such liens to be released within fifteen (15) days.

Section 2.6. Railroad shall not create or store any waste or nuisance on the Track. Railroad shall neither use nor occupy the Track or any part thereof in violation of Legal Requirements (as defined in Section 9.1). City shall not cause or allow the Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad's ability to use the Track for the purposes set forth in this Agreement, provided however, that use of the Track by any user in the ordinary course of providing rail service to any industry on the Track, shall not be deemed a violation of the requirements of this sentence.

SECTION 3 **MAINTENANCE**

Section 3.1. City, at its cost and expense, shall be solely responsible for, and shall have exclusive direction and control over, the maintenance of the Track which shall include, but not be limited to, maintenance of tracks, subgrade, track drainage, grade crossings, grade crossing warning signs and devices, signal boxes, bridges and abutments, culverts, drainage ditches, retaining walls and any fences or barriers that City may erect. City shall also be solely responsible for litter and vegetation control and for keeping the Track sufficiently free and clear of snow and ice to permit railroad operations thereover.

Section 3.2. City shall maintain the Track to not less than Federal Railroad Administration (hereinafter referred to as "FRA") Class 2 track safety standards with a maximum gross weight limitation of not less than 286,000 lbs. per car and City shall maintain the Track in such condition and in compliance with all Legal Requirements (as hereinafter defined below). City shall also maintain all grade crossing signal equipment on the Track in accordance with all applicable Legal Requirements (as defined in Section 9.1).

Section 3.3. City, in its sole discretion, may contract with a third party to perform City's maintenance obligations hereunder, provided, however, City shall remain responsible for any obligations of City under this Agreement that may be performed by any such contractor.

Section 3.4. Railroad shall notify City in writing of any deficiencies in City's maintenance of the Track when such deficiencies are reasonably discovered by Railroad, and City shall, as soon as practicable, but in any event not more than thirty (30) days after its receipt of such notice, or in the case of an imminent safety hazard and/or condition which renders the Track impassable, within forty-eight (48) hours, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

Section 3.5. If the use of the Track is at any time interrupted or traffic thereover is delayed for any cause whatsoever, City shall, with reasonable diligence, restore the Track for the passage of trains. Railroad shall not have nor make any claim against City for loss, damage, loss of business or expenses of any kind resulting from such interruption or delay.

Section 3.6. City shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Track and, subject to the provisions of Section 4.1 of this Agreement, Railroad shall not, by reason of City's performing

or failing, or neglecting to perform any maintenance, repair or renewal of the Track, have or make against City, its officers, agents or employees, any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from any defect in the Track or City's performance, failure or neglect, except as provided otherwise in Section 11 herein.

Section 3.7. Subject to the provisions of Section 8.1 herein, Railroad shall have the right to enter upon the Track and make inspections to determine compliance with the terms of this Agreement. In no event shall Railroad be obligated to make any such inspections, and Railroad shall not be liable for any failure to make any such inspections or failure to identify any matters that are not in compliance with this Agreement. In no event shall Railroad's conducting of inspections be deemed to result in a waiver of City's compliance with any terms of this Agreement.

Section 3.8. City shall be responsible for reporting of grade crossings and structures inventory and any other similar information as may be required by the FRA or any other governmental body having jurisdiction over such matters.

SECTION 4 **COMPENSATION**

Section 4.1. For so long as City permits Railroad reasonable use of the Track, as compensation for Railroad's use of the Track, Railroad shall pay to City annually at the beginning of each calendar year a fee of Fifteen Thousand Dollars (\$15,000) (hereinafter referred to as the "Annual Fee") which shall be payable regardless of Railroad's use of the Track during that year.

Section 4.2.

A. The Annual Fee shall be subject to adjustment on January 1 of each year beginning January 1, 2011 in accordance with changes in the Consumer Price Index for Wage Earners and Clerical Workers, series CWUR0000SA0 (hereinafter referred to as "CPI-W"). The Annual Fee set forth in Section 4.1 shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recent July as related to the final index of the previous July and applying this percentage of increase or decrease to the current Annual Fee to be revised. The resulting adjusted Annual Fee shall hereinafter be referred to as "the Revised Annual Fee."

By way of example, assuming "A" to be the CPI-W final index figure for July 1, 2009; "B" to be the CPI-W final index figure for July, 2010; and "C" to be the current Annual Fee to be escalated; the Revised Annual Fee effective January 1, 2011 would be determined by the following formula:

$$B/A \times C = \text{Revised Annual Fee, Rounded to Nearest Whole Cent}$$

B. In the event that publication of the CPI-W is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the

parties hereto. In the absence of agreement, the matter shall be submitted to arbitration in accordance with Section 16 herein.

C. Under no circumstances shall the Revised Annual Fee paid by Railroad to City be less than the Annual Fee in effect on the date of this Agreement.

Section 4.3.

A. Railroad agrees that as part of the consideration for obtaining City's permission to use the Track herein, Railroad shall, subject to Legal Requirements, as of the Effective Date and during the term of this Agreement, permanently relocate any interchange receipt operations between Railroad and another rail carrier at Richland Junction to an alternate interchange location except that Railroad may, in emergency situations only, interchange cars at Richland Junction. For purposes of this provision, an emergency situation includes, but is not limited to, the following: Force Majeure events or other Acts of God; movement of High or Wide loads; movement or handling of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) in compliance with Legal Requirements or other safety requirements; track or other mechanical conditions necessitating a change in interchange location. Except as required by law or as provided in this Section 4.3.A, Railroad shall not, during the term of this Agreement, enter any agreement to deliver cars in interchange to any other railroad at Richland Jct.

B. Railroad further agrees that if the design of Center Parkway requires an at-grade crossing of a track owned or used by Railroad, Railroad shall not oppose installation of a crossing designed in compliance with the current version of the Manual on Uniform Traffic Control Devices or any other applicable Legal Requirements, with the appropriate traffic control system to be used at the crossing to be determined by an engineering study involving both the City and Railroad representatives. In the event that both City and Railroad representatives jointly agree as to the appropriate traffic control system to be used at the crossing, Railroad shall execute a waiver of hearing document to the Washington State Utilities and Transportation Commission regarding the proposed crossing.

Section 4.4. City acknowledges that the compensation provided for in this Section 4 shall be the sole consideration for the right to use the Track, and in no event shall City impose any additional charges tariffs, or surcharges on Railroad or any customer or receiver of Railroad as a condition of use of the Track for the provision of rail transportation service except to the extent expressly set forth below. Notwithstanding the foregoing, City may assess additional charges, tariffs, or surcharges for maintenance, operating and dispatching costs associated with the Track if all of the following conditions are satisfied: (i) City provides Railroad with advance written notice of the proposed charges, tariffs or surcharges and detailed information concerning City's costs, including the deficit not covered by the then current Annual Fee; and (ii) City, Railroad and any other users of the Track are not able to negotiate, within 60 days of City providing notice in (i) above, an updated Annual Fee in lieu of the proposed charges to the mutual satisfaction of the parties.

SECTION 5
BILLING AND PAYMENT

Section 5.1. City shall render to Railroad a bill for the Annual Fee.

Section 5.2. Upon reasonable request by City, Railroad shall furnish to City, within sixty (60) days of receiving such request, a statement of the number of loaded and empty cars handled by Railroad over all or any portion of the Track during the previous twelve (12) months. Notwithstanding the foregoing, City shall only be entitled to make one request for such car information each calendar year during the term of this Agreement.

Section 5.3. All payments called for under this Agreement shall be made by Railroad within thirty (30) days after receipt of a bill therefor except for any claims or demands for payment pursuant to Section 11 of this Agreement. No payment shall be withheld because of any dispute as to the correctness of items in any bill rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. In the event that Railroad shall fail to pay any monies due to City within thirty (30) days after the invoice date, Railroad shall pay interest on such unpaid sum of twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 5.4. The records of Railroad, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by City for a period of two (2) years from the date of billing.

Section 5.5. For purposes of this Agreement, the terms "cost," "costs," "expense" and "expenses" shall include actual labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed for Railroad, which surcharges, overhead percentages and equipment rentals shall be reasonable and consistent with City's then-current standard billing practice, procedures, rates and schedules.

SECTION 6
ADDITIONS, RETIREMENTS AND ALTERATIONS

Section 6.1. City, from time to time, and at its sole cost and expense, may make such changes in, additions and improvements to, and retirements from the Track as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof, or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and improvements shall become part of the Track and such retirements shall be excluded from the Track.

Section 6.2. If Railroad requests City to make changes in or additions or improvements to the Track required to accommodate Railroad's operations thereover, and Railroad agrees to reimburse City therefor, City shall make such changes, additions or improvements to the Track and Railroad shall pay to City the cost thereof, including the annual expense, if any, of maintaining, repairing and renewing such additional or altered facilities.

SECTION 7

TERM

Section 7.1. This Agreement shall take effect on the date hereof and shall continue in full force and effect for three (3) years from the date hereof (hereinafter referred to as the "Initial Term") and shall automatically renew for successive one (1) year periods thereafter, absent written notice of termination by either party made at least one hundred eighty (180) days prior to expiration of the Initial Term or prior to any expiration of any such one-year renewal term unless earlier terminated pursuant to the terms of this Agreement.

SECTION 8

OPERATIONS

Section 8.1. Railroad agrees that entry to and exit from the Track shall be controlled by City or any contractor or admittee designated by City. City shall require that any entity allowed by City to control operations thereover shall be required to ensure that the trains, locomotives and cars of all users of the Track shall be operated thereon and thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track. City reserves the right at any time by written notice to Railroad and any other user or users of the Track to assume management and control of all operations over the Track consistent with the terms of this Section 8.1.

Section 8.2. Railroad shall provide, at its sole cost and expense, all locomotives, railcars, other rolling stock and transportation equipment, personnel, fuel and train supplies necessary for Railroad to provide safe and adequate rail transportation to the Industries. Railroad shall also provide, at its sole cost and expense, all radios and other communication facilities as necessary to comply with the regulations of the FRA. Railroad shall be solely responsible for all car hire charges and mileage allowances on cars in Railroad's account handled over the Track.

Section 8.3. City, at its sole cost and expense, shall provide all necessary switchlocks for use in the operation of the Track. City shall provide at no charge a reasonable number of keys for such switchlocks to Railroad and any other user or users of the Track.

Section 8.4. Railroad, at its sole cost and expense, shall perform or cause to be performed any repairs required to make locomotives, cars or other equipment in the custody or control of Railroad on the Track comply with Legal Requirements (as defined in Section 9.1).

Section 8.5. City shall not place, permit to be placed or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within eight and one-half (8-1/2) feet laterally from the centerline of straight track (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or within twenty-three (23) feet vertically from the top of the rail of any track (hereinafter referred to as "Minimal Clearances"), provided that if any Legal Requirements (as defined in Section 9.1) require greater clearances than those provided for in this Section 8.5, City shall comply with such Legal Requirements. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal

Requirements shall not be a violation of this Section, so long as City complies with the terms of any such Legal Requirements.

Section 8.6. Railroad shall not place or allow to be placed any rail car within two hundred fifty (250) feet of either side of any at-grade crossing on the Track. Railroad shall not place or permit to be placed on the City's right-of-way any permanent or temporary structure of any kind whatsoever without the prior written consent of City, which consent may be withheld at City's sole discretion. City shall require any other user or users of the Track to comply with the requirements of this Section 8.6.

Section 8.7. Railroad and City agree that with respect to the at-grade road crossings on the Port of Benton County's track between the proposed Center Parkway crossing at Richland Junction and SR 240 (Vantage Highway) inclusive, Railroad shall use reasonable efforts to minimize its operations over such crossings during peak highway traffic times Monday through Friday. City acknowledges and understands that Railroad's compliance with its common carrier obligations may, from time to time, require operations over such crossings during peak highway traffic times. Railroad agrees to use reasonable efforts to meet its obligations under this Section 8.7.

Section 8.8. In the event that any user of the Track, including Railroad, provides notice to the City of any violation of Legal Requirements by any user of the Track, including Railroad, or any violation of the terms of this Agreement or the applicable agreement between such user and City (including without limitation, any applicable obligation to control entry to and exit from the Track or operations thereon or thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track), City shall conduct an investigation into such alleged violation, and if, in the reasonable judgment of City, Railroad or such user shall be in violation of applicable Legal Requirements or the terms of this Agreement or such user's agreement with the City, City shall require Railroad or such user as the case may be to cure such conduct in accordance with this Agreement or the applicable agreement, and unless and until same shall be cured in compliance with this Agreement or the applicable agreement, City shall bar Railroad or such user as the case may be from use of the Track.

SECTION 9 **COMPLIANCE WITH LAWS**

Section 9.1. The parties agree to comply with all applicable provisions of law, statutes, regulations, ordinances, orders, covenants, restrictions and decisions of any governmental body or court having jurisdiction (hereinafter collectively referred to as "Legal Requirements") relating to this Agreement or use of the Track. Each party hereto shall indemnify, protect, defend and hold harmless the other party and its officers, agents and employees from and against all fines, penalties, and liabilities imposed on the other party under such laws, rules and regulations by any such public authority or court having jurisdiction when attributable to the failure of the first party to comply with its obligations in this regard.

Section 9.2. City and Railroad agree that the Track is excepted trackage under 49 U.S.C. Section 10906 and that no approval, authorization or exemption from the Surface

Transportation Board (hereinafter referred to as the "STB") is required for Railroad to use the Track or to discontinue its use of the Track. Railroad agrees that it will not seek or obtain any approval, authorization or exemption from the STB for its use or discontinuance of use of the Track.

SECTION 10 **CLEARING OF WRECKS**

Section 10.1. If trains, locomotives, cars or equipment of Railroad are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, Railroad shall be responsible for the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if Railroad fails to restore the Track to service within a reasonable period of time, not to exceed forty-eight (48) hours, after such wreck or derailment, City, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and Railroad shall reimburse City for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.

Section 10.2. If trains, locomotives, cars or equipment of any admittee of City, other than Railroad, are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, City shall ensure the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if City fails to have the Track restored to service within a reasonable period of time, not to exceed seventy-two (72) hours, after such wreck or derailment, Railroad, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and City shall reimburse Railroad for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provision of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by City or its admittee at the time of such wreck shall be promptly delivered to City or its admittee, as the case may be.

SECTION 11
LIABILITY

Section 11.1

A. TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "CITY INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATHS, DAMAGE OR DESTRUCTION OF PROPERTY AND DAMAGE TO OR DESTRUCTION OF THE ENVIRONMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION LAND, AIR, WATER, WILDLIFE, AND VEGETATION (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY RAILROAD AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

B. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "RAILROAD INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY CITY AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

C. UPON WRITTEN NOTICE FROM RAILROAD OR CITY, THE OTHER PARTY AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE OF THE OTHER PARTY BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE OTHER PARTY HAS AN OBLIGATION TO ASSUME LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS SUCH INDEMNITEE. THE OTHER PARTY SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

D. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES, AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.

SECTION 12
INSURANCE

Section 12.1.

A. Railroad shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

1. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post-1998 ISO occurrence form or equivalent and include coverage for, but not limited to:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation-related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of the Track.
- Any exclusion related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy with regard to Railroad's use of the Track under this Agreement.

2. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to:
 - Bodily injury and property damage
 - Any and all vehicles owned, used or hired
3. Workers' Compensation and Employers Liability insurance including coverage for, but not limited to:

- Railroad's statutory liability under the worker's compensation laws of the State of Washington. If optional under State law, the insurance must cover all employees anyway.
 - Employers' liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
4. Excess Liability insurance in an amount not less than \$10,000,000 each occurrence and \$10,000,000 aggregate limit.

B. Railroad shall also comply with the following requirements:

1. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
2. Railroad agrees to waive its right of recovery against City and Indemnitees under its Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers Liability insurance coverages.
3. Railroad's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.
4. All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name City as an additional insured by endorsement using additional insured form CG 26 07 04 with respect to Railroad's use of the Track under this Agreement. Severability of interest and naming City as an additional insured shall be indicated on the certificate of insurance.
5. Except if Railroad is a Class I rail carrier as defined under the regulations of the STB, Railroad is not allowed to self-insure without the prior written consent of City. If granted by City, any deductible, self insured retention or other financial responsibility for claims shall be paid directly by Railroad. Any and all City liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Railroad's insurance shall be paid by Railroad as if Railroad elected not to include a deductible, self-insured retention or other financial responsibility for claims.

6. Prior to entering upon the Track, Railroad shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving City arising out of this Agreement, Railroad will make available any required policy covering such claim or lawsuit.
 7. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the State of Washington.
 8. Railroad represents that this Agreement has been thoroughly reviewed by Railroad's insurance agent(s)/broker(s), who have been instructed by Railroad to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
 9. Not more frequently than once every five (5) years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
 10. Failure to provide evidence as required by this section shall entitle, but not require, City to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Railroad's obligations hereunder.
 11. The fact that insurance (including, without limitation, self-insurance) is obtained by Railroad shall not be deemed to release or diminish the liability of Railroad including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.
- C. City shall waive in writing the above insurance requirements if Railroad is a Class I rail carrier as defined in the regulations of the STB.

SECTION 13
ENVIRONMENTAL

Section 13.1

A. Railroad shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Track, including, but not limited to Environmental Laws. Railroad shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, anywhere on the Track. Railroad shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, anywhere on the Track.

B. Railroad shall provide immediate notice to City's Contract Officer at (509) 942-7327 of any release of hazardous substances on or from the Track, violation of Environmental Laws, or inspection or inquiry by government authorities charged with enforcing Environmental Laws with respect to Railroad's use of the Track. Railroad shall use reasonable efforts to promptly respond to any release on or about the Track. Railroad also shall give City immediate notice of all measures undertaken on behalf of Railroad to investigate, remediate, respond to or otherwise cure such release or violation.

C. In the event that City receives notice from Railroad or otherwise learns of a release or violation of Environmental Laws on the Track which occurred or may occur during the term of this Agreement for which Railroad is responsible pursuant to this Agreement, City may require Railroad, at Railroad's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure or prevent such release or violation affecting the Track.

D. Railroad shall promptly report to City in writing any known conditions or activities on the Track 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 Railroad's reporting to City shall not relieve Railroad of any obligation whatsoever imposed on it by this Agreement. Railroad shall promptly respond to City's request for information regarding said conditions or activities.

SECTION 14
TERMINATION

Section 14.1. Railroad may terminate this Agreement at any time after one year from the Effective Date, by giving City not less than six (6) months' written notice of termination. Upon expiration or termination of this Agreement consistent with the terms herein, all rights of Railroad to use the Track shall cease.

Section 14.2. Notwithstanding any other provision of this Agreement except Section 14.3, at any time after the Effective Date, City may terminate this Agreement if Railroad shall default on or breach any of its obligations hereunder, including but not limited to timely payment of compensation to City pursuant to Section 4.1, and Railroad fails to cure such default or breach within twenty (20) days of receipt of written notice from City specifying such default or breach.

Section 14.3. Notwithstanding any other provision of this Agreement, at any time after the Effective Date, City may terminate this Agreement if Railroad fails to comply with its obligations under Section 4.3 herein and Railroad does not cure such failure within thirty (30) days of receipt of written notice from City specifying such failure.

Section 14.4. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The Annual Fee paid by Railroad to City pursuant to Section 4.1 shall be non-refundable if termination of this Agreement becomes effective after June 1 of the year to which the Annual Fee applies.

SECTION 15 **NOTICES**

Section 15. 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 for such change in address:

If to City: Community Development Services
 Attn: Horn Rapids Rail Spur
 City of Richland
 975 George Washington Way
 P.O. Box 190, MS #18
 Richland, WA 99352
 (509) 942-7593

If to Railroad: AVP Contracts and Joint Facilities
 2600 Lou Menk Drive
 P.O. Box 961034
 Fort Worth, TX 76161-0034
 (817) 352-2354

SECTION 16 **ARBITRATION**

Section 16.1. Any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules may be amended from time to time, and as shall be applied with reference to the customs and practices of the railroad industry. Any such arbitration shall be held in Richland, Washington or at such other location as may be mutually acceptable to the parties

hereto. The decision of the arbitrator or arbitration panel shall be final and conclusive upon the parties hereto. A final decision and award of the arbitration panel shall be enforceable in any court of competent jurisdiction in the United States of America. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator or panel, if any, shall be borne equally by the parties hereto. The arbitration panel shall not have the power to (a) award punitive or consequential damages, (b) determine violations of antitrust or criminal laws, or (c) reform the terms of this Agreement, in whole or in part.

SECTION 17 **MISCELLANEOUS**

Section 17.1. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, provided however, no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 17.2. This Agreement shall be binding upon and inure to the benefit of City and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth. Railroad may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations in whole or in part under this Agreement, without the prior written consent of City, which consent may be withheld in City's sole discretion; provided, however, no such consent shall be required where assignment occurs as a result of a sale or transfer of all or substantially all of the assets of Railroad pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 17.3. If fulfillment of any provision hereof shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 17.4. Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

Section 17.5. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in state court in Washington.

