



MEMORANDUM
Economic Development Office

TO: Economic Development Committee
FROM: Economic Development Office
DATE: August 19, 2013
SUBJECT: Commodities Plus - Land Lease, Land Purchase, & Infrastructure Financing,
Horn Rapids Industrial Park

Note: Dollar amounts were generated in August 2013 and have been modified as contract specifications have been resolved. – SCM, 11/14/2013

As part of the Economic Development Committee's responsibility to review proposals of potential land sales and leases, the Economic Development staff is asking for the EDC to review the proposed land lease, land purchase, and financing request that Commodities Plus is pursuing at the Horn Rapid Industrial Park (HRIP) and to make a recommendation to Council.

Summary:

- Dennis Kylo with Commodities Plus and his partners at Central Washington Corn Processors (CWCP) have been working with city staff regarding a loop track in the Horn Rapids Industrial Park. At this time, Mr. Kylo and his partners would like to proceed with a land lease of approximately 19 acres to build a loop track, a purchase of approximately 19 acres in the Horn Rapids Industrial Park above the proposed loop track location for their facility, as well as some financing assistance for the project (see map). Their investment for the loop and property improvements will be approximately \$5,000,000.
- The proposed lease will be approximately \$38,000 per year. The initial lease term will be for 15 years with an option to extend every five years. There will be rate escalations throughout the term of the initial lease. Commodities Plus is planning on building and paying for an 8400 lineal foot loop track on the proposed city-leased land.
- The proposed price for the land purchase will be approximately \$675,000.00 (\$22,500 per acre for 30 acres). Commodities Plus is planning to build two office buildings, storage area, and a silo on this property for their bulk trans-loading business.
- Commodities Plus has requested that the city help with road improvements to the property. Staff is researching and analyzing the costs of these improvements to see if the property and lease improvements will quantify these road improvements for LRF.

Real Estate Analysis:

Land Lease

- The price for the proposed property is approximately \$38,000 per year for approximately 8400 lineal feet.

- Premises will be approximately nineteen (19) acres of land for a rail loop track and service road, the approximate location for which is shown on Exhibit 1 "Proposed Rail Loop Exhibit." 19 acres assumes an 8,400 foot rail loop track and 50 feet from the track centerline on both sides of the track.
- The term of the initial lease will be for 15 years from effective date and will terminate on the fifteen year anniversary.
- There will be an option to negotiate a five year lease after the initial lease term is complete.
- In lieu of the first year's lease payment, upon execution. Lessee shall pay a security deposit equal to one year's rent. Lessee shall then have up to 18 months to complete construction of the rail loop track. If completion occurs before the 18th month, yearly rent payments shall commence on the first full month after completion of the loop track. If the loop track is not completed within 18 months, yearly rent shall commence at the beginning of the 19th month. The security deposit shall be applied to the first year's rent and thereafter be payable on a yearly basis and due by