Section 17.6. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties hereto. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 17.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17.8. The parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this Section 17.9, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

Section 17.9. The failure of either of the parties hereto in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof, or to exercise any remedy, privilege, or option herein conferred upon or reserved to such party, shall not operate and shall not be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

Section 17.10. Railroad shall, on the last day of the term, or upon any earlier termination of this Agreement, peaceably and in an orderly manner vacate the Track free of any property of Railroad or third parties placed by Railroad thereon. Railroad shall, if not in default hereunder, remove its equipment, goods, trade fixtures and effects and those of all persons claiming by, through or under it, provided that such removal does not cause irreparable damage to the Track. Any personal property not used in connection with the operation of the Track and belonging to Railroad, if not removed at the termination hereof, and if City shall so elect, shall be deemed abandoned and become the property of City without any payment or offset therefor. City may remove such property from the Track and store it at the risk and expense of Railroad if City shall not so elect. Railroad shall repair and restore all damage to the Track caused by the removal of any of Railroad's equipment and personal property. Railroad, if requested by City, shall remove all signs placed on the Track by Railroad and restore the portion of the Track on which they were placed substantially to the same condition as immediately prior to installation thereof.

Section 17.11. The failure of Railroad to vacate the Track on the expiration or termination of this Agreement as required pursuant to the terms of this Agreement and the subsequent holding over by Railroad, with or without the consent of City, shall result in the creation of a tenancy at will at a monthly fee equal to one hundred fifty percent (150%) of the then-applicable Annual Fee divided by twelve (12), for each month or portion thereof in which the Railroad holds over, payable on the tenth (10th) day of the following month. This provision does not give Railroad any right to hold over at termination of this Agreement, and all other terms and conditions of this Agreement shall remain in force during any tenancy at will created by any holding over by Railroad.

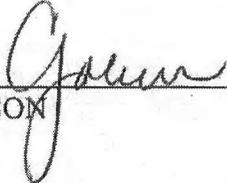
Section 17.12. The parties expressly agree that this Agreement and any rights and obligations under this Agreement shall not be deemed an "interchange commitment" as such

term is defined in Bill No. S-2889 dated December 9, 2009 entitled "the Surface Transportation Board Reauthorization Act of 2009."

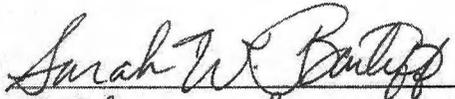
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

CITY OF RICHLAND, WASHINGTON

BNSF RAILWAY COMPANY



CYNTHIA D. JOHNSON
City Manager



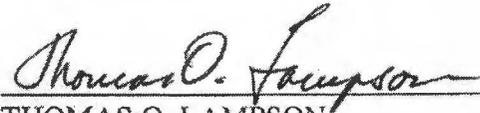
AVP CONTRACTS & JOINT FACILITIES

ATTEST:

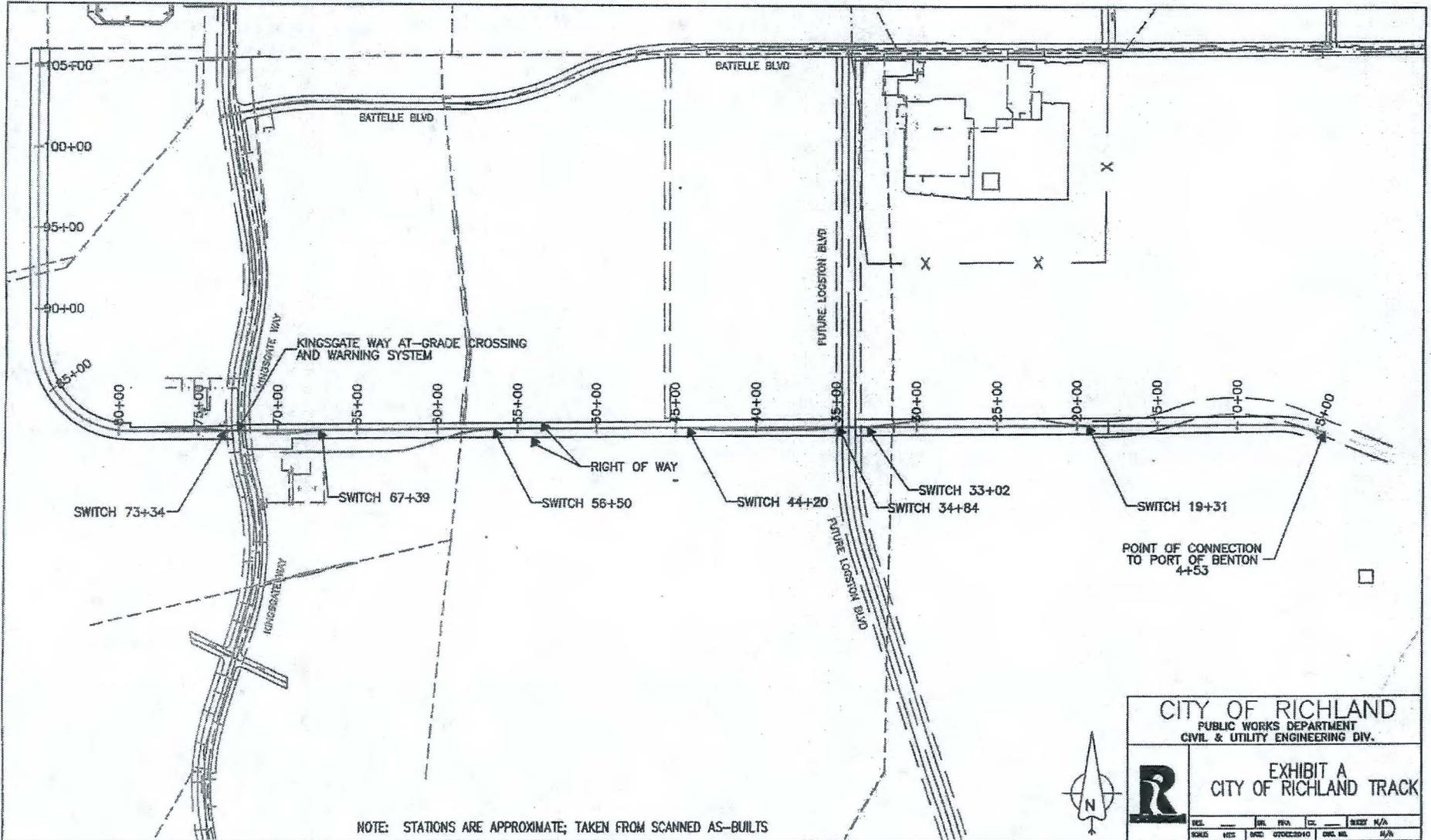
APPROVED AS TO FORM:



DEBRA C. BARHAM
Deputy City Clerk



THOMAS O. LAMPSON
City Attorney



NOTE: STATIONS ARE APPROXIMATE; TAKEN FROM SCANNED AS-BUILTS



CITY OF RICHLAND PUBLIC WORKS DEPARTMENT CIVIL & UTILITY ENGINEERING DIV.			
		EXHIBIT A CITY OF RICHLAND TRACK	
<small>DESIGNED BY</small> <small>DATE</small>	<small>CHKD BY</small> <small>DATE</small>	<small>APP'D BY</small> <small>DATE</small>	<small>SCALE</small> <small>AS SHOWN</small>

EXHIBIT 13



Council Agenda Coversheet

Council Date: 04/05/2011

Category: Items of Business

Agenda Item: B1

Key Element: Key 2 - Infrastructure & Facilities

Subject: HORN RAPIDS TRACK USE AGREEMENT WITH UNION PACIFIC RAILROAD

Department: Public Works

Ordinance/Resolution:

Reference: 42-11

Document Type: Contract/Agreement/Lease

Recommended Motion:

Authorize the City Manager to sign and execute the attached Standard Form Track Use Agreement with Union Pacific Railroad subject to the City of Kennewick's action to provide funding support, amend the Capital Improvement Plan to supplement Center Parkway project funding to fulfill the City's obligations under the Agreement, and authorize the necessary budget adjustments.

Summary:

The city's economic development goals have long sought expanded industrial development in the Horn Rapids Industrial Park and expanded retail / commercial development in the Tapteal Business Center. City-provided infrastructure in the Horn Rapids Industrial Park includes two miles of city-owned industrial railroad track.

Since the late 1990's, Richland and Kennewick's transportation plans have included an extension of Center Parkway between Tapteal Drive in Richland and Gage Boulevard in Kennewick. Center Parkway is necessary to improve vehicle circulation opportunities and support highest and best use development of the Tapteal Business Center and west Gage Boulevard area.

Since approximately 2000, the Tri-City Railroad (TCRR), Union Pacific Railroad (UPRR), and Burlington Northern Sante Fe Railroad (BNSF) have interchanged rail cars at Richland Junction, located on the alignment of the proposed Center Parkway. The railroads have refused city requests to relocate interchange operations and permit completion of Center Parkway using an at-grade railroad crossing.

In mid-2010, city staff, working with a consultant team, drafted a Horn Rapids Standard Form Track Use Agreement linking access to the city's industrial park railroad track to railroad cooperation on Center Parkway. The Agreement provided standard terms for all interested railroads to access the Horn Rapids track. In January 2011, the BNSF entered into the agreement. The proposed agreement represents completed negotiations with the UPRR, largely to the same terms agreed to by BNSF. The UPRR and BNSF agree to pay an annual access fee, indemnify the city for damages caused by railroad operations, operate under the city's authority to ensure fair access to both railroads and allow completion of Center Parkway, including an at-grade railroad crossing. In addition to the standard terms, the UPRR agreement includes compensation paid by the city, for UPRR assets at Richland Junction, a roadway easement across UPRR property and impacts to UPRR operating costs due to the interchange relocation. The city acquires railroad materials present on UPRR property at Richland Junction. These materials may be salvaged or reused by the city in its industrial park development.

The Kennewick's City Council is considering a budget adjustment at their April 5th meeting to support this agreement.

Fiscal Impact?

Yes No

UPRR will provide approximately \$15,000 annually to support track maintenance. The Agreement requires compensation to UPRR totalling \$2,100,000. Staff proposes that Kennewick provide \$1,000,000 and Richland provide \$1,100,000 because Richland will own the salvaged railroad materials. In addition, Richland's share of consultant and legal fees adds \$65,000. Staff proposes to fund Richland's share with \$415,000 from the LTGO 98 fund, \$250,000 from the Industrial Development Fund and \$500,000 from the Center Parkway project.

Attachments:

- 1) UP - City of Richland Horn Rapids Spur Agmt
- 2) CFP - Center Parkway- revised 04-05-2011

City Manager Approved:

Johnson, Cindy
Mar 31, 16:39:42 GMT-0700 2011

CITY OF RICHLAND
STANDARD FORM RAILROAD TRACK USE AGREEMENT

THIS RAILROAD TRACK USE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of this ____ day of April, 2011 (hereinafter referred to as the "Effective Date") by and between the CITY OF RICHLAND, a municipal corporation in the State of Washington (hereinafter referred to as "City") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation and a duly licensed corporation in the State of Washington (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, City is the owner of a railroad industrial spur track, commonly known as the Horn Rapids Rail Spur, located at the Horn Rapids Industrial Park in the City of Richland and connected to the Southern Connection of the Hanford Railroad (owned by the Port of Benton, Washington (hereinafter referred to as the "Port"), successor in interest to the United States Department of Energy), as shown on Exhibit A attached hereto (hereinafter referred to as the "Track"); and

WHEREAS, Railroad operates pursuant to separate agreement(s) over tracks owned by the Port which tracks connect with the Track near Milepost B 37 on the Port's trackage and a portion of which tracks have been used for the interchange of traffic between rail carriers at or near Richland Junction, Washington (hereinafter referred to as "Richland Junction"); and

WHEREAS, Railroad desires to use the Track for the purpose of providing railroad freight service thereon and thereover to industries located on or adjacent to the Track (hereinafter referred to individually as "Industry" and collectively as "Industries"); and

WHEREAS, City desires that all railroad interchange operations at Richland Junction be permanently eliminated to facilitate commercial development and improve vehicular traffic movement in the area; and

WHEREAS, City is willing to allow Railroad to use the Track on a non-exclusive basis but only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties, intending to be bound, do hereby agree as follows:

SECTION 1
GRANT OF USE

Section 1.1. City hereby grants to Railroad non-exclusive permission to operate its trains, locomotives, cars and equipment with its own crews over the Track for the purposes set forth herein. Railroad's use of the Track shall be in common with such other user or users of the Track as City has heretofore admitted, or may at any time in the future admit, to use of all or any

portion of the Track, provided that City shall require such user or users to comply with all Legal Requirements (as defined in Section 9.1) applicable to such user's or users' use of the Track. Subject to the foregoing, City shall retain the exclusive right to grant to other persons the right to use all or any portion of the Track, provided that such use does not unreasonably interfere with the rights granted to Railroad herein.

Section 1.2. The Track shall include, without limitation, the right-of-way, tracks, rails, ties, ballast, other track materials, switches, bridges, grade crossings and any and all other improvements or fixtures affixed to the right-of-way.

Section 1.3. Railroad shall take the Track in an "AS IS, WHERE IS" condition subject to all rights, interests and estates of third parties in and to the Track.

Section 1.4. City represents that it owns or controls the land underlying the Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement.

SECTION 2 **PERMITTED USE**

Section 2.1. Railroad's use of the Track shall be limited to the movement of goods by rail to and from an Industry via tracks of such Industry that connect to the Track.

Section 2.2. Railroad shall not knowingly and intentionally permit the loading or unloading of railcars on the Track by any party within its control, and shall not enter into agreements or arrangements with any person for the storage of empty or loaded railcars on the Track or any portion thereof, without the prior written consent of City.

Section 2.3. Neither party shall use the Track or any portion thereof, for the storage, transload or disposal of any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (hereinafter referred to as "CERCLA"), or petroleum or oil as defined by CERCLA, the Resource Conservation and Recovery Act, as amended (hereinafter referred to as "RCRA"), the Clean Water Act, the Oil Pollution Act, and the Hazardous Materials Transportation Act (hereinafter collectively referred to herein as the "Environmental Laws"), provided however, that nothing herein shall preclude Railroad or any other admittee of City from using the Track for the movement of hazardous substances in railcars in the normal course of providing rail transportation service to or from an Industry.

Section 2.4. Neither party shall use nor allow the use of the Track for the transportation of passengers thereon or thereover, provided however, that nothing herein shall preclude Railroad or any other admittee of City from operating a hi-rail vehicle over the Track for the purpose of inspecting the Track.

Section 2.5. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Track. In the event any such liens

are filed, Railroad shall cause such liens to be released within thirty (30) days of Railroad's receipt of notice of any such lien.

Section 2.6. Railroad shall not create or store any waste or nuisance on the Track. Railroad shall neither use nor occupy the Track or any part thereof in violation of Legal Requirements (as defined in Section 9.1). City shall not cause or allow the Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad's ability to use the Track for the purposes set forth in this Agreement, provided however, that use of the Track by any user in the ordinary course of providing rail service to any Industry on the Track, shall not be deemed a violation of the requirements of this sentence.

SECTION 3 **MAINTENANCE**

Section 3.1. City, at its cost and expense, shall be solely responsible for, and shall have exclusive direction and control over, the maintenance of the Track which shall include, but not be limited to, maintenance of tracks, subgrade, track drainage, grade crossings, grade crossing warning signs and devices, signal boxes, bridges and abutments, culverts, drainage ditches, retaining walls and any fences or barriers that City may erect. City shall also be solely responsible for litter and vegetation control and for keeping the Track sufficiently free and clear of snow and ice to permit railroad operations thereover.

Section 3.2. City shall maintain the Track to not less than Federal Railroad Administration (hereinafter referred to as "FRA") Class 2 track safety standards with a maximum gross weight limitation of not less than 286,000 lbs. per car and City shall maintain the Track in such condition and in compliance with all Legal Requirements (as hereinafter defined below). City shall also maintain all grade crossing signal equipment on the Track in accordance with all applicable Legal Requirements (as defined in Section 9.1).

Section 3.3. City, in its sole discretion, may contract with a third party to perform City's maintenance obligations hereunder, provided, however, City shall remain responsible for any obligations of City under this Agreement that may be performed by any such contractor.

Section 3.4. Railroad shall notify City in writing of any deficiencies in City's maintenance of the Track when such deficiencies are reasonably discovered by Railroad, and City shall, as soon as practicable, but in any event not more than thirty (30) days after its receipt of such notice, or in the case of an imminent safety hazard and/or condition which renders the Track impassable, within forty-eight (48) hours, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

Section 3.5. If the use of the Track is at any time interrupted or traffic thereover is delayed for any cause whatsoever, City shall, with reasonable diligence, restore the Track for the passage of trains. Railroad shall not have nor make any claim against City for loss, damage, loss of business or expenses of any kind resulting from such interruption or delay.

Section 3.6. City shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Track and, Railroad shall not, by reason of City's performing or failing, or neglecting to perform any maintenance, repair or renewal of the Track, have or make against City, its officers, agents or employees, any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from any defect in the Track or City's performance, failure or neglect, except as provided otherwise in Section 11 herein.

Section 3.7. Subject to the provisions of Section 8.1 herein, Railroad shall have the right to enter upon the Track and make inspections to determine compliance with the terms of this Agreement. In no event shall Railroad be obligated to make any such inspections, and Railroad shall not be liable for any failure to make any such inspections or failure to identify any matters that are not in compliance with this Agreement. In no event shall Railroad's conducting of inspections be deemed to result in a waiver of City's compliance with any terms of this Agreement.

Section 3.8. City shall be responsible for reporting of grade crossings and structures inventory and any other similar information as may be required by the FRA or any other governmental body having jurisdiction over such matters.

SECTION 4 COMPENSATION

Section 4.1. For so long as City permits Railroad reasonable use of the Track, as compensation for Railroad's use of the Track, Railroad shall pay to City annually at the beginning of each calendar year a fee of Fifteen Thousand Dollars (\$15,000) (hereinafter referred to as the "Annual Fee") which shall be payable regardless of Railroad's use of the Track during that year.

Section 4.2.

A. The Annual Fee shall be subject to adjustment on January 1 of each year beginning January 1, 2011 in accordance with changes in the Consumer Price Index for Wage Earners and Clerical Workers, series CWUR0000SA0 (hereinafter referred to as "CPI-W"). The Annual Fee set forth in Section 4.1 shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recent July as related to the final index of the previous July and applying this percentage of increase or decrease to the current Annual Fee to be revised. The resulting adjusted Annual Fee shall hereinafter be referred to as "the Revised Annual Fee."

By way of example, assuming "A" to be the CPI-W final index figure for July 1, 2009; "B" to be the CPI-W final index figure for July, 2010; and "C" to be the current Annual Fee to be escalated; the Revised Annual Fee effective January 1, 2011 would be determined by the following formula:

$$B/A \times C = \text{Revised Annual Fee, Rounded to Nearest Whole Cent}$$

B. In the event that publication of the CPI-W is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter shall be submitted to arbitration in accordance with Section 16 herein.

C. Under no circumstances shall the Revised Annual Fee paid by Railroad to City be less than the Annual Fee in effect on the date of this Agreement.

Section 4.3.

A. Railroad agrees that as part of the consideration for obtaining City's permission to use the Track herein, Railroad shall, subject to Legal Requirements, as of the Effective Date and during the term of this Agreement, permanently relocate any interchange receipt operations between Railroad and another rail carrier at Richland Junction to an alternate interchange location except that Railroad may, in emergency situations only, interchange cars at Richland Junction. For purposes of this provision, an emergency situation includes, but is not limited to, the following: Force Majeure events or other Acts of God; movement of High or Wide loads; movement or handling of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) in compliance with Legal Requirements or other safety requirements; track or other mechanical conditions necessitating a change in interchange location. Except as required by law or as provided in this Section 4.3.A, Railroad shall not, during the term of this Agreement, enter any agreement to deliver cars in interchange to any other railroad at Richland Jct.

B. City intends to construct a public street, called Center Parkway, at the location of Richland Junction. Railroad further agrees to provide easements and rights of way necessary to complete Center Parkway in exchange for compensation as defined in Section 18.

C. Railroad further agrees that if the design of Center Parkway requires an at-grade crossing of a track owned or used by Railroad, Railroad shall not oppose installation of a crossing designed in compliance with the current version of the Manual on Uniform Traffic Control Devices or any other applicable Legal Requirements, with the appropriate traffic control system to be used at the crossing to be determined by an engineering study involving both the City and Railroad representatives. In the event that both City and Railroad representatives jointly agree as to the appropriate traffic control system to be used at the crossing, Railroad shall execute a waiver of hearing document to the Washington State Utilities and Transportation Commission regarding the proposed crossing.

Section 4.4. City acknowledges that the compensation provided for in this Section 4 shall be the sole consideration for the right to use the Track, and in no event shall City impose any additional charges, tariffs, or surcharges on Railroad or any customer or receiver of Railroad as a condition of use of the Track for the provision of rail transportation service except to the extent expressly set forth below. Notwithstanding the foregoing, City may assess additional charges, tariffs, or surcharges for maintenance, operating and dispatching costs associated with the Track if all of the following conditions are satisfied: (i) City provides Railroad with ninety (90) days advance written notice of the proposed charges, tariffs or

surcharges and detailed information concerning City's costs, including the deficit not covered by the then current Annual Fee; and (ii) City, Railroad and any other users of the Track are not able to negotiate, within sixty (60) days of City providing notice in (i) above, an updated Annual Fee in lieu of the proposed charges to the mutual satisfaction of the parties. The increase in the updated Annual Fee as provided in this Section 4.4, shall not exceed Railroad's proportionate share of the deficit not covered by the Annual Fee prior to update. Railroad's proportionate share shall be calculated by comparing the total number of cars handled by Railroad over the Track to the total number of cars handled by all users over the Track for the twelve (12) full months prior to City's notification to Railroad of its intent to increase the Annual Fee.

SECTION 5 BILLING AND PAYMENT

Section 5.1. City shall render to Railroad a bill for the Annual Fee.

Section 5.2. Upon reasonable request by City, Railroad shall furnish to City, within sixty (60) days of receiving such request, a statement of the number of loaded and empty cars handled by Railroad over all or any portion of the Track during the previous twelve (12) months. Notwithstanding the foregoing, City shall only be entitled to make one request for such car information each calendar year during the term of this Agreement.

Section 5.3. All payments called for under this Agreement shall be made by Railroad within thirty (30) days after receipt of a bill therefor except for any claims or demands for payment pursuant to Section 11 of this Agreement. No payment shall be withheld because of any dispute as to the correctness of items in any bill rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. In the event that Railroad shall fail to pay any monies due to City within thirty (30) days after the invoice date, Railroad shall pay interest on such unpaid sum of twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 5.4. The records of each party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.

Section 5.5. For purposes of this Agreement, the terms "cost," "costs," "expense" and "expenses" shall include actual labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed for Railroad, which surcharges, overhead percentages and equipment rentals shall be reasonable and consistent with City's then-current standard billing practice, procedures, rates and schedules. City's overhead percentages shall not exceed sixty percent (60%) during the term of this Agreement without Railroad's review and approval.

SECTION 6 ADDITIONS, RETIREMENTS AND ALTERATIONS

Section 6.1. City, from time to time, and at its sole cost and expense, may make such changes in, additions and improvements to, and retirements from the Track as shall, in its

judgment, be necessary or desirable for the economical or safe operation thereof, or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and improvements shall become part of the Track and such retirements shall be excluded from the Track.

Section 6.2. If Railroad requests City to make changes in or additions or improvements to the Track required to accommodate Railroad's operations thereover, and Railroad agrees to reimburse City therefor, and City determines that the requested improvements will not adversely impact City's economic development goals, then City shall make such changes, additions or improvements to the Track and Railroad shall pay to City the cost thereof, including the annual expense, if any, of maintaining, repairing and renewing such additional or altered facilities. Any facilities other than the Track, which are exclusively funded by Railroad as provided for herein, shall be for the exclusive use of Railroad and City shall not allow any other party access to the facility without Railroad's prior written agreement.

SECTION 7 **TERM**

Section 7.1. This Agreement shall take effect on the date hereof and shall continue in full force and effect for three (3) years from the date hereof (hereinafter referred to as the "Initial Term") and shall automatically renew for successive one (1) year periods thereafter, absent termination as provided in Section 14.

SECTION 8 **OPERATIONS**

Section 8.1. Railroad agrees that entry to and exit from the Track shall be controlled by City or any contractor or admittee designated by City. City shall require that any entity allowed by City to control operations thereover shall be required to ensure that the trains, locomotives and cars of all users of the Track shall be operated thereon and thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track. Except to the extent prohibited by law, City reserves the right at any time by sixty (60) days prior written notice to Railroad and any other user or users of the Track to assume coordination of operations over the Track consistent with the terms of this Section 8.1.

Section 8.2. Railroad shall provide, at its sole cost and expense, all locomotives, railcars, other rolling stock and transportation equipment, personnel, fuel and train supplies necessary for Railroad to provide safe and adequate rail transportation to the Industries. Railroad shall also provide, at its sole cost and expense, all radios and other communication facilities as necessary to comply with the regulations of the FRA. Railroad shall be solely responsible for all car hire charges and mileage allowances on cars in Railroad's account handled over the Track.

Section 8.3. City, at its sole cost and expense, shall provide all necessary switch locks for use in the operation of the Track. City shall provide at no charge a reasonable number of keys for such switch locks to Railroad and any other user or users of the Track.

Section 8.4. Railroad, at its sole cost and expense, shall perform or cause to be performed any repairs required to make locomotives, cars or other equipment in the custody or control of Railroad on the Track comply with Legal Requirements (as defined in Section 9.1).

Section 8.5. City shall not place, permit to be placed or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within eight and one-half (8-1/2) feet laterally from the centerline of straight track (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or within twenty-three (23) feet vertically from the top of the rail of any track (hereinafter referred to as "Minimal Clearances"), provided that if any Legal Requirements (as defined in Section 9.1) require greater clearances than those provided for in this Section 8.5, City shall comply with such Legal Requirements. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements shall not be a violation of this Section, so long as City complies with the terms of any such Legal Requirements.

Section 8.6. Railroad shall not place or allow to be placed any rail car within two hundred fifty (250) feet of either side of any at-grade crossing on the Track. Railroad shall not place or permit to be placed on the City's right-of-way any permanent or temporary structure of any kind whatsoever without the prior written consent of City, which consent may be withheld at City's sole discretion. City shall require any other user or users of the Track to comply with the requirements of this Section 8.6.

Section 8.7. Railroad and City agree that with respect to the at-grade road crossings on the Port of Benton's track between the proposed Center Parkway crossing at Richland Junction and SR 240 (Vantage Highway) inclusive, Railroad shall use reasonable efforts to minimize its operations over such crossings during peak highway traffic times Monday through Friday. City acknowledges and understands that Railroad's compliance with its common carrier obligations may, from time to time, require operations over such crossings during peak highway traffic times. Railroad agrees to use reasonable efforts to meet its obligations under this Section 8.7.

Section 8.8. In the event that any user of the Track, including Railroad, provides notice to the City of any violation of Legal Requirements by any user of the Track, including Railroad, or any violation of the terms of this Agreement or the applicable agreement between such user and City (including without limitation, any applicable obligation to control entry to and exit from the Track or operations thereon or thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track), City shall conduct an investigation into such alleged violation, and if, in the reasonable judgment of City, Railroad or such user shall be in violation of applicable Legal Requirements or the terms of this Agreement or such user's agreement with the City, City shall require Railroad or such user as the case may be to cure such conduct in accordance with this Agreement or the applicable agreement, and unless and until same shall be cured in compliance with this Agreement or the applicable agreement, City shall bar Railroad or such user as the case may be from use of the Track.

SECTION 9
COMPLIANCE WITH LAWS

Section 9.1. The parties agree to comply with all applicable provisions of law, statutes, regulations, ordinances, orders, covenants, restrictions and decisions of any governmental body or court having jurisdiction (hereinafter collectively referred to as "Legal Requirements") relating to this Agreement and/or use of the Track. Each party hereto shall indemnify, protect, defend and hold harmless the other party and its officers, agents and employees from and against all fines, penalties, and liabilities imposed on the other party under such laws, rules and regulations by any such public authority or court having jurisdiction when attributable to the failure of the first party to comply with its obligations in this regard.

Section 9.2. It is the understanding of the City and the Railroad that the Track is industry track. Unless otherwise required by law, Railroad does not intend to and will not seek or obtain any approval, authorization or exemption from the STB for its use or discontinuance of use of the Track.

SECTION 10
CLEARING OF WRECKS

Section 10.1. If trains, locomotives, cars or equipment of Railroad are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, Railroad shall be responsible for the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if Railroad fails to restore the Track to service within a reasonable period of time, not to exceed forty-eight (48) hours, after such wreck or derailment, City, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and Railroad shall reimburse City for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be determined in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.

Section 10.2. If trains, locomotives, cars or equipment of any admittee of City, other than Railroad, are wrecked or derailed on the Track and require rerailling, wrecking service or wrecking train service, City shall ensure the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if City fails to have the Track restored to service within a reasonable period of time, not to exceed seventy-two (72) hours, after such wreck or derailment, Railroad, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and City shall reimburse Railroad for the cost and expense thereof in accordance with Section 5 herein. In order for Railroad's costs to be eligible for reimbursement, Railroad shall provide at least twenty-four (24) hours written notice to City and all other users of the Track of Railroad's intent

to mobilize resources to complete the work. City will be responsible for coordinating resources of various entities to complete the repair and avoid duplication of effort. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be determined in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by City or its admitttee at the time of such wreck shall be promptly delivered to City or its admitttee, as the case may be.

SECTION 11 LIABILITY

Section 11.I

A. TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "CITY INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATHS, DAMAGE OR DESTRUCTION OF PROPERTY AND DAMAGE TO OR DESTRUCTION OF THE ENVIRONMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION LAND, AIR, WATER, WILDLIFE, AND VEGETATION (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY RAILROAD AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

B. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "RAILROAD INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY CITY AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

C. UPON WRITTEN NOTICE FROM RAILROAD OR CITY, THE OTHER PARTY AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE OF THE OTHER PARTY BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE OTHER PARTY HAS AN OBLIGATION TO ASSUME

LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS SUCH INDEMNITEE. THE OTHER PARTY SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

D. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES, AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.

SECTION 12
INSURANCE

Section 12.1.

A. Railroad shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

1. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post-1998 ISO occurrence form or equivalent and include coverage for, but not limited to:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation-related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of the Track.
- Any exclusion related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy with regard to Railroad's use of the Track under this Agreement.

2. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to:
 - Bodily injury and property damage
 - Any and all vehicles owned, used or hired
3. Workers' Compensation and Employers Liability insurance including coverage for, but not limited to:
 - Railroad's statutory liability under the worker's compensation laws of the State of Washington. If optional under State law, the insurance must cover all employees anyway.
 - Employers' liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
4. Excess Liability insurance in an amount not less than \$10,000,000 each occurrence and \$10,000,000 aggregate limit.

B. Railroad shall also comply with the following requirements:

1. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
2. Railroad agrees to waive its right of recovery against City and Indemnitees under its Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers Liability insurance coverages.
3. Railroad's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.
4. All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name City as an additional insured by endorsement using additional insured form CG 26 07 04 with respect to Railroad's use of the Track under this Agreement. Severability of interest and naming City as an additional insured shall be indicated on the certificate of insurance.

5. Except if Railroad is a Class I rail carrier as defined under the regulations of the STB, Railroad is not allowed to self-insure without the prior written consent of City. If granted by City, any deductible, self insured retention or other financial responsibility for claims shall be paid directly by Railroad. Any and all City liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Railroad's insurance shall be paid by Railroad as if Railroad elected not to include a deductible, self-insured retention or other financial responsibility for claims.
6. Prior to entering upon the Track, Railroad shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving City arising out of this Agreement, Railroad will make available any required policy covering such claim or lawsuit.
7. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the State of Washington.
8. Railroad represents that this Agreement has been thoroughly reviewed by Railroad's insurance agent(s)/broker(s), who have been instructed by Railroad to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
9. Not more frequently than once every five (5) years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
10. Failure to provide evidence as required by this section shall entitle, but not require, City to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Railroad's obligations hereunder.
11. The fact that insurance (including, without limitation, self-insurance) is obtained by Railroad shall not be deemed to release or diminish the liability of Railroad including, without limitation,

liability under the indemnity provisions of this Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

C. City shall waive in writing the above insurance requirements if Railroad is a Class I rail carrier as defined in the regulations of the STB.

SECTION 13
ENVIRONMENTAL

Section 13.1

A. Railroad shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Track, including, but not limited to Environmental Laws. Railroad shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, anywhere on the Track. Railroad shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, anywhere on the Track. Any such release shall not be considered a default of this Agreement but shall be remedied as described below.

B. In the event of any such release described in Section 13.1.A., then Railroad shall provide immediate notice to City's Contract Officer at (509) 942-7327 of any release of hazardous substances on or from the Track, violation of Environmental Laws, or inspection or inquiry by government authorities charged with enforcing Environmental Laws with respect to Railroad's use of the Track. Railroad shall use reasonable efforts to promptly respond to any release on or about the Track. Railroad also shall give City immediate notice of all measures undertaken on behalf of Railroad to investigate, remediate, respond to or otherwise cure such release or violation.

C. In the event that City receives notice from Railroad or otherwise learns of a release or violation of Environmental Laws on the Track which occurred or may occur during the term of this Agreement for which Railroad is responsible pursuant to this Agreement, City may require Railroad, at Railroad's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure or prevent such release or violation affecting the Track.

D. Railroad shall promptly report to City in writing any known conditions or activities on the Track 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 Railroad's reporting to City shall not relieve Railroad of any obligation whatsoever imposed on it by this Agreement. Railroad shall promptly respond to City's request for information regarding said conditions or activities.

SECTION 14
TERMINATION

Section 14.1. Railroad may terminate this Agreement at any time after one year from the Effective Date, by giving City not less than six (6) months' written notice of

termination. Upon expiration or termination of this Agreement consistent with the terms herein, all rights of Railroad to use the Track shall cease.

Section 14.2. Notwithstanding any other provision of this Agreement except Section 14.3, at any time after the Effective Date, City may terminate this Agreement if Railroad shall default on or breach any of its material obligations hereunder, including but not limited to timely payment of compensation to City pursuant to Section 4.1, and Railroad fails to cure such default or breach within thirty (30) days of receipt of written notice from City specifying such default or breach.

Section 14.3. Notwithstanding any other provision of this Agreement, at any time after the Effective Date, City may terminate this Agreement if Railroad fails to comply with its material obligations under Section 4.3 herein and Railroad does not cure such failure within thirty (30) days of receipt of written notice from City specifying such failure.

Section 14.4. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The Annual Fee paid by Railroad to City pursuant to Section 4.1 shall be non-refundable if termination of this Agreement becomes effective after June 1 of the year to which the Annual Fee applies.

SECTION 15 NOTICES

Section 15. 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 for such change in address:

If to City:	Community Development Services Attn: Horn Rapids Rail Spur City of Richland 975 George Washington Way P.O. Box 190, MS #18 Richland, WA 99352 (509) 942-7593
-------------	--

If to Railroad:

General Manager Joint Facilities
1400 Douglas Street
MS 1180
Omaha, Nebraska 68179
(402) 544-2292

SECTION 16 **ARBITRATION**

Section 16.1. Any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules may be amended from time to time, and as shall be applied with reference to the customs and practices of the railroad industry. Any such arbitration shall be held in Richland, Washington or at such other location as may be mutually acceptable to the parties hereto. The decision of the arbitrator or arbitration panel shall be final and conclusive upon the parties hereto. A final decision and award of the arbitration panel shall be enforceable in any court of competent jurisdiction in the United States of America. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own arbitrator, witnesses, exhibits and counsel. The compensation, costs and expenses of any neutral arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator or arbitration panel shall not have the power to (a) award punitive or consequential damages, (b) determine violations of antitrust or criminal laws, or (c) reform the terms of this Agreement, in whole or in part.

SECTION 17 **MISCELLANEOUS**

Section 17.1. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, provided however, no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 17.2. This Agreement shall be binding upon and inure to the benefit of City and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth. Railroad may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations in whole or in part under this Agreement, without the prior written consent of City which consent may be withheld; in City's sole discretion; provided, however, no such consent shall be required where assignment occurs as a result of a sale or transfer of all or substantially all of the assets of Railroad pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 17.2.1. Notwithstanding Section 17.2 of this Agreement, UP shall have the right, at its sole discretion and upon ten (10) days advance written notice to the City, to name an agent to handle UP rail traffic to and from Industries located along the Track. While handling

such UP traffic, for the purposes of this Agreement, any agent so named by UP shall be considered to be UP, and City may enforce the provisions of this Agreement against UP for the acts of such agent. Regardless of whether or not UP names an agent as provided for in this Section 17.2.1, UP shall continue to have the right to handle part or all of its own traffic to Industries.

Section 17.3. If fulfillment of any provision hereof shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 17.4. Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

Section 17.5. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in state court in Washington.

Section 17.6. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties hereto. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 17.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17.8. The parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this Section 17.8, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

Section 17.9. The failure of either of the parties hereto in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof, or to exercise any remedy, privilege, or option herein conferred upon or reserved to such party, shall not operate and shall not be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

Section 17.10. Railroad shall, on the last day of the term, or upon any earlier termination of this Agreement, peaceably and in an orderly manner vacate the Track free of any property of Railroad or third parties placed by Railroad thereon. Railroad shall, if not in default

hereunder, remove its equipment, goods, trade fixtures and effects and those of all persons claiming by, through or under it, provided that such removal does not cause irreparable damage to the Track. Any personal property not used in connection with the operation of the Track and belonging to Railroad, if not removed at the termination hereof, and if City shall so elect, shall be deemed abandoned and become the property of City without any payment or offset therefor. City may remove such property from the Track and store it at the risk and expense of Railroad if City shall not so elect. Railroad shall repair and restore all damage to the Track caused by the removal of any of Railroad's equipment and personal property. Railroad, if requested by City, shall remove all signs placed on the Track by Railroad and restore the portion of the Track on which they were placed substantially to the same condition as immediately prior to installation thereof.

Section 17.11. The failure of Railroad to vacate the Track on the expiration or termination of this Agreement as required pursuant to the terms of this Agreement and the subsequent holding over by Railroad, with or without the consent of City, shall result in the creation of a tenancy at will at a monthly fee equal to one hundred fifty percent (150%) of the then-applicable Annual Fee divided by twelve (12), for each month or portion thereof in which the Railroad holds over, payable on the tenth (10th) day of the following month. This provision does not give Railroad any right to hold over at termination of this Agreement, and all other terms and conditions of this Agreement shall remain in force during any tenancy at will created by any holding over by Railroad.

SECTION 18 RELOCATION AND COMPENSATION

Section 18.1. Railroad has secured all agreements necessary with Tri-City Railroad Company, LLC ("Tri-City Railroad") to permanently relocate the UP/Tri City Railroad interchange ("Interchange") from Richland Junction and the path of the Center Parkway. Pursuant to the Tri-City Railroad agreements, Railroad shall relocate its Interchange with Tri-City Railroad within thirty (30) days of the effective date of this Agreement.

Section 18.2. Within sixty (60) days after relocation of the Interchange, City shall pay to Railroad \$2,100,000 (which constitutes \$2,000,000 for the relocation of the Interchange and offset for Railroad's increased operating expense and \$100,000 for the easement, as described below).

Section 18.3. The payment described in Section 18.2 provides compensation to the Railroad for the following:

- a. The Railroad's estimated cost of increased operating expense and to replace rail assets lost due to the relocation of the Interchange.
- b. A roadway and utility easement conveyed by the Railroad to the City of Kennewick for the completion of Center Parkway across Railroad's property at Richland Junction as described below.

- c. Salvage by the City of all Railroad Track Materials (defined below) located on Railroad's property at Richland Junction west of the Richland Junction switch between MP 18.8 and the end of track at MP 19.5.

Section 18.4 Railroad shall convey an easement in width not to exceed eighty (80) feet to City for the Center Parkway across Railroad's right of way. The easement shall allow for curb cuts on each side of the road to serve Railroad's adjacent property. The easement shall be delivered to City no later than the date upon which the Interchange operations are relocated away from the Center Parkway.

Section 18.5 As of the date Interchange operations are relocated away from Richland Junction and the Center Parkway, the City will assume ownership and control of the Railroad Track Materials. Railroad Track Materials is defined to include rail, ties, switches and other track materials which make up the current interchange track between MP 18.8 and the end of track at MP 19.5 of Railroad's Kalan Industrial Lead west of the Richland Junction switch. At its sole risk, cost and discretion the City may remove, salvage or reuse all Railroad Track Materials; provided, however, that the City first obtains a right of entry to Railroad's property from Railroad.

Section 18.6 Subsequent to relocation of the Interchange, Railroad shall not reestablish an interchange operation at Richland Junction or the Center Parkway location, or any portion thereof, or sell or lease property at Richland Junction or the Center Parkway location to another railroad for the purposes of establishing a switching or interchange operation.

Section 18.7 Notwithstanding any termination of this Agreement, Section 18.6 above shall remain in full force and effect until City, at its sole election, shall agree to any proposed change.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

CITY OF RICHLAND,
WASHINGTON

UNION PACIFIC
RAILROAD COMPANY

CYNTHIA D. JOHNSON
City Manager

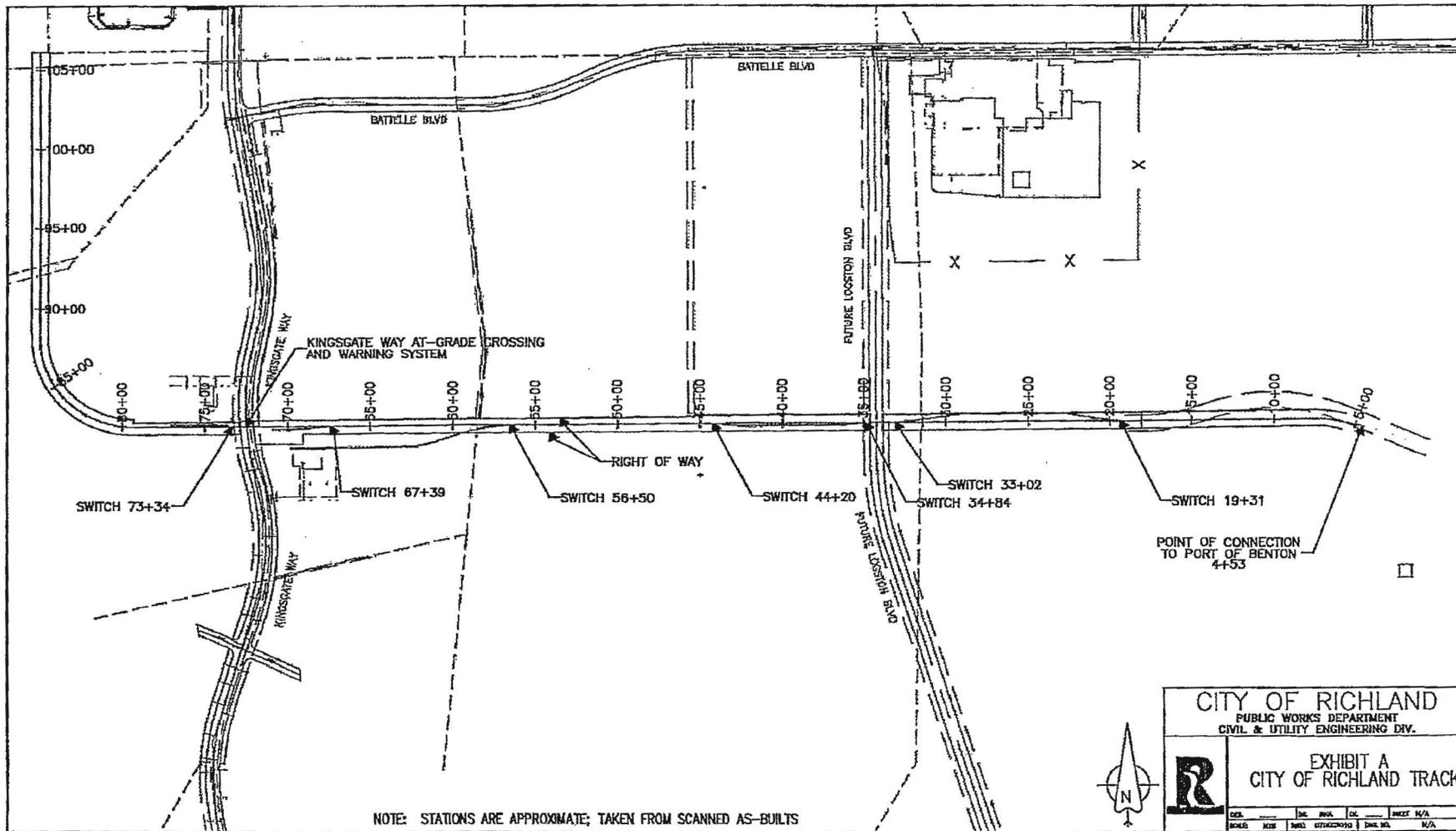

George M. Sturin
General Manager Joint Facilities

ATTEST:

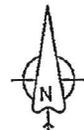
APPROVED AS TO FORM:

MARCIA HOPKINS
City Clerk

THOMAS O. LAMPSON
City Attorney



NOTE: STATIONS ARE APPROXIMATE; TAKEN FROM SCANNED AS-BUILTS



CITY OF RICHLAND PUBLIC WORKS DEPARTMENT CIVIL & UTILITY ENGINEERING DIV.			
		EXHIBIT A CITY OF RICHLAND TRACK	
DATE	DES. BY	CHK. BY	SHEET NO.
REV. NO.	REV. DATE	REV. BY	REV. DATE

EXHIBIT 14



Entering
City of Richland
Railroad
Authorized
Users Only

R.M.C. 508575

EXHIBIT 15



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

April 21, 2014

Department of Ecology
RECEIVED

APR 24 2014

Shorelands & Environmental
Assistance Program

City of Richland
Attn: Aaron Lambert
3100 George Washington Way
Richland, WA 99354

RE: Order # 10664 – Authorization for work in isolated wetlands for the Central Washington Transfer Terminal Railroad Embankment Project.

Dear Mr. Lambert:

The request for certification for proposed work in isolated wetlands in the Horn Rapids Industrial Park area has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of 90.48, RCW, WAC 173-201A 260 and other appropriate requirements of State Law.

This authorization is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Gary Graff, PWS
Regional Section Manager
Shorelands and Environmental Assistance Program

Enclosure

By certified mail: 7009 2250 0004 4951 1836

cc: Premier Excavation - Todd Johnson
RGW Enterprises – Roger Wright
Corps of Engineers – Tim Erkel
Ecology SEA HQ – Jessica Hausman



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER # 10664
The City of Richland)
FOR AN ADMINISTRATIVE ORDER TO)
CONDUCT WORK IN ISOLATED WETLANDS)

TO: City of Richland
Attn: Aaron Lambert
3100 George Washington Way
Richland, WA 99354

This is an Administrative Order requiring the city of Richland to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

Ecology received SEPA documents in late 2013 and the application for a Construction Stormwater Permit for the Central Washington Transfer Terminal Railroad Embankment project in late February 2014 from the project contractor. While reviewing the permit application, it was determined that the grading project will require fill to be placed in approximately 2720 square feet of a category III isolated wetland. (The isolated wetland determination by the Corps of Engineers was made in 2008, but the Corps reference number from that determination is not currently available.) Fill will also be placed in 5,030 square feet of wetland buffer. In order to comply with state policy of "no net loss" of wetland function, a wetland and wetland buffer mitigation plan was submitted to Ecology on March 28, 2014 by Shannon and Wilson on behalf of Premier Excavation and the city of Richland. The wetland fill location for the project is located in the Horn Rapids Business Center in Richland, generally west of American Rock Products' pit site, north of SR 240, south of Battelle Blvd and west of Stevens Drive in the city of Richland, sections 22 and 27, Township 10 N Range 28 East, in WRIA 40. The wetland fill is part of grading and fill preparation for a proposed rail loop which will connect to the existing Tri Cities Railroad track to the north.

This Administrative Order authorizes 2720 square feet of Category III isolated wetland impacts and 5030 square feet of wetland buffer impact at the project location. Mitigation for this proposal will consist of 5,440 square feet of Wetland Creation, and 5,030 square feet of Wetland Buffer Enhancement for a total mitigation area of 10,470 square feet. This Order also authorizes all other actions as proposed in the "Wetland Boundary Verification and Wetland Buffer Mitigation Plan, City of Richland Rail Loop Project, dated March 24, 2014" (herein called the "the wetland mitigation plan") in the wetland complex generally south of the fill location.

For purposes of this Order, the term "Applicant" shall mean the city of Richland and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the SEPA documents, construction stormwater permit application and the wetland mitigation plan received by Ecology on March 24, 2014 or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Catherine Reed, SEA Program, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902. Any submittals shall reference Order No. 10664.
3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
6. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.

B. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Central Regional Office wetland specialist, Catherine Reed, in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to a pre-construction meeting
 - b. At least ten (10) days prior to the onset of any work on site
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands
 - d. At least ten (10) days prior to the onset of work at the wetland mitigation site
 - e. Immediately following a violation of the state water quality standards or any condition of this Order
 - f. Within fourteen (14) days after completion of construction.

C. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the plan entitled "Wetland Boundary Verification and Wetland Buffer Mitigation Plan City of Richland Rail Loop Project dated March 24, 2014" except as modified in this Order or revised and approved by Ecology.
2. The Applicant shall submit any changes to the mitigation plan in writing to Ecology (per condition A.2. above) for review and approval before work begins or when problems occur during construction requiring plan changes.
3. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all mitigation site construction and planting.

Implementation

4. The Applicant shall begin the compensatory mitigation project before or concurrent with impacting wetlands, unless prior approval from Ecology is obtained. Ecology may require additional compensation to account for additional temporal loss if the mitigation is not completed in a timely manner.
5. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and above the 100-year floodplain.
6. If seeding is used as a temporary erosion control BMP, it must be a wetland mix consisting of native, annual, non-invasive plant species, unless Ecology approves an alternate mix.
7. The Applicant shall place signs at the extent of the mitigation area's boundaries, including buffers, which mark the area as wetland mitigation. At least one sign should be placed on each fence/gate access point to the wetland mitigation area.

8. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved mitigation plan or subsequent Ecology-approved plan changes. Written confirmation can be a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan.
9. Within ninety (90) days of completing site construction and planting, the Applicant shall submit a final as-built report with maps to Ecology. The As-Built report must:
 - a. Document site conditions at Year Zero;
 - b. Be submitted to Ecology per Condition A.2. of this Order as one hard copy and one electronic file;
10. If the mitigation project installation is not completed within 13 months of this Order's date, the Applicant shall submit a written construction status report and submit status reports every 12 months until construction and planting are complete and the final as-built report is submitted.

Monitoring and Maintenance:

11. The Applicant shall water and maintain all plantings at the mitigation site as needed to meet the mitigation plan's performance standards.
12. The Applicant shall monitor the mitigation site over a span of 5 years. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
13. The Applicant shall submit monitoring reports (one hard copy file and one electronic file per Condition A.2. of this Order) to Ecology documenting site conditions at the mitigation site for the years 1, 3 and 5 at a minimum. The city of Richland may require additional reports as referenced in section 6.5 of the wetland mitigation plan.
14. The Applicant shall implement the mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.
15. Prior to implementing any unidentified contingency measures, the Applicant shall consult with Ecology.
16. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or a native plant alternative appropriate for the location, during the first available planting season and note the species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
17. The property owner shall grant Ecology access to the mitigation area for inspection during the 5 year monitoring period or until mitigation success has been achieved.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order.

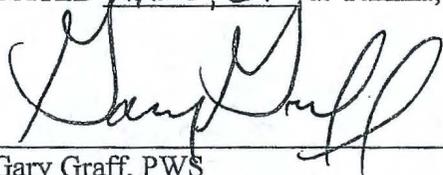
- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

DATED April 21, at Yakima, Washington.



Gary Graff, PWS
Regional Section Manager
Shorelands and Environmental Assistance Program
Central Regional Office – Ecology
State of Washington

ATTACHMENT A

**City of Richland
Water Quality Certification Order #10664**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #10664 Section 401 Water Quality Certification for the Central Washington Transfer Terminal Railroad Embankment Project. I have also read and understand all permits, plans, documents, and approvals associated with the above-referenced Project referenced in the Order.

Signature

Date

Title

EXHIBIT 16



WHEN RECORDED RETURN TO:

City Attorney
City of Richland
P.O. Box 190
Richland, WA 99352

EXCISE TAX NOT REQUIRED
BENTON COUNTY EXCISE TAX DIVISION

BY *Mr. Skerson* DEPUTY *4/22/10*
Easement

Portion of Tax Parcel No. 1-2108-100-0001-015

SECTION 21, TOWNSHIP 10 NORTH, RANGE 28 EAST

RAIL SPUR EASEMENT

The Grantor, the City of Richland, Washington, a municipal corporation, hereby grants and conveys to DelHur Industries, a Washington Corporation, a rail spur easement for the purposes of track construction and operating and storing rail cars. The easement shall include access of the Grantee's equipment and vehicles to access the rail cars. The easement shall be in and over the following described real property situated in the City of Richland, County of Benton, State of Washington as legally described below and as shown on the attached Exhibit A:

AN EASEMENT FOR A RAILSPUR BEING 50.00 FEET IN WIDTH LYING IN THAT PORTION OF THE WEST HALF OF SECTION 21, TOWNSHIP 10 NORTH, RANGE 28 EAST, W.M., CITY OF RICHLAND, BENTON COUNTY, WASHINGTON, SAID EASEMENT BEING PARALLEL AND ADJACENT TO THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE NORTHEAST CORNER OF A PARCEL AS DEPICTED IN RECORD OF SURVEY NO. 3661 AND AS DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE NO. 2006-031629, BOTH BEING RECORDS OF BENTON COUNTY, WASHINGTON, SAID CORNER ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY MARGIN OF KINGSGATE WAY AND THE SOUTH LINE OF THE CITY OF RICHLAND RAILROAD RIGHT-OF-WAY AS DEPICTED IN RECORD OF SURVEY NO. 2934 AND AS DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE NO. 2001-032717, RECORDS OF BENTON COUNTY; THENCE SOUTH 89°32'55" WEST ALONG THE SOUTH LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A DISTANCE OF 646.75 FEET; THENCE LEAVING SAID RAILROAD RIGHT-OF-WAY AND CONTINUING SOUTH 89°32'55" WEST FOR A DISTANCE OF 343.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°32'55" WEST FOR A DISTANCE OF 640.00 FEET TO THE TERMINUS OF SAID LINE.

**EXHIBIT A
RAILSPUR EASEMENT**

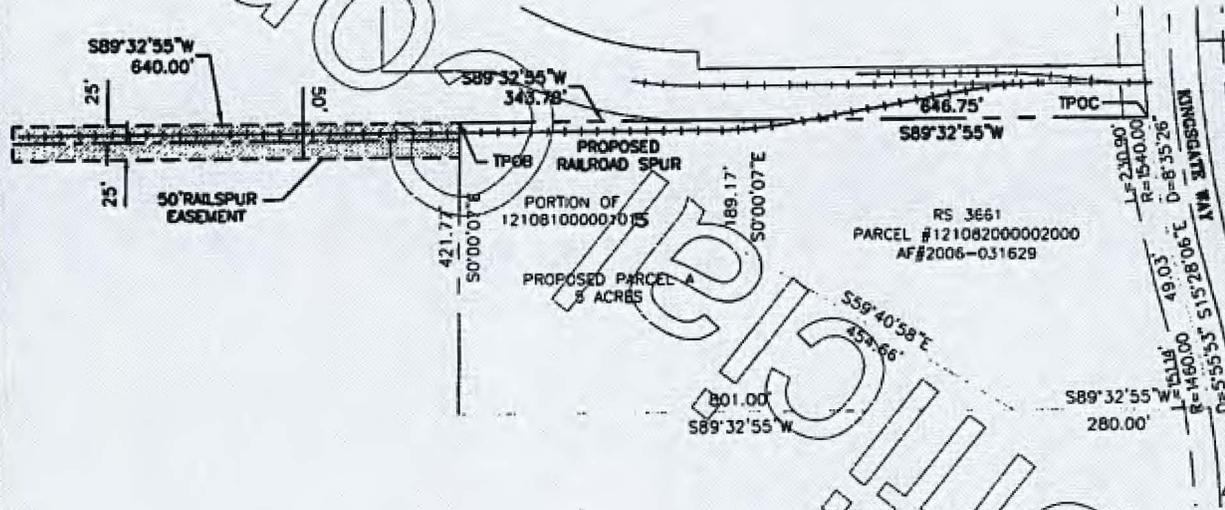


EXHIBIT 17

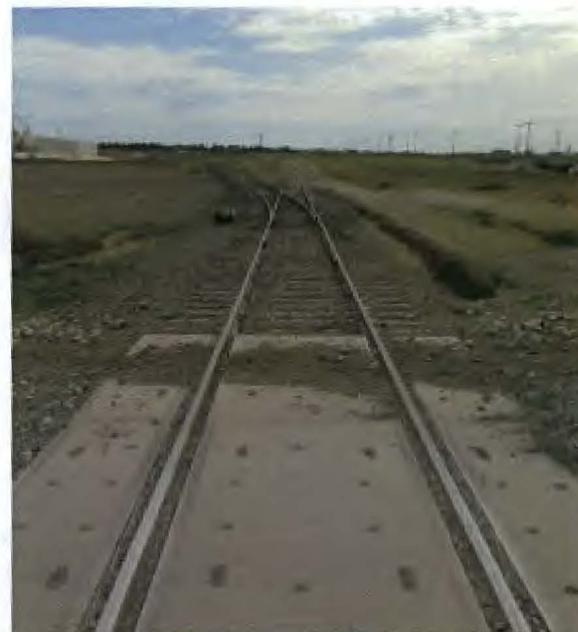


HORN RAPIDS INDUSTRIAL PARK

- | | | |
|--|--|---------------------------|
| ■ 1: CERTIFIED DEF | ■ 6: AGRO GYPSUM | ■ 10: DEL HUR INDUSTRIES |
| ■ 2: COST LESS CARPET | ■ 7: CENTRAL WASHINGTON CORN PROCESSORS (CWCP) | ■ 11: HOOKS CRANE SERVICE |
| ■ 3: NORTHSTAR BIOFUELS (JBS) | ■ 8: PREFERRED FREEZER SERVICES | ■ 12: WALTERS INC. |
| ■ 4: PERMA-FIX NORTHWEST | ■ 9: WEST COAST WAREHOUSE (WCW) | ■ 13: GAVILON |
| ■ 5: CENTRAL WASHINGTON CORN PROCESSORS (CWCP) | | |



CITY PASSING TRACK LOOKING EAST



CITY MAINLINE LOOKING EAST



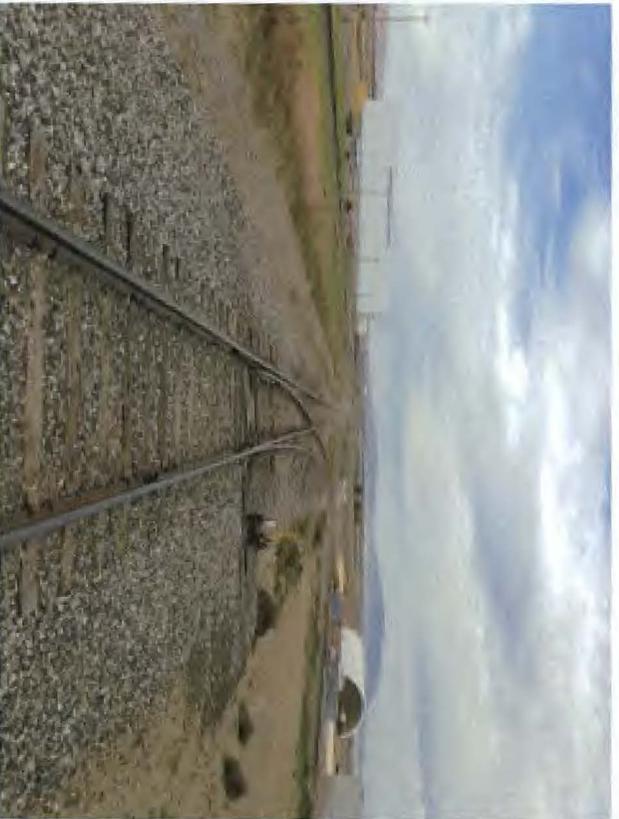
CITY PASSING TRACK LOOKING WEST



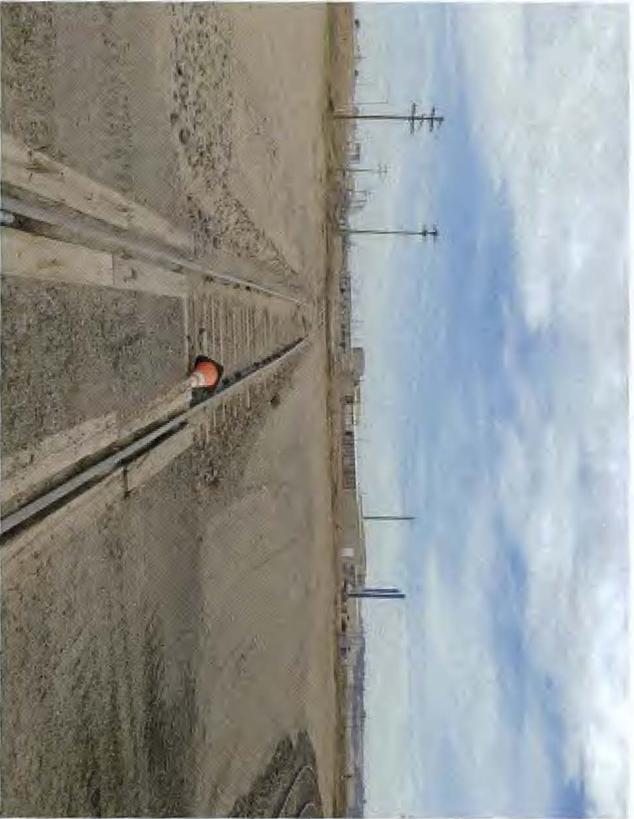
CITY MAINLINE LOOKING WEST



ENTERING CITY OF RICHLAND RAILROAD



ENTERING NPD LOOP



PERMAFIX SPUR (4)



NPD LOOP - JBS/NORTHSTAR (3),



PERMAFIX TRANSLOAD (4)



ENTERING CITY LOOP (7)



ENTERING PREFERRED SPUR (8)



PREFERRED SPUR LOOKING WEST (8)



PREFERRED SPUR LOOKING EAST (8)



PREFERRED LOOKING EAST (8)



PREFERRED LOOKING WEST (8)



3 TRACK CROSSING AT LOGSTON



SPUR TO POB TRANSLOAD (9)



POB TRANSLOAD (9)



KINGSGATE CROSSING LOOKING WEST TO DELHUR (10)



DELHUR (10)



DELHUR (10)

EXHIBIT 18



JANUARY 2016

CITY OF RICHLAND

HORN RAPIDS MASTER PLAN UPDATE



Mackay  Sposito

Mackay Sposito
7601 W Clearwater Ave, Suite 405
Kennewick, WA 99336
Ph: 509.374.4248
Fax: 509.347.4267

Derrick Smith, PE, Senior Vice President

Contents

1. Executive Summary	3	7. Wetland Impacts and Mitigation	25
1.1 Purpose of Plan	4	8. Infrastructure Costs	27
1.2 Planning Process	5	9. Implementation	29
2. Existing Conditions	6	9.1 Economic Development Strategy	29
2.1 Land Use and Zoning	6	Appendix A - HRMP Boundary Legal Description	A - 1
2.2 Capital Facilities, Public Services and Utilities	8	Appendix B - Cost Estimate	B - 1
3. Goals and Objectives	10	Appendix C - Resolution No. 51-11	C - 1
3.1 Land Use and Community Development	10		
3.2 Transportation and Circulation	10		
3.3 Public Facilities and Services	11		
3.4 Landscape, Open Space and Recreation	11		
3.5 Economic Development	12		
4. Land Use Plan and Zoning	13		
4.1 Land Use Designations	13		
4.2 Land Use Summary Table	13		
5. Utilities	14		
5.1 Water	15		
5.2 Sanitary Sewer	16		
5.3 Irrigation	17		
5.4 Stormwater	18		
5.5 Electrical	18		
5.6 Natural Gas	18		
5.7 Telecommunications	18		
5.8 Typical Utility Section	18		
6. Transportation	20		
6.1 Transportation Analysis	20		
6.2 Road Standards and Road Sections	22		
6.3 Railroad	24		

1. Executive Summary

The Horn Rapids Master Plan (HRMP) area is an approximately 2,466 acre industrial and business center development serving as a gateway to the City of Richland, Washington (City). With outstanding transportation access, the HRMP has been envisioned as an employment center for the community and is anticipated to provide employment and business opportunities for the region. The area generally resembles a large triangle, bounded on the first side by Horn Rapids Road, on the second side by the Landfill and Twin Bridges Road and on the third side by State Route 240 (SR 240). The site hosts a variety of existing industrial and business center uses. The Hanford Nuclear Reservation, located to the north of the site, is the dominant land use in the area. The Horn Rapids residential planned community, comprising 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. The Vicinity Map (Figure 1) shows the general location of the HRMP in relation to the Tri-Cities. The HRMP was initially adopted in 1995 and the changes in the region over the last 16 years highlight the need to re-evaluate how to better leverage the economic opportunity of this area as a burgeoning employment center.



Figure 1: Vicinity Map

The City initiated the HRMP to assess existing land uses and infrastructure, evaluate the untapped potential that the site possessed, and provide some guidelines for future development. This plan looks at the opportunities and challenges associated with developing the site. It also aims to balance the land requirements of current and future industrial and business uses. Staff met with key stakeholders at several City departments, including Public Works, Development Services, Parks, Energy Services, Survey and Economic Development, as well as the Port of Benton to solicit input on the HRMP update. Through these meetings, current issues and concerns were identified and recommendations for the updated plan were established.

The HRMP envisions the area as an active and vital employment and economic center, attracting new development, reinvestment and employment. This is realized with attractive buildings and practical streetscapes that enhance the marketability of the area. These improvements also serve to reinforce its place as a gateway to the community of Richland. Further, the updated master plan recognizes the requirements of large industrial-scale businesses. The HRMP provides for large-acreage users and lays out a plan that assures functional circulation patterns are provided and associated infrastructure needs are sufficiently met.

Three specific focal areas emerged during our HRMP update discussions with stakeholders:

1) Road standards for circulation systems within the HRMP needed to be agreed upon and adopted as part of the update process. Providing this consistency will sustain transportation functions and establish predictability through the permitting processes.

2) Open space areas needed to be re-evaluated, both for suitability of location as well as for landscape design standards. The initial plan envisioned a more manicured campus style of development that does not reflect development that has occurred on the site and is not the best fit for the climate or the region.

3) Development standards needed to be devised for the project to assure consistent growth patterns and provide the City with continuing oversight as parcels are sold.

1.1 Purpose of Plan

The HRMP supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995. The HRMP presents the vision and policies related to the future development of properties within what is now the Horn Rapids Industrial Park and the Horn Rapids Business Center and consolidates this into one master plan for both areas.

In 1995, the City of Richland adopted a Master Plan to guide the development of the Business Center portion of the planning area. Since then, the master plan area has undergone significant changes. These include the development of business and industry onsite, as well as the associated infrastructure. This updated Plan adjusts for these changes as well input from current stakeholders. It addresses both the opportunities and constraints presented by the site and provides guidance for future development. It also ensures the needed infrastructure relates to adjacent properties and considers existing development on the site. Unlike the original plan, the update also includes the land in the Horn Rapids Industrial Park.

The HRMP represents a long term vision with flexible plan implementation approaches that respect market conditions and interests within the Plan's

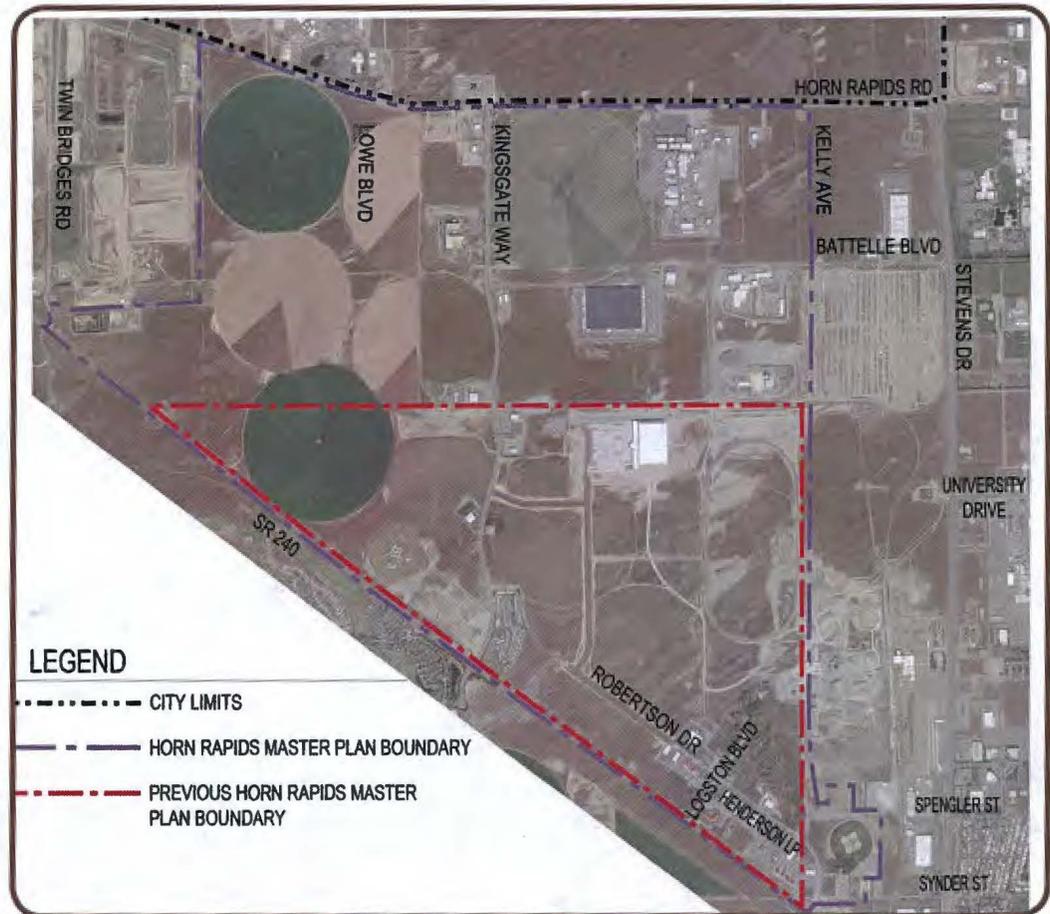


Figure 2: Study Area

anticipated 20 to 30 year build-out period. The Plan area is anticipated to continue to develop as a major employment center in Richland. In addition to employment center uses, the HRMP also provides open space and recreational amenities which will guide the development within this gateway to the City.

It is anticipated that the Horn Rapids Business Center will continue to grow and provide solid tax revenue generation for the City by appealing to companies and businesses associated with the Hanford Reservation as well as companies seeking a high quality business environment for their employees. Finally, supplemental planning and development efforts for the surrounding properties will also have an impact on how the Horn Rapids planning area ultimately builds out.

1.2 Planning Process

The update process began with interviews of key city staff responsible for transportation planning, energy services, survey, sanitary sewer, public water, storm facilities, development review and economic development. The goal of these meetings was to identify existing facilities, previous and ongoing issues as well as planned improvements for the area. Preliminary development alternatives were identified and a second round of stakeholder interviews was held.

Based on feedback received during the second round of stakeholder interviews, changes were made to the plan documents and prepared for review by the Planning Commission. The Planning Commission reviewed an initial draft of this plan in a public workshop on February 9, 2011. Additional public workshops will be held in 2016 along with the SEPA review. Approval and adoption of the plan is anticipated in March 2016.

2. Existing Conditions

The Study Area Plan (Figure 2) identifies the current status of the property as of the end of 2010. The HRMP is located on the north side of SR 240, about seven miles northwest of the City of Richland. The property, which is triangular shaped, consists of approximately 2,466 acres. As noted in the executive summary, the site is bounded on one side by Horn Rapids Road, on the second side by the Richland Landfill and the extension of Twin Bridges Road and on the third side by SR 240. The Hanford Nuclear Reservation is the dominant land user in the area and is located to the north and east of the site. The Horn Rapids residential master planned community, comprising of 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. A legal description for the boundary can be found in Appendix A.

2.1 Land Use and Zoning

As seen in Figure 3: "City of Richland Zoning Map", zoning in the HRMP is primarily heavy and medium industrial with a small amount of general business. The surrounding area consists of a mix of neighborhood retail business, limited business, agriculture and multiple family residence.

Land Use Designations

The Land Use Plan contains four (4) separate land use designations which are identified below and illustrated in the Land Use Plan (Figure 4). These land use categories are intended to accommodate the City of Richland's ability to recruit new business opportunities. They are also anticipated to promote development which will provide employment for its residents and strengthen and expand its tax base. The following land use categories will be encouraged to implement sustainable development principles.

Industrial Land Use

The medium industrial use district (I-M) is a zone providing for

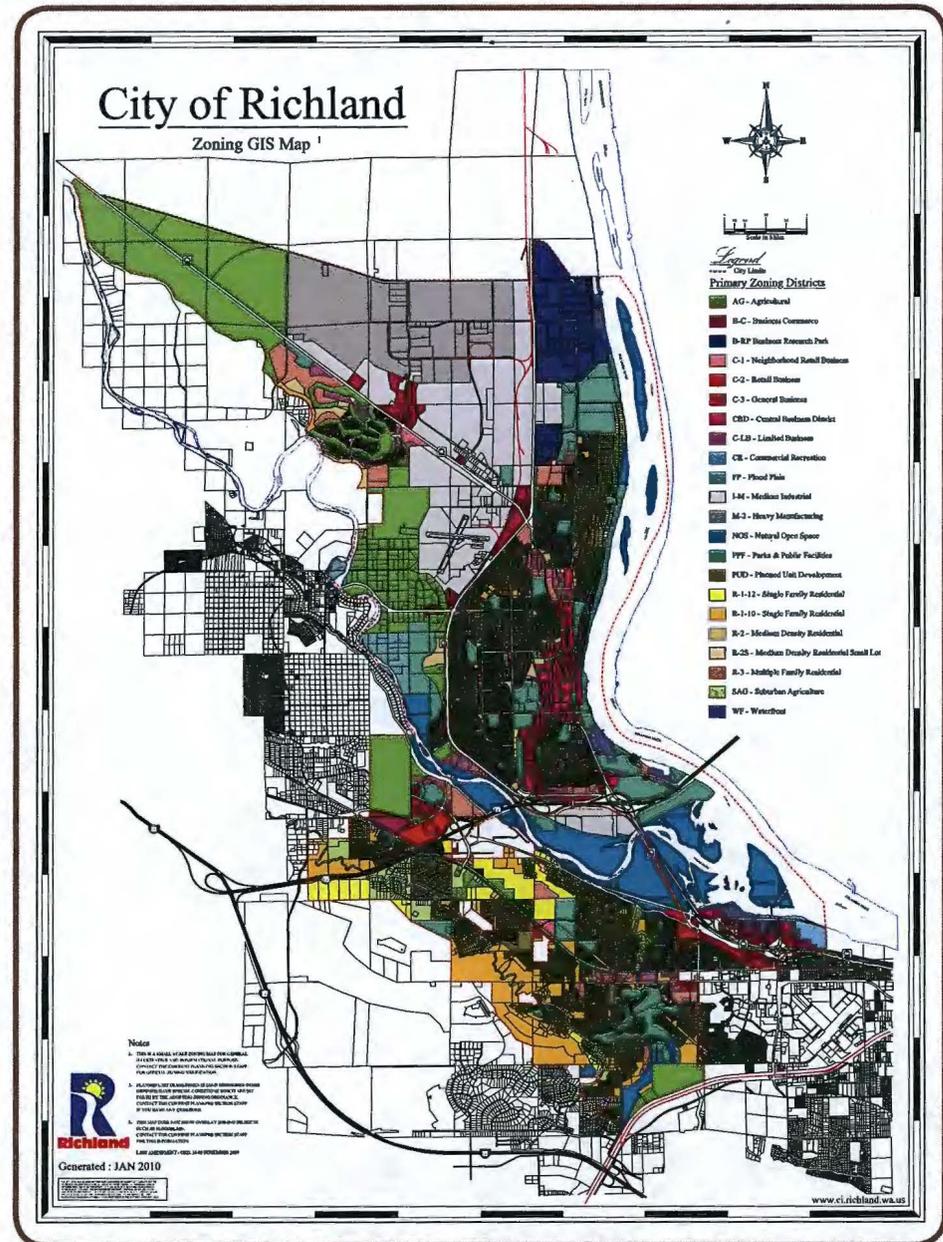


Figure 3: City of Richland Zoning Map

limited manufacturing, assembly, warehousing and distribution operations and retail and wholesale sales of products manufactured on the premises or products allied thereto; and administrative and research and development facilities for science-related activities and commercial uses that are supportive and compatible with other uses allowed in the district. Regulations are intended to prevent frictions between uses within the district, and also to protect nearby residential districts. This zoning classification is intended to be applied to some portions of the City that are designated Industrial under the City of Richland Comprehensive Plan.

The heavy manufacturing district (M-2) is intended primarily for heavy manufacturing and other closely related uses. Regulations for this district are intended to provide protection principally against effects harmful to other districts. This zoning classification is intended to be applied to some portions of the City that are designated Industrial under the City of Richland Comprehensive Plan.

Commercial Land Use

The general business use district (C-3) is intended to provide a use district for commercial establishments which require a retail contact with the public together with incidental shop work, storage and warehousing, or light manufacturing and extensive outdoor storage and display, and those retail businesses satisfying the essential permitted use criteria of the C-2 (Retail Business) use district. This zoning classification is intended to be applied to some portions of the City that are designated commercial under the City of Richland Comprehensive Plan.

Business Center Land Use

The Business Research Park use classification (B-RP) is intended to provide location for a range of business research and business park uses, including office and administrative uses, designed to be conducted wholly within enclosed buildings. It is also a purpose of this land use classification to protect a portion of the existing industrial land base for research park facility development, which provides high-technology employment opportunities. Light manufacturing uses that compliment the business park or research park use, may be permitted if pertinent to the primary use. The business research park zoning classification provides opportunities for employment in modern, attractive buildings on well-landscaped sites which may be close to residential areas.

Open Space

The Parks and Public Facilities district (PPF) is a use classification intended to provide areas for retention of public lands necessary for open spaces, parks, playgrounds, trails, and structures designed for public recreation and to provide areas for the location of buildings and structures for public education, recreation, and other public and semi-public uses.

The Natural Open Space district (NOS) is a use classification intended to provide area for the retention of publicly owned, natural open spaces, that due to their proximity to wetlands, shorelines, flood plains, or critical habitat areas are too sensitive for intensive use or development.

2.2 Capital Facilities, Public Services and Utilities

Transportation

Built transportation infrastructure in the vicinity of Horn Rapids includes road, railroad and bike lanes. SR 240 runs the length of the southeast boundary of the site. Horn Rapids Road travels the entire north boundary of the HRMP study area. Kingsgate Way bisects the site, connecting Horn Rapids Road and SR 240. The site is also served by rail which connects from the east. This rail, owned by The City of Richland connects to the Port of Benton owned rail lines to the east. This portion of the Port of Benton rail is operated by Tri-City and Olympia Railroad Company (TCRY). (See Figure 9: "Transportation Plan" for a graphic showing additional transportation infrastructure.)

Water

There are two existing pressures zones onsite, roughly divided by a north-south line approximately 1,200 feet east of Kingsgate Way. Pressure Zone 1 is below 600 feet and Pressure Zone 2 is above 600 feet. An existing 30-in diameter concrete lined steel water main runs northwest along SR 240 and the southern boundary of the site. This line connects to an existing 20-in diameter line across SR 240 to serve the residential community to the south. A booster pump station is located on the north side of SR 240 at the end of this main, near the northwest corner of Phase 1, providing the pressure for Pressure Zone 2 above 600 feet. This 30-in main also feeds a 16-in diameter in Logston Blvd and 10-in diameter main in Henderson Loop serving the developed portions of Phase 1.

An existing 16-in diameter line in Horn Rapids Road, 12-in diameter line in Battelle Blvd., and 20-in diameter line in Kingsgate Way serve existing properties in the industrial area. These water mains are interconnected to create a looped water system. See Figure 5: "Water Plan" for additional existing water infrastructure.

Sanitary Sewer

There are four existing sanitary sewer basins onsite. An existing 12-in diameter sewer main in Kingsgate Way, 21-in diameter main in Robertson Drive, 24-in diameter north-south main, and 42-in diameter main in Henderson Loop all drain to the southeast. The existing 16-in main in Battelle Blvd drains south to the 24-inch diameter main and to Robertson Ave. Finally, an existing 18-in sewer line that crosses SR 240 at the southeast corner of the ball fields and drains to the residential master planned community south of SR 240. See Figure 6: "Sewer Plan" for additional existing sewer infrastructure.

Storm Facilities

The existing storm drainage systems onsite appear to utilize a combination of ditches and dispersed overland sheetflow. Existing roadways with curb-and gutter have curb-cuts or inlet pipes allowing stormwater runoff to drain into roadside ditches or swales.

Electricity

Power to the east side of the site is currently provided from three existing City of Richland substations. The Snyder substation supplies several feeders to the southern and far western portion of the site, and can be expanded by three more feeders. The University Drive substation provides several feeders to the northeast and north central parts of the site. The Horn Rapids Road substation provides several feeders to the northeast portion

of the master plan. Additional existing service is shown in Figure 8: "Electrical Plan".

Other Plans – The Port of Benton

The Port of Benton owns land directly to the east of the HRMP. This land has been master planned for heavy industrial uses, similar in nature to those proposed in the industrial portions of the HRMP. Provisions have been made to extend a road stub for access as well as associated utilities.

3. Goals and Objectives

The HRMP goals and objectives focus on the City's vision for the Master Plan area. The HRMP is consistent with the Comprehensive Plan goals and policies. This alignment of goals will further encourage the HRMP goals in an area identified for employment growth. The new goals and objectives are listed below, following the Comprehensive Plan element goal most closely associated with it. These include goals pertaining to Land Use, Transportation, Public Facilities, Landscape and Open Space, and Economic Development.

Horn Rapids Master Plan Goals and Objectives

3.1 Land Use and Community Development

Comprehensive Plan Land Use Goal 2: The City will promote industrial development to provide employment for its residents, and strengthen and expand the tax base through its land use policies.

Goal 1: Create an attractive, well-designed industrial, office and commercial center consistent with the goals and policies set forth in the Richland Comprehensive Plan.

Objective 1.1 Adopt specific development standards for the HRMP that compliment the Richland Development Code and propose necessary amendments to the master plan to allow a mixture of light industrial, warehouse, related office, general office, and other ancillary uses.

Objective 1.2 Support the presence and further development of a mix of large and small industrial and business uses that meet employment density and wage targets.

Objective 1.3 Encourage a sustainable approach to site design. Development should follow the sustainability principles of equity, economic development, design, and environment.

3.2 Transportation and Circulation

Goal 2: Develop an efficient and safe circulation system for private vehicles, commercial vehicles, emergency vehicles, pedestrians, and cyclists both into and throughout the HRMP area.

Objective 2.1 Develop and implement Road Standards as part of the Master Plan process.

Objective 2.2 Construct and improve street, pedestrian, and bicycle connections to allow for safe and efficient access throughout the Horn Rapids Business Park.

Objective 2.3 Consider alternate road widths and or unique approaches to streetscape design to accommodate vehicle and bicycle transportation, enhance pedestrian safety and encourage walkability where appropriate.

3.3 Public Facilities and Services

Comprehensive Plan Utility Element Goal 1: The City will provide existing levels of service to current customers and establish policies to extend utility systems to meet new development requirements.

Goal 3: Ensure that new and existing development will be adequately served by municipal services and facilities.

Objective 3.1 Extend water, sewer and storm drainage systems in the area to support maximum development. Explore the viability of other financing options to fund infrastructure improvements.

Objective 3.2 Encourage the use of creative sustainable approaches to reducing runoff and managing stormwater such as rain gardens and rainwater collection for use in industrial operations and landscape maintenance as appropriate.

Objective 3.3 Preserve a parallel waterline for additional capacity and to irrigate crop circles

3.4 Landscape, Open Space and Recreation

Comprehensive Plan Land Use Goal 6: The City will protect and conserve its natural resources and critical lands and provide public access based on ability of the resource to support the use.

Goal 4: Provide for recreation, open space and landscaped areas by creating a cohesive open space plan.

Objective 4.1 Determine the amount of active recreational and passive open spaces necessary to meet the future needs of the business park and the community as a whole.

Objective 4.2 Encourage the preservation and enhancement of existing natural features.

Objective 4.3 Promote the use of native and drought tolerant landscaping material where possible.

Objective 4.4 Design location of trails, open space, and parks to incorporate areas of geological or environmental significance including steep slopes, wetlands, natural drainage patterns, and contours.

3.5 Economic Development

Richland has established a sense of place that appeals to citizens of all ages. The City has become the entertainment and upscale retail center for the Tri-Cities with a range of shopping and service business that meet the needs of local residents and visitors to the community.

Goal 5: Create a development plan which will protect and enhance long term economic and social interests.

Objective 5.1 Create an economic development climate that supports the existing business community and promotes new business opportunity.

Objective 5.2 Provide the necessary infrastructure to capture employment and industrial growth

Objective 5.3 Provide areas to accommodate a balance of intensity of uses which will enhance Richland's ability to recruit new business opportunities.

4. Land Use Plan and Zoning

4.1 Land Use Designations

The City of Richland zones that encompass the proposed Master Plan have been discussed previously under section “2. Existing Conditions”.

Figure 4: “Land Use Plan” shows how these areas are allocated on the site.

The uses shown on the Land Use Plan are general in nature and reflect the existing underlying zoning designations. This Plan does not propose any changes to existing zoning.

4.2 Land Use Summary Table

Land Use Summary Table

Development in the HRMP is intended to provide an attractive employment and economic center, which will draw new development and employment to the area. The Land Use portion of the plan is essential in creating desirable forms of development that captures future growth. The Master Plan is intended to provide for large-acreage users as well as business and commercial uses, civic and open spaces, and other uses that strengthen the City of Richland’s economic base. The Land Use Summary Table below provides an overall summary of the land uses with acreages.

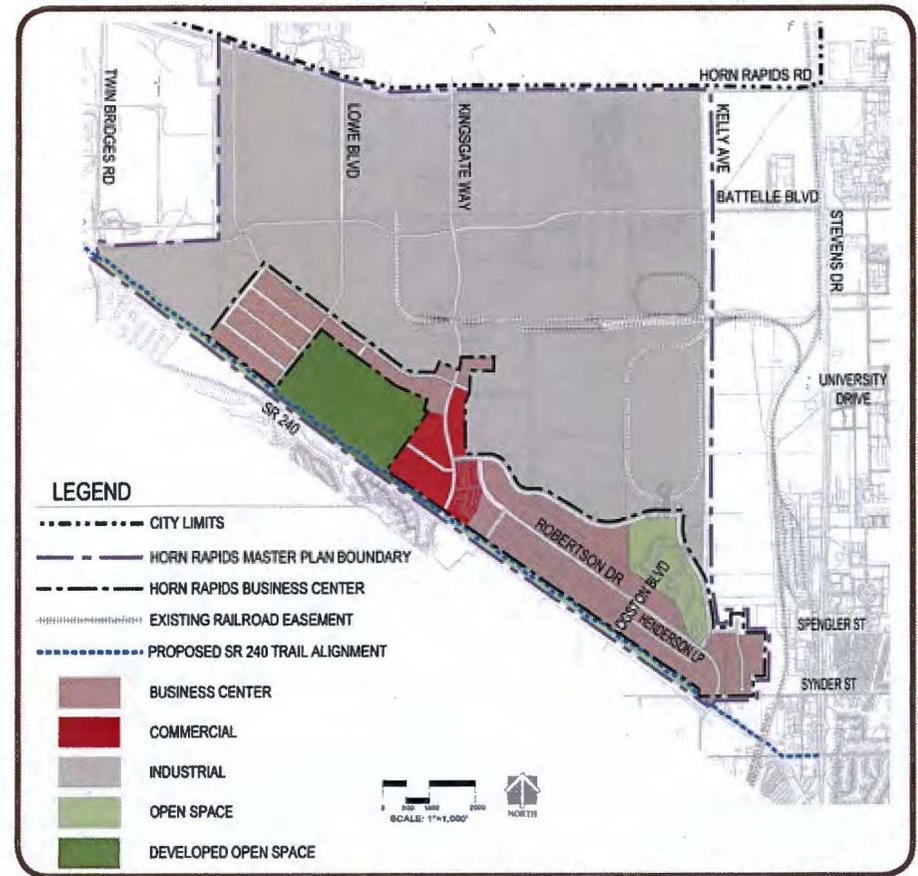


Figure 4: Land Use Plan

Table: Total Land Use Areas

Land Use Designation	Acres	Percent of Total
Business Center/Commercial	372	16%
Industrial	1,689	74%
Open Space	228	10%

5. Utilities

Utility Analysis

The HRMP area includes several sites that are ready for development as demonstrated on the existing utility plans as well as the availability of other infrastructure necessary to serve the site. Full build-out can be accommodated with key investments in sewer, water, rail, water and the other utility systems provided for in this Section.

5.1 WATER

The water system that will serve Horn Rapids consists of two pressure zones (see Figure 5: "Water Plan"). Pressure zone 1 will be below 600 feet and pressure zone 2 will be above 600 feet.

Water lines are proposed in all of the major roadways including a 12-inch diameter north-south water main parallel to and about 0.5 miles east of Twin Bridge Road. Additionally a 12-inch diameter water main is proposed around the northern limits of the Business Center area. There is uncertainty as to the required size of the proposed water lines, especially in the industrial area where there is the potential for a high water-user such as a processing facility. Therefore, prior to final decision on pipe sizing, some limited modeling effort will need to take place using expected demands based on property acreage and type of use. The size of the existing lines in the Kingsgate area are based on similar modeling which was conducted during the preparation of the Comprehensive Plan, and can likely serve as a model for this effort. The water system will be designed and constructed to provide for the demand of development as well as the minimum fire flow rates as required by the City of Richland Building Codes and Fire Marshall.

Additionally, a proposed 8-in stub is provided at the south end of the Port of Benton property (near Spengler Street) property.

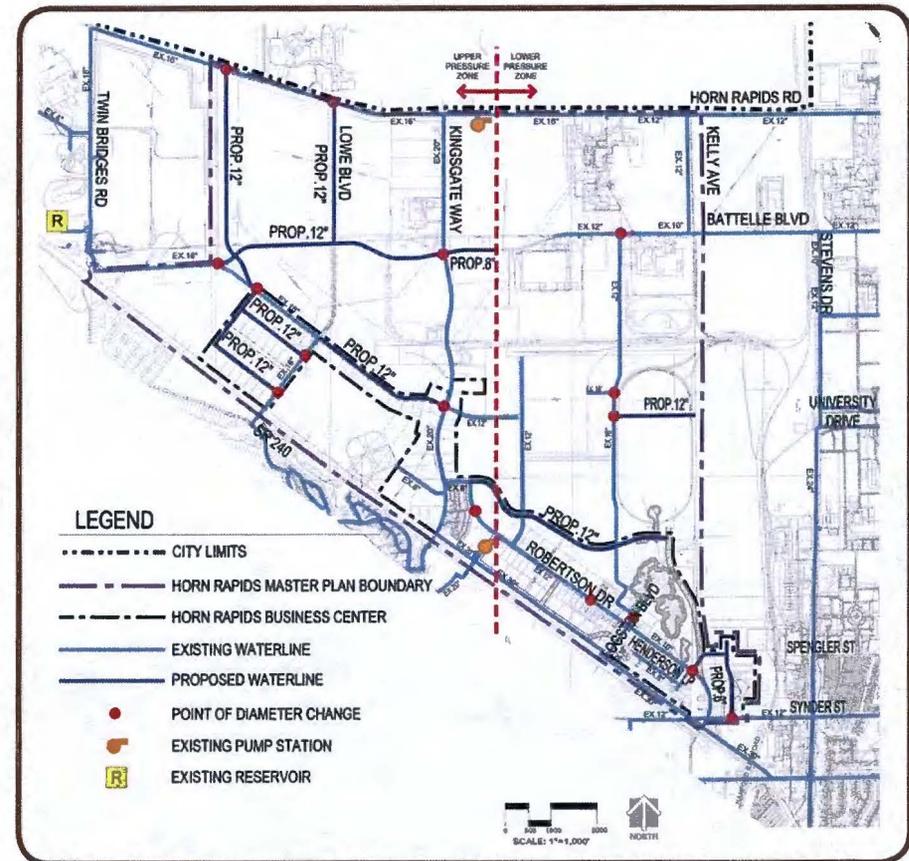


Figure 5: Water Plan

5.2 SANITARY SEWER

Wherever possible, all sanitary sewer improvements will be constructed in the public right-of-way. Where construction in the public right-of-way is not possible, sanitary mains will be constructed along with a maintenance and operations access road. In general, Business Center roadways are proposed to be constructed with 8-in diameter sewer mains, while Industrial roadways are proposed to be constructed with 12-in diameter sewer mains. Deviations from this generalization can be seen in Figure 6: "Sewer Plan". Sanitary sewer infrastructure will be installed with each Phase of the Business Center and as needed in the Industrial area. There is an existing 12-in diameter sewer main in Kingsgate Way, 21-in diameter main in Robertson Drive and an existing 42-in diameter main in Henderson Loop. Phases 1 and 2 of the Business Center as well as the majority of the Industrial lands will be served by collectors and laterals connected to this system. Phase 3 of the Business Center will be collected in a proposed 12-in diameter main in Lowe Blvd., and drain into a proposed 18-in diameter main running southeast along SR 240 just south of Phase 2, and ultimately through the Horn Rapids development sanitary sewer system (this system eventually discharges back to the Robertson Drive sanitary main).

A 24-in diameter sewer main has also been constructed from Battelle Boulevard, south to Logston Boulevard. This sewer main was constructed with a gravel access road because it does not fall within a roadway. This main is designed such that the existing sanitary lift station on Battelle Boulevard can be removed from service. This pipe also provides sanitary sewer service to properties east of Kingsgate Way.



Figure 6: Sewer Plan

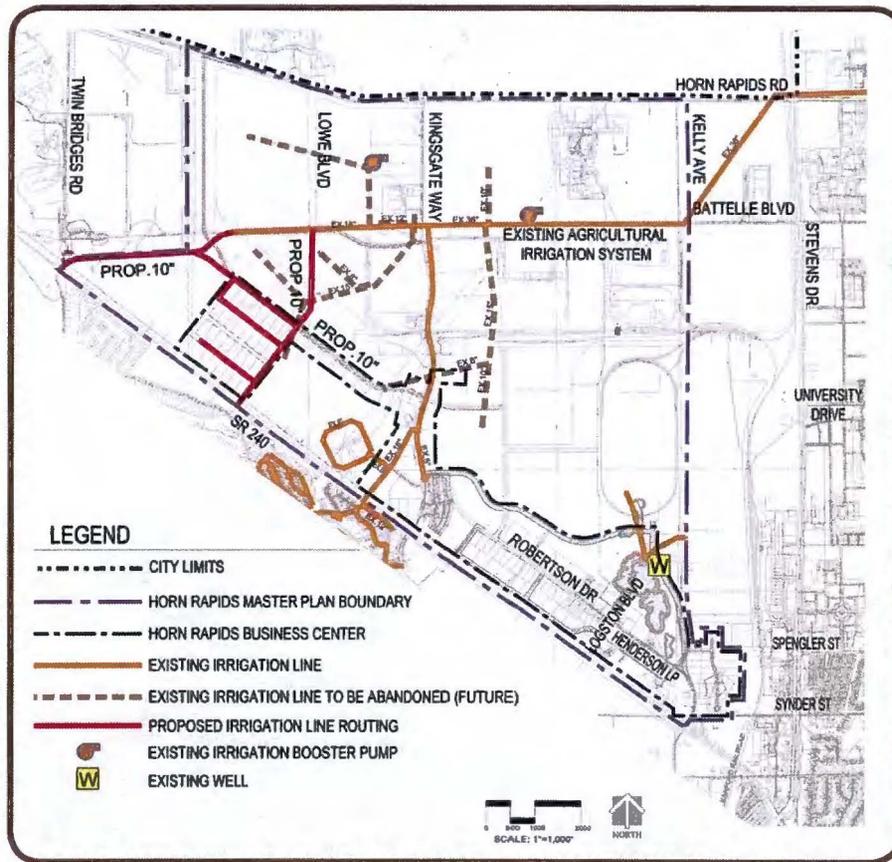


Figure 7: Irrigation Plan

5.3 IRRIGATION

Irrigation water may be distributed from two different sources which would serve separate systems (see "Irrigation Plan" Figure 7). The primary source is the existing agricultural system which is currently used to irrigate crop circles that are currently within the industrial park. These water rights may be used for the irrigation of developed lots, specifically in the Business Center area. Irrigation in the industrial park is not anticipated due to the significantly lower road and frontage standards for this land use. As part of the sustainability component of the Master Plan the industrial properties should be developed to provide building shading and innovative stormwater systems. These site elements may require irrigation. Where cost effective to access the existing irrigation main, irrigation water will be extended to industrial properties for landscape improvements. A second available source of irrigation water is an existing well located northeast of the intersection of Robertson Drive and Logston Boulevard. This source may be used to serve the Phase 1 Business Center on a separate system, or interconnected with the primary system to provide additional water. New irrigation lines will be constructed per the Irrigation Plan. For the purposes of the cost estimate it was assumed that only the existing primary irrigation system would be used. The portions of the existing irrigation system no longer required may be abandoned in place or removed and disposed of as needed. The phasing of the cost estimate also assumes that Phase 1 and Phase 2 will be irrigated with the existing irrigation system, and no new irrigation infrastructure will be installed for these phases.

At this time MacKay Sposito has not conducted a full accounting of the acres of water right available to Horn Rapids development, but due to the nature of developed properties they are likely more than sufficient to accommodate all future irrigation needs. There may be some possibility of converting the excess irrigation water right to domestic water right to add to the City's existing water system, however, the feasibility of this was not evaluated for this master plan.

5.4 STORMWATER

Stormwater runoff from the roadways will be handled in roadside swales. Stormwater will be collected and retained in the roadside swales where it will infiltrate or evaporate. Infiltrated stormwater will be treated through the soil layer under the bottom of swales. Stormwater runoff from individual properties shall be handled onsite and treated through approved pre-treatment facilities (such as swales, oil-water separators, filters, etc.) prior to infiltration. Due to high infiltration rates in this area and low rainfall, quantity of runoff is not considered an issue; however low-points where large volumes of runoff would tend to pond in an extremely large storm event should have an outfall to low undeveloped land.

5.5 ELECTRICAL

The power for Horn Rapids will be supplied from three existing and one future City of Richland substations (see Figure 8 "Electrical Plan"). The Snyder substation will supply five to six feeders, the University Drive substation supplies two feeders, and the Horn Rapids substation supplies three to four feeders to serve the east half of the project. A new substation with 4-5 feeders will be constructed near the western limits of the master plan to serve the new industrial users on the west side of the project. (See Figure 8: "Electrical Plan")

5.6 NATURAL GAS

There is an existing 4-in natural gas line in Robertson Avenue, an existing 8-in line in SR 240, and an existing 8-in line in Kingsgate Way. No master plan graphic is provided for natural gas.

5.7 TELECOMMUNICATIONS

Business center and Industrial tenants have a wide range of potential telecommunications infrastructure needs. Included in the lineal footage road costs is an allowance for dry utility conduits including fiber, phone, and cable. No master plan graphic is provided for telecommunications.

5.8 TYPICAL UTILITY SECTION

All of the streets shall have utilities placed in the general locations shown in the section below (see "Transportation Plan", Figure 9). A

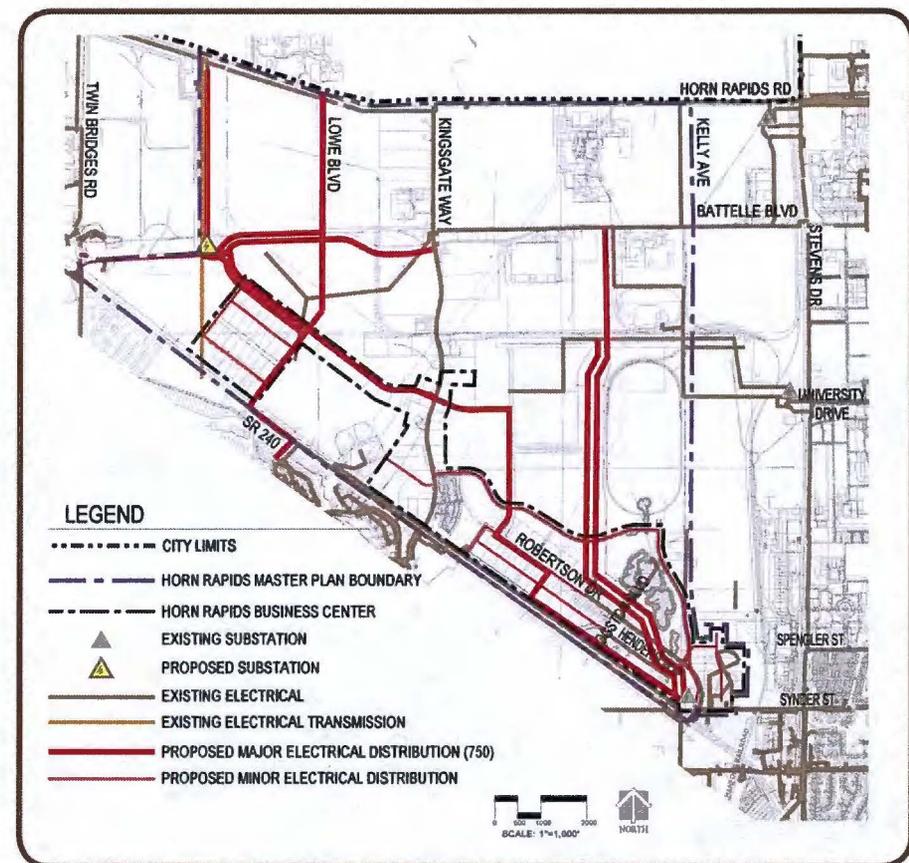


Figure 8: Electrical Plan



utility easement is provided on both sides of Industrial and Business Center roadways sections, immediately outside of the right-of-way, and shall be used for all underground electrical, telephone, cable and communications utilities as well as above-ground vaults or junction boxes. Utilities shall not be placed in the roadside swales.

6. Transportation

There is tremendous growth potential within the boundaries of the HRMP, with extensive pre-planning already undertaken to assure appropriate circulation systems. The Transportation Plan (Figure 9) identifies the transportation improvement projects that can be completed for continued growth.

6.1 Transportation Analysis

The road network plan and associated phasing of construction improvements has been designed to comply with the following policies of the Comprehensive Plan:

- The City should ensure that direct access is provided to property through the development of a network of collector and access streets, whose design would be as unobtrusive as possible to serve, rather than be the dominant feature of the area.
- The City should ensure that transportation facilities are designed to be aesthetically pleasing.
- The City should ensure the improvement of existing circulation systems to provide for maximum efficiency in vehicle movement.
- The City should encourage the development and enhancement of principle entrance ways into Richland.
- The City should ensure that there is adequate access and transportation facilities should be provided to industrial sites.
- The City should ensure vehicular traffic to industrial sites is be routed away from the central business route.

The primary components of the existing road network serving Horn Rapids are SR 240 along the south boundary, Horn Rapids Road which runs along the north boundary, and Kingsgate Way a north-south principal arterial which runs between them, roughly bisecting the property. Ultimately it is planned to extend Kingsgate Way to the south through the residential master planned community and connect to Van Giesen Street, thereby providing a new route to Van Giesen Street for Hanford-related traffic.



Figure 9: Transportation Plan

Additional access points to SR 240 will be limited to those approved by the Washington State Department of Transportation (WSDOT). Currently Robertson Avenue and Logston Boulevard provide access to SR 240 for the eastern portion of the master plan and Business Center. One additional connection to SR 240 is proposed at Lowe Boulevard. WSDOT intersection spacing requirements for state highways should allow the connection of Lowe Boulevard. Three signals are proposed at the major access points along SR 240: Twin Bridges Road, Kingsgate Way, and Robertson Drive. Signals would not be constructed until traffic volumes at these access points warrants signaling them.

As part of the Master Plan, a series of internal collector streets are also proposed. These streets which will distribute traffic between the major roads, individual properties, and other internal streets would primarily serve the proposed Business Park. Industrial roadways are proposed in strategic alignments to provide access to development areas within the industrial lands.

6.2 Road Standards and Road Sections

Industrial Roadway Section

The proposed industrial roadway section shown below consists of an 85' right-of way with a three lane street and roadside swales on both sides for collection and retention of stormwater. The west or south side of the roadway has a trail corridor for potential future trail improvements. A 10' wide utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 10: "Industrial Roadway Section")

Curbed Roadway Section

The proposed business center roadway section shown below consists of a 80' right-of way, three lane street with monolithic curb and gutter and roadside swales on both sides for collection and retention of stormwater. Stormwater will be routed to the swales through curb-cuts. The east or north side of the roadway has a 6' concrete sidewalk. A 10' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 11: "Curbed Roadway Section")

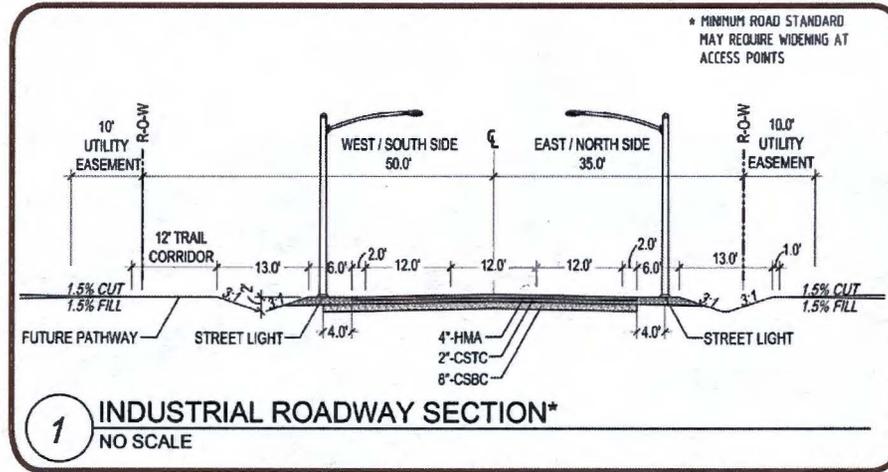


Figure 10: Industrial Roadway Section

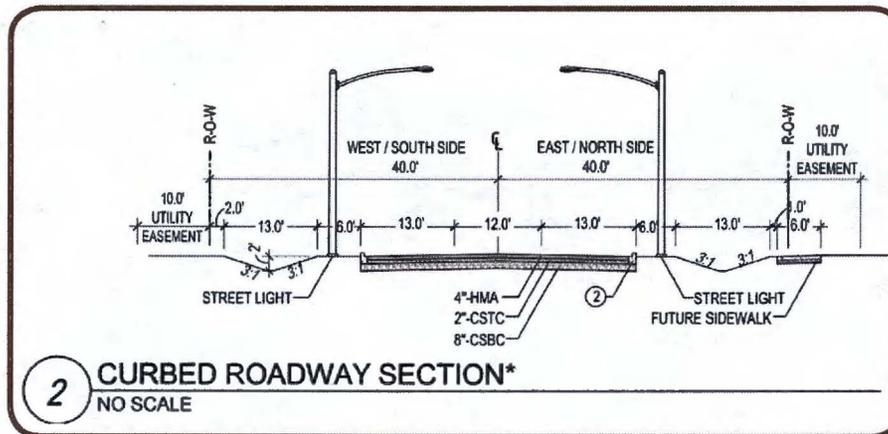


Figure 11: Curbed Roadway Section

6.3 RAILROAD

Existing railroad infrastructure has been installed through the central core of the master plan.

One railroad crossing is proposed at the future road crossing with Battelle Boulevard. This crossing would be installed when Battelle Boulevard is extended. No other railway improvements are proposed for the master plan. See Figure 12: Railroad Infrastructure Plan for a depiction of existing railroad network.

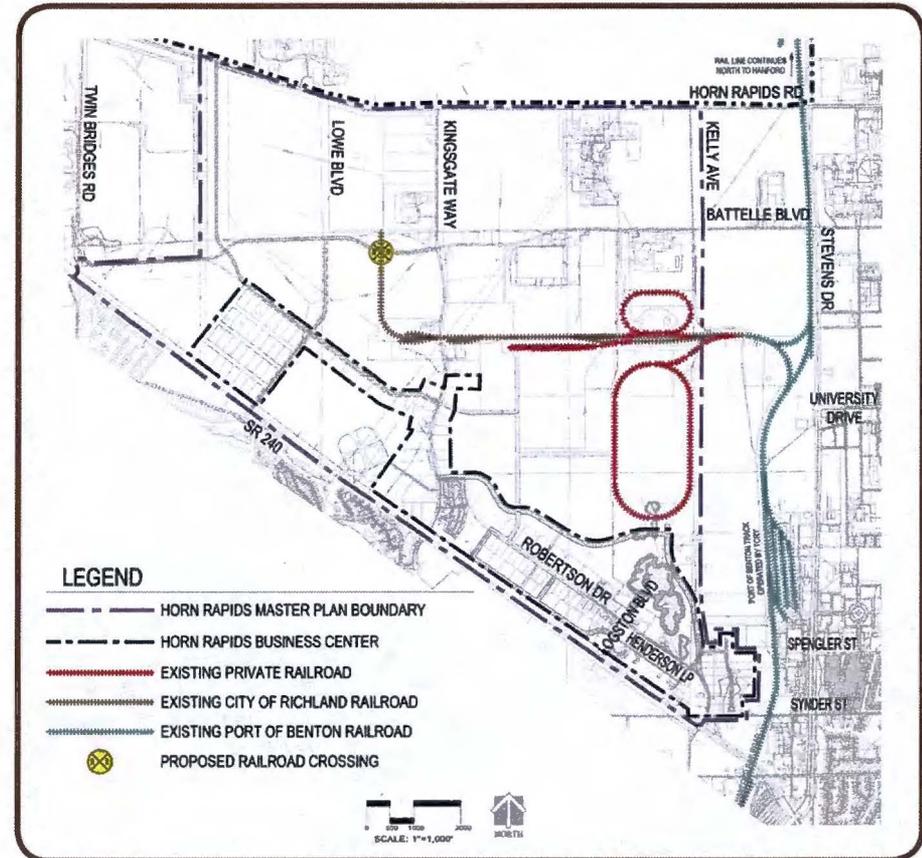


Figure 12: Railroad Infrastructure Plan

7. Wetland Impacts and Mitigation

As identified in the March 24, 2014 Wetland Boundary verification and Wetland Buffer and Mitigation Plan for the City of Richland Rail Loop Project nine separate wetlands were previously identified and delineated within the HRMP. These consist of Category II and III depressional wetlands, all containing similar hydrophytic vegetation, hydric soils, and hydrology. The construction of the rail loop impacted Wetland F, and associated wetland buffer. To compensate for this impact, the project provided mitigation by creating wetland between Wetlands D and J. Impacts consisted of 35 feet wide track embankment with 2:1 side slopes for a total width of 112' width where the track crossed through Wetland F and result in approximately 2,720 sf of permanent fill in a Category III emergent wetland. A 24" culvert was installed in the railroad embankment to connect the upper and lower portions of Wetland F and maintain hydrologic connection. The proposed railroad embankment is 50' wide where the track crosses through wetland buffer on either side of Wetland F and resulted in 5,030 sf of permanent buffer impacts. (See Figure 13: "Wetland Impacts and Mitigation Plan")

The project compensated for wetland and wetland buffer impacts through on-site, in-kind wetland, and wetland buffer mitigation. Mitigation create new wetlands by removing a portion of the gravel roadway embankment that separates Wetlands D and J. This consisted of removing the road material and excavating to the groundwater creating a hydrologic connection between Wetlands D and J. Soils were excavated, at varying elevations at or below the delineated wetland elevation of the adjoining wetlands, creating multiple hydrologic regimes and vegetation types. Wetland creation established a seasonally inundated, emergent wetland area as well as scrub-shrub/forested (SS/FO) wetland areas.

To compensate for buffer impacts, the existing buffer areas in between Wetlands D and J were enhanced by removing roadway gravel, decompacting the native soil, and establishing a native diverse plan community with native grass and forb seed mix and container

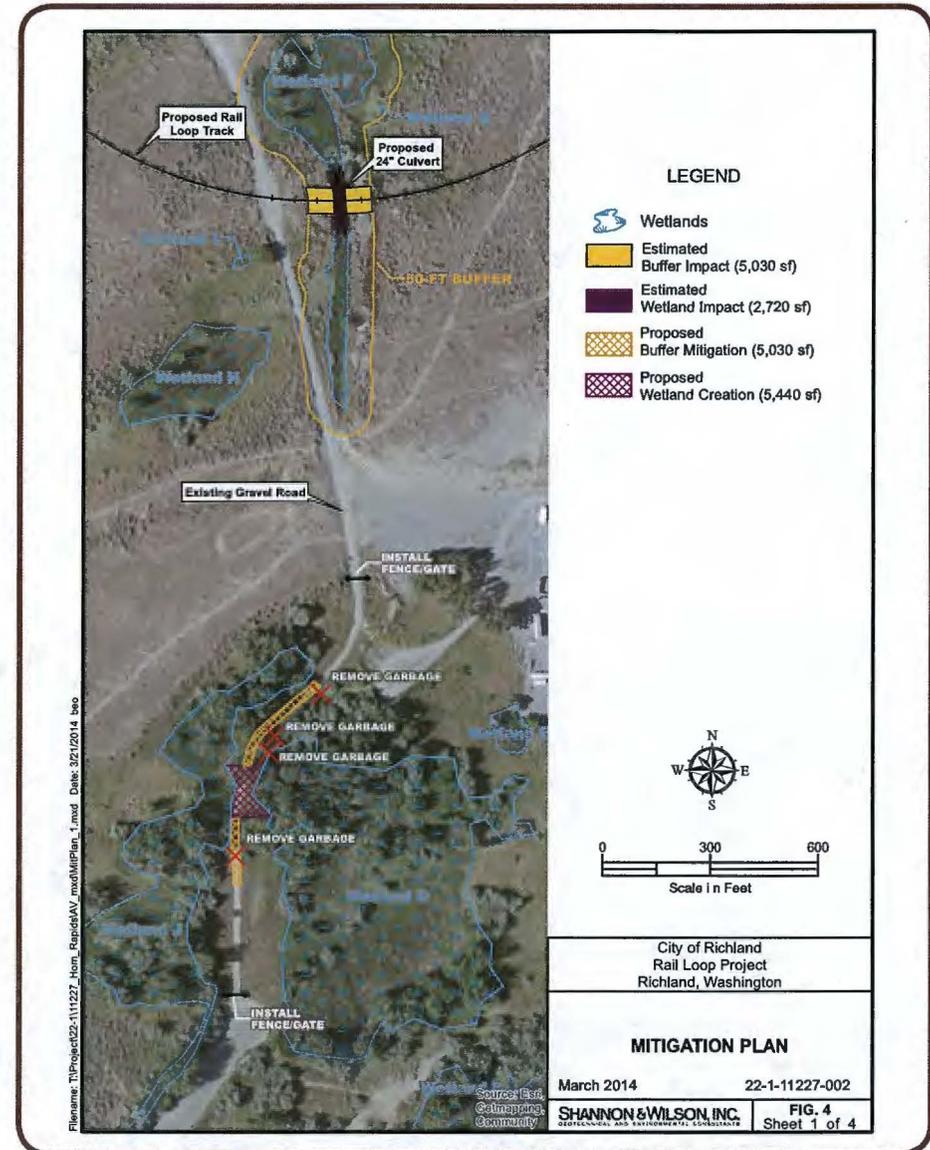


Figure 13: Wetland Impacts and Mitigation Plan

plantings of native shrubs and tree species.

The gravel road between Wetlands D and J appeared to be used for illicit dumpings. The mitigation effort removed the refuse on site and constructed a gate at the access point off of Logston Boulevard to deter human disturbance and degradation.

Wetland creation was at a ratio of 2:1 (5,440 sf of creation to 2,720 sf of impact). Buffer enhancement were at a ratio of 1:1 (5,030 sf of enhancement to 5,030 sf of buffer impact).

Under the Richland Municipal Code (RMC Section 22.10.120), Washington Department of Ecology (Ecology) regulations unavoidable impacts were mitigated by providing compensation. These wetlands have been determined by the US Army Corps of Engineers (USACE) to be isolated and therefore not subject to USACE regulation; however they are regulated by the City and Ecology. As the current project plans had permanent impacts to the wetland area, wetland and buffer mitigation was required by the City and Ecology.

8. Infrastructure Costs

General concepts for the provisions of basic infrastructure are illustrated and described in the previous sections. These infrastructure concepts are meant to inform and guide future development decisions; however, in all likelihood, the final design will vary from these concepts. Therefore, the rough cost estimates based on the Plan's concepts provide information to inform what one approach would look like and might cost in today's dollars. These Cost Estimates can be found in Appendix B. Figure 14 sets out a conceptual phasing plan associated with the Cost Estimates providing for logical project boundaries that can respond to market demands.

This estimate represents an engineer's opinion of costs based on the conceptual Master Plan, assumptions of unit prices, and past experiences. It does not represent a guaranteed development cost.

Utilities were generally estimated on a per lineal foot basis, inclusive of all tees, connections, valves, poles, backfill, excavation and other appropriate items incidental to the utility line. One new substation was included in the Industrial estimate as directed by the City of Richland energy services. Cost-sharing and alternative funding mechanisms may be pursued for these large capital improvements.

Two road sections are proposed with the Master Plan update. These are Industrial and Business Center. The costs for each were developed from measured material quantities and unit prices (in 2015 dollars), then converted to an average cost per lineal foot of roadway. These average costs were used in the estimates for each section for ease of approximation. All rail crossings were assumed to be at-grade. Any other rail crossing configuration would add substantial additional costs.

The Cost Estimate is divided into five sections:

- Phase 1 – Business Center east of Kingsgate Way to the eastern boundary of the Master Plan.

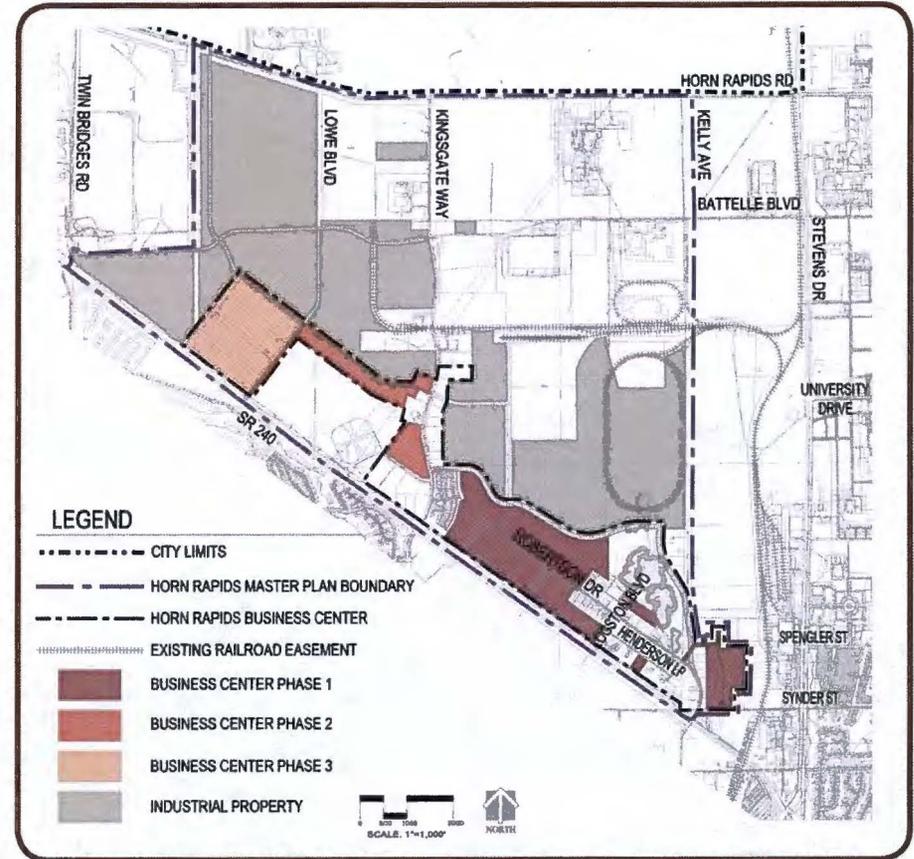


Figure 14: Cost Estimate Plan

Table: Proposed Development Areas

Land Use Designation	Acres	Percent of Total
Business Center	276	26%
Industrial Property	793	74%

-
- Phase 2 – Business Center west of Kingsgate Way and east of Lowe Blvd.
 - Phase 3 – Business Center west of Lowe Blvd. to the western boundary of the Business Center.
 - Industrial – All Industrial lands including potential rail improvements.

The Industrial land development costs are included together as a separate phase, however this is not intended to indicate that these improvements will be built at once or the order in which they will be constructed relative to the Business Center Phases. This estimate is only intended to capture all of the costs associated with the full build-out of all industrial lands. It is assumed that the improvements will be built as needed, as users come to the park.

The total development cost for Phases 1, 2, and 3 of the Business Center (including hard costs, engineering, permitting, construction administration, etc.) were divided across remaining developable acres served by the improvements to yield an anticipated cost per developable square foot. This number can inform future lot prices.

9. Implementation

9.1 Economic Development Strategy

Over the life of the HRMP, many important decisions will be made. These choices will impact how development evolves and the specific phasing of improvements. A range of ways to fund the basic infrastructure, with site specific infrastructure connections being the responsibility of the developer of the individual sites, could be available to the City, for example:

-Public/Private Development Agreements: New development agreements between the City and a developer specifying financing needs and responsibilities for infrastructure needs that serve a wider area than the developer is contemplating.

-Tax Increment Financing (TIF) or Local Revitalization Financing (LRF). This is a method of distributing property tax collections within designated areas to finance infrastructure improvements within these designated areas. Under the TIF method, infrastructure is financed by the incremental increase in tax revenue that is made possible by infrastructure improvement within the designated area. The City has been successful in obtaining an allocation under the State's current LRF program.

-Grant Opportunities: While no specific grant opportunities have been identified that would be a good match for needed improvements in the HRMP, over the build out period of development, grant opportunities will likely emerge. HRMP includes aspects that should make it attractive for grants that promote economic development, especially in these current times of economic recession

-Local Improvement District (LID): The City can work with purchasers/developers to establish a local improvement district which includes an agreed upon repayment schedule based on agreed upon equitable criteria; the City sells bonds to cover the costs of infrastructure to be built within the district, and the owners/developers pay off the bonds through regular payments usually over a 10 to 20 year period.



Appendix A - HRMP Boundary Legal Description

HORN RAPIDS - R.A.I.S.E DESCRIPTION

A PORTION OF LAND LYING IN SECTIONS 14,15,16,17,19,20,21,22,23,26,27,28 AND 34, ALL WITHIN TOWNSHIP 10 NORTH, RANGE 28 EAST, ., CITY OF RICHLAND, STATE OF WASHINGTON, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY SR-240 AND THE NORTH SECTION LINE OF SECTION 34, SAID POINT ALSO BEING THE NORTH QUARTER CORNER OF SAID SECTION 34; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 16,200 FEET MORE OR LESS TO THE EASTERLY RIGHT-OF-WAY LINE OF TWIN BRIDGES ROAD; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE NORTH LINE OF SAID SECTION 19; THENCE EASTERLY ALONG SAID NORTH LINE OF SECTION 19, 2 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 17, 18, 19 & 20; SAID SECTION CORNER BEING ON THE SOUTH LINE OF THAT PROPERTY KNOWN AS THE CITY OF RICHLAND LANDFILL, AND THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20 BEARS NORTH $86^{\circ}37'55''$ EAST A DISTANCE OF 2618 FEET MORE OR LESS; THENCE CONTINUING ALONG SAID PROPERTY LINE THE FOLLOWING FIVE COURSES;

1. EASTERLY ALONG THE NORTHERLY SECTION LINE OF SECTION 20 A DISTANCE OF 100.00 FEET TO A POINT IN A CHAIN LINK FENCE;
2. THENCE LEAVING SAID SECTION LINE ALONG SAID CHAIN LINK FENCE SOUTH $03^{\circ}19'06''$ EAST A DISTANCE OF 399 FEET MORE OR LESS TO THE CORNER THEREOF;
3. THENCE CONTINUING ALONG SAID CHAIN LINK FENCE AND EXTENDING BEYOND A CORNER THEREIN, NORTH $86^{\circ}40'54''$ EAST A DISTANCE OF 2,497 FEET MORE OR LESS TO THE SOUTHERLY PROJECTION OF THE NORTH-SOUTH CENTERLINE OF SECTION 17 THROUGH THE SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20;
4. THENCE NORTH $00^{\circ}15'25''$ WEST A DISTANCE OF 400.91 FEET ALONG SAID SOUTHERLY PROJECTION TO SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20;
5. THENCE CONTINUING NORTH $00^{\circ}15'25''$ WEST A DISTANCE OF 3809.00 FEET MORE OR LESS TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HORN RAPIDS ROAD; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE THEREOF A DISTANCE OF 3,700 FEET MORE OR LESS TO AN ANGLE POINT THEREIN;

THENCE EASTERLY, CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE THEREOF A DISTANCE OF 9,300 FEET MORE OR LESS TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF A DISTANCE OF 2,700 FEET MORE OR LESS TO A POINT ON THE WESTERLY PROJECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF A ROAD KNOWN AS GEORGE WASHINGTON WAY AS SHOWN ON RECORD OF SURVEY 3673, SAID COUNTY SURVEY RECORDS; THENCE SOUTHEASTERLY ALONG SAID NORTHERLY LINE THEREOF A DISTANCE OF 3,800 FEET MORE OR LESS TO A POINT THE NORTH BOUNDARY OF THAT TRACT OF LAND CONVEYED TO THE PORT OF BENTON, AS DESCRIBED IN QUIT CLAIM DEED FROM THE U.S.A. TO THE PORT OF BENTON, RECORDED IN AUDITOR'S FILE NO. 521608, RECORDS OF BENTON COUNTY; THENCE EASTERLY ALONG SAID NORTH BOUNDARY A DISTANCE OF 1,667.00 FEET MORE OR LESS TO THE ORDINARY HIGH WATER LINE OF THE COLUMBIA

RIVER: THENCE SOUTHERLY ALONG SAID WATER LINE A DISTANCE OF 8,200 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 24; THENCE WESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 85.00 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 23, 24, 25 & 26 BEING ON THE CENTERLINE OF SPROUT ROAD AS SHOWN IN RECORD OF SURVEY 1199; THENCE CONTINUING ALONG SAID CENTERLINE AND THE SOUTH LINE OF SECTION 23 A DISTANCE 2,765 FEET MORE OR LESS TO THE CENTERLINE OF SAID GEORGE WASHINGTON WAY; THENCE NORTHERLY ALONG SAID CENTERLINE OF GEORGE WASHINGTON WAY 532 FEET MORE OR LESS TO THE EASTERLY PROJECTED CENTERLINE OF CURRY ROAD AS SHOWN ON RECORD OF SURVEY 4048 (CURRY STREET); THENCE WESTERLY ALONG SAID PROJECTED CENTERLINE A DISTANCE OF 1,009 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF "PARCEL A" AS DEPICTED IN RECORD OF SURVEY 4104; SAID POINT ALSO BEING ON THE CAMP HANFORD LINE; THENCE SOUTHERLY ALONG A PORTION OF THE WEST LINE OF "PARCEL A" AND ALONG THE CAMP HANFORD LINE A DISTANCE OF 2,940 FEET MORE OR LESS TO AN ANGLE POINT MARKED BY A BRASS DISK, "CH-10-1"; SAID ANGLE POINT BEING ON THE WESTERLY LINE OF "PARCEL B" OF SAID RECORD OF SURVEY 4104; THENCE SOUTHWESTERLY CONTINUING ALONG SAID WESTERLY BOUNDARY A DISTANCE OF 1,600 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SPENGLER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,500 FEET MORE OR LESS TO THE SAID WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE SOUTHERLY ALONG SAID WEST LINE A DISTANCE OF 1,300 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SNYDER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,200 FEET MORE OR LESS TO THE WEST LINE OF A PARCEL OWNED BY THE PORT OF BENTON AS DESCRIBED IN DEED 2001-006829, RECORDS OF BENTON COUNTY, WASHINGTON; THENCE NORTHERLY ALONG SAID WEST LINE THEREOF A DISTANCE OF 1,300 FEET MORE OR LESS TO A SOUTHERLY LINE OF SAID PARCEL; THENCE WESTERLY ALONG SAID SOUTHERLY LINE A DISTANCE OF 1,350 FEET MORE OR LESS TO THE WEST LINE THEREOF; ALSO BEING A POINT ON THE EASTERLY LINE OF "TRACT A" AS SHOWN IN RECORD OF SURVEY 2056, SAID COUNTY RECORDS; THENCE SOUTH ALONG THE SOUTHERLY PROJECTION OF THE WEST LINE THEREOF A DISTANCE OF 240 FEET MORE OR LESS TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ROBERTSON DRIVE; THENCE SOUTHEASTERLY, SOUTHERLY, AND SOUTHWESTERLY ALONG THE SAID RIGHT-OF-WAY LINE OF ROBERTSON DRIVE AND THE SOUTHWESTERLY PROJECTION THEREOF A DISTANCE OF 1,500 FEET MORE OR LESS TO THE NORTH LINE OF SAID SR240; THENCE NORTHWESTERLY ALONG THE NORTH LINE THEREOF A DISTANCE OF 340 MORE OR LESS TO THE SAID TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR SAID GEORGE WASHINGTON WAY AND SPROUT ROAD.

THIS DESCRIPTION IS FOR PLANNING PURPOSES ONLY AND NOT TO BE USED IN THE TRANSFER OF REAL PROPERTY.

Appendix B - Cost Estimate



Business Center Phase 1 AREA: 153.19 ACRES (development area)

	Unit	Description of Work	Unit Price	
Administration				
1	LS	Equipment Mobilization (5%)	\$ 451,170.63	\$ 451,171
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	\$ 180,468.25	\$ 180,468
1	LS	Construction Bonds and Permits (1%)	\$ 90,234.13	\$ 90,234
				\$ 721,873
Roads				
8,520	LF	Curbed Roadway Section	\$ 348.00	\$ 2,964,960
8,541	LF	Industrial Roadway	\$ 186.00	\$ 1,588,626
1	EA	Traffic Signal	\$ 200,000.00	\$ 200,000
				\$ 4,753,588
Non-Road Work				
108	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	\$ 1,500.00	\$ 162,000
				\$ 162,000
Trail				
5,800	LF	Trail		
698	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	\$ 85.00	\$ 59,343
1,180	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	\$ 20.00	\$ 23,200
81,200	SF	Subgrade Prep	\$ 0.20	\$ 16,240
8	EA	Bollards	\$ 1,200.00	\$ 9,600
23,200	SF	Restoration along Trail in Open Space	\$ 0.35	\$ 8,120
				\$ 116,503
Utilities				
Utility Misc				
10	EA	Pothole Existing Utilities	\$ 250.00	\$ 2,500
Sewer				
3,406	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 26.50	\$ 90,259
5,266	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 22.50	\$ 118,485
22	EA	48" San. Manholes (Approx 400' Spacing)	\$ 2,450.00	\$ 53,900
4	EA	Connection to Ex. Main	\$ 1,500.00	\$ 6,000
Water				
4	EA	Hot-tap Existing	\$ 2,500.00	\$ 10,000
4,908	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 50.00	\$ 245,300
2,659	LF	8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 40.00	\$ 106,360
4	EA	Fire hydrant	\$ 4,200.00	\$ 15,960
Irrigation				
0	EA	Tap Existing Irrigation	\$ 1,500.00	\$ -
0	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 25.00	\$ -
Power Transmission				
0	EA	New Substation	\$ 3,750,000.00	\$ -
	LF	OH Transmission	\$ 45.00	\$ -
	LF	OH Distribution	\$ 25.00	\$ -
15,388	LF	Underground Transmission	\$ 120.00	\$ 1,846,560
18,700	LF	Underground Distribution	\$ 80.00	\$ 1,496,000
				\$ 3,991,324
			(1) SUBTOTAL CONSTRUCTION	\$ 9,023,412.59
			(2) Administration	721,873.01
			(3) Planning Level Contingency (25%)	\$ 2,436,321.40
			(4) SUBTOTAL CONSTRUCTION (1+2+3)	\$ 12,181,607.00
			(5) Tax (8.8% of Water, Power, and Sewer)	\$ 343,253.86
			(6) Construction Total (4+5)	\$ 12,524,860.86
PROFESSIONAL SERVICES				
1	LS	Engineering and Geotechnical (12%)	\$ 1,461,793	\$ 1,461,793
1	LS	Environmental Permitting (3%)	\$ 270,702	\$ 270,702
1	LS	Construction Staking (1.5%)	\$ 135,351	\$ 135,351
1	LS	Construction Administration (3%)	\$ 270,702	\$ 270,702
		SUBTOTAL		\$ 2,138,549
COST PER ACRE				
			Total (6 + Professional Services)	\$ 14,663,410
			Developable Acres Served (total area less roads)	113.6
			Cost per Developable Acre	\$ 129,095
			Cost per Developable Square Foot	\$ 2.96

Business Center Phase 2 AREA: 45.80 ACRES (development area)

Unit	Description of Work	Unit Price	
Administration			
1	LS Equipment Mobilization (5%)	\$ 109,324.16	\$ 109,324
1	LS Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	\$ 43,729.66	\$ 43,730
1	LS Construction Bonds and Permits (1%)	\$ 21,864.83	\$ 21,865
			\$ 174,919
Roads			
330	LF Curbed Roadway Section	\$ 348.00	\$ 114,840
3,200	LF Industrial Roadway - University Way	\$ 336.00	\$ 1,075,200
1	EA Traffic Signal	\$ 150,000.00	\$ 150,000
			\$ 1,340,040
Non-Road Work			
79	AC Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	\$ 1,500.00	\$ 118,500
			\$ 118,500
Trail			
2,590	LF Trail		
312	TN Furnish and Install HMA Class PG 64-28 (2" Thick)	\$ 76.00	\$ 23,694
518	SF Furnish and Install Crushed Surfacing Top Course (4" Thick)	\$ 20.00	\$ 10,360
36,260	SF Subgrade Prep	\$ 0.20	\$ 7,252
4	EA Bollards	\$ 800.00	\$ 3,200
10,360	SF Restoration along Trail in Open Space	\$ 0.35	\$ 3,626
			\$ 48,132
Utilities			
Utility Misc			
4	EA Pothole Existing Utilities	\$ 200.00	\$ 800
Sewer			
2,801	LF 12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 26.50	\$ 74,227
8	EA 48" San. Manholes (Approx 400' Spacing)	\$ 2,450.00	\$ 19,600
1	EA Connection to Ex. Main	\$ 1,500.00	\$ 1,500
Water			
2	EA Hot-tap Existing	\$ 2,500.00	\$ 5,000
3,225	LF 12" Ductile Iron Water Main (Includes 2-16" x 12" Tees, all valves, TB, etc.)	\$ 50.00	\$ 161,250
1	EA Fire hydrant	\$ 4,200.00	\$ 4,200
Irrigation			
0	EA Tap Existing Irrigation	\$ 1,500.00	\$ -
0	LF 10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 25.00	\$ -
Power Transmission			
0	EA New Substation	\$ 3,750,000.00	\$ -
7,071	LF OH Transmission	\$ 45.00	\$ 318,195
	LF OH Distribution	\$ 25.00	\$ -
	LF Underground Transmission	\$ 120.00	\$ -
1,188	LF Underground Distribution	\$ 80.00	\$ 95,040
			\$ 679,812
		(1) SUBTOTAL CONSTRUCTION	\$ 2,186,483.20
		(2) Administration	174,918.66
		(3) Planning Level Contingency (25%)	\$ 590,350.47
		(4) SUBTOTAL CONSTRUCTION (1+2+3)	\$ 2,951,752.33
		(5) Tax (8.6% of Water, Power, and Sewer)	\$ 58,463.79
		(6) Construction Total (4+5)	\$ 3,010,216.11
PROFESSIONAL SERVICES			
1	LS Engineering and Geotechnical (12%)	\$ 354,210	\$ 354,210
1	LS Environmental Permitting (3%)	\$ 65,594	\$ 65,594
1	LS Construction Staking (1.5%)	\$ 32,797	\$ 32,797
1	LS Construction Administration (3%)	\$ 65,594	\$ 65,594
	SUBTOTAL		\$ 518,197
COST PER ACRE			
		Total (6 + Professional Services)	\$ 3,528,413
		Developable Acres Served (total area less roads)	71.97
		Cost per Developable Acre	\$ 49,028
		Cost per Developable Square Foot	\$ 1.13

Business Center Phase 3 AREA: 77.52 ACRES (development area)

Unit	Description of Work	Unit Price		
Administration				
1	LS Equipment Mobilization (5%)	\$ 280,828.88	\$	280,827
1	LS Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	\$ 112,330.75	\$	112,331
1	LS Construction Bonds and Permits (1%)	\$ 56,165.37	\$	56,165
			\$	449,323
Roads				
3,810	LF Industrial Roadway - University Way & Lowe Blvd	\$ 336.00	\$	1,280,160
6,637	LF Curbed Roadway Section	\$ 348.00	\$	2,309,676
1	EA Traffic Signal	\$ 150,000.00	\$	150,000
			\$	3,739,836
Non-Road Work				
57	AC Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	\$ 2,000.00	\$	114,700
			\$	114,700
Trail				
7,825	LF Trail			
942	TN Furnish and Install HMA Class PG 64-28 (2" Thick)	\$ 76.00	\$	71,584
1,565	SF Furnish and Install Crushed Surfacing Top Course (4" Thick)	\$ 20.00	\$	31,300
109,550	SF Subgrade Prep	\$ 0.20	\$	21,910
4	EA Bollards	\$ 800.00	\$	3,200
31,300	SF Restoration along Trail in Open Space	\$ 0.35	\$	10,955
			\$	138,949
Utilities				
Utility Misc				
5	EA Pothole Existing Utilities	\$ 200.00	\$	1,000
Sewer				
2,708	LF 18" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 56.00	\$	151,648
2,166	LF 12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 26.50	\$	57,929
4,918	LF 8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 22.50	\$	110,655
25	EA 48" San. Manholes (Approx 400' Spacing)	\$ 2,450.00	\$	61,250
2	EA Connection to Ex. Main	\$ 1,500.00	\$	3,000
Water				
3	EA Hot-tap Existing	\$ 2,500.00	\$	7,500
4,922	LF 12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 50.00	\$	246,100
2	EA Fire hydrant	\$ 4,200.00	\$	8,400
Irrigation				
1	EA Tap Existing Irrigation	\$ 1,500.00	\$	1,500
7,565	LF 10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 25.00	\$	189,125
Power Transmission				
0	EA New Substation	\$ 3,750,000.00	\$	-
8,693	LF OH Transmission	\$ 45.00	\$	391,185
	LF OH Distribution	\$ 25.00	\$	-
	LF Underground Transmission	\$ 120.00	\$	-
4,922	LF Underground Distribution	\$ 80.00	\$	393,760
			\$	1,623,052
		(1) SUBTOTAL CONSTRUCTION	\$	5,616,537.26
		(2) Administration	\$	449,322.98
		(3) Planning Level Contingency (25%)	\$	1,516,465.06
		(4) SUBTOTAL CONSTRUCTION (1+2+3)	\$	7,582,325.30
		(5) Tax (8.6% of Water, Power, and Sewer)	\$	123,188.72
		(6) Construction Total (4+5)	\$	7,705,514.02
PROFESSIONAL SERVICES				
1	LS Engineering and Geotechnical (12%)	\$ 909,879	\$	909,879
1	LS Environmental Permitting (3%)	\$ 168,496	\$	168,496
1	LS Construction Staking (1.5%)	\$ 84,248	\$	84,248
1	LS Construction Administration (3%)	\$ 168,496	\$	168,496
SUBTOTAL				1,331,119.33
COST PER ACRE				
		Total (6 + Professional Services)	\$	9,036,633
		Developable Acres Served (total area less roads)		57.9
		Cost per Developable Acre	\$	156,137
		Cost per Developable Square Foot	\$	3.58

Industrial AREA: 793.03 ACRES (development area)

Unit	Description of Work	Unit Price	
Administration			
1	LS Equipment Mobilization (5%)	\$ 658,052.00	\$ 658,052
1	LS Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	\$ 263,221.00	\$ 263,221
1	LS Construction Bonds and Permits (1%)	\$ 131,611.00	\$ 131,611
			\$ 1,052,884
Roads			
19,190	LF Industrial Roadway	\$ 336.00	\$ 6,447,840
			\$ 6,447,840
Open Space			
0	AC Open Space	\$ 1,000.00	\$ -
			\$ -
Railroad			
0	LF New Track (Southeast Industrial Loop)	\$ 150.00	\$ -
0	LF New Track (Southeast Industrial Spur)	\$ 150.00	\$ -
0	LF New Track (Northwest Industrial Loop and Extension to Horn Rapids)	\$ 150.00	\$ -
1	EA At-Grade Crossing (Includes Concrete Planks, Re-Laying the Tracks, Control Arms, Bungalow, Etc)	\$ 400,000.00	\$ 400,000
			\$ 400,000
Utilities			
Utility Misc			
10	EA Pothole Existing Utilities	\$ 200.00	\$ 2,000
Sewer			
1	LS Decommissioning Pump Station	\$ 10,000.00	\$ 10,000
8,626	LF 12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 26.50	\$ 228,589
8,792	LF 8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	\$ 22.50	\$ 197,820
44	EA 48" San. Manholes (Approx 400' Spacing)	\$ 2,450.00	\$ 107,800
6	EA Connection to Ex. Main	\$ 1,500.00	\$ 9,000
Water			
4	EA Hot-tap Existing	\$ 2,500.00	\$ 10,000
14,061	LF 12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 40.00	\$ 562,440
1,120	LF 8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 25.00	\$ 28,000
Irrigation			
4	EA Tap Existing Irrigation	\$ 1,500.00	\$ 6,000
706	LF 10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	\$ 25.00	\$ 17,650
Power Transmission			
1	EA New Substation	\$ 3,750,000.00	\$ 3,750,000
29,198	LF OH Transmission	\$ 45.00	\$ 1,313,910
2,799	LF OH Distribution	\$ 25.00	\$ 69,975
			\$ 6,313,184
		(1) SUBTOTAL CONSTRUCTION	\$ 13,161,024.00
		(2) Administration	1,052,884.00
		(3) Planning Level Contingency (25%)	3,553,477.00
		(4) SUBTOTAL CONSTRUCTION (1+2+3)	17,767,385.00
		(5) Tax (8.6% of Water, Power, and Sewer)	538,491.92
		(6) Construction Total (4+5)	18,305,876.92
PROFESSIONAL SERVICES			
1	LS Engineering and Geotechnical (12%)	\$ 2,132,086	\$ 2,132,086
1	LS Environmental Permitting (3%)	\$ 394,831	\$ 394,831
1	LS Construction Staking (1.5%)	\$ 197,415	\$ 197,415
1	LS Construction Administration (3%)	\$ 394,831	\$ 394,831
SUBTOTAL			3,119,163.00
COST PER ACRE			
		Total (6 + Professional Services)	21,425,039.92
		Developable Acres Served (total area less roads)	692
		Cost per Developable Acre	\$ 30,983
		Cost per Developable Square Foot	\$ 0.71

Appendix C - Resolution No. 51-11



EXHIBIT 19

EXHIBIT 20

**City of Richland Railroad
Rail Traffic**

For the Period: January 1, 2002 - May 4, 2016

Customer	Delivered by Tri-City Railroad 1/1/02 - 8/23/09	Delivered by BNSF 8/24/09 - 5/4/16	Delivered by Tri-City Railroad 8/24/09 - 5/04/16	Total Carloads
WALTERS	115	318	257	690
CENTRAL WASHINGTON CORN PROCESSORS	0	2334	939	3273
PREFERRED FREEZER SERVICES	0	449	1823	2272
DEL HUR INDUSTRIES	0	690	0	690
WEST COAST WAREHOUSE	11	16	323	350
NORTHSTAR BIO FUELS (JBS)	0	0	336	336
GAVILON	144	33	24	201
SAFETY-KLEEN	100	0	0	100
HENNINGSEN - POB TRANSLOAD	21	0	67	88
CERTIFIED DEF	0	0	20	20
CITY OF RICHLAND	0	17	0	17
PACIFIC ECOSOLUTIONS	16	0	0	16
CH2M HILL	2	0	0	2
CHPRC	2	0	0	2
CITY LOOP	0	2	0	2
COST LESS CARPET	0	0	1	1
PERMAFIX	1	0	0	1
Total Carloads	412	3859	3790	8061

EXHIBIT 21

City of Richland Railroad
 Carload Activity
 January 1, 2013 - May 4, 2016

Customer	BN TOTAL	UP LOADS	TOTAL
WEST COAST WAREHOUSE (WCW)	16	288	304
DEL HUR	83		83
WALTERS	259	48	307
CITY OF RICHLAND	17		17
CENTRAL WASHINGTON CORN PROCESSORS (CWCP)	2334	398	2732
PREFERRED FREEZER SERVICES	449	1823	2272
CITY LOOP	2		2
CERTIFIED DEF	0	20	20
COST LESS CARPET	0	1	1
NORTHSTAR BIO FUELS (JBS)	0	336	336
TOTAL	3160	2914	6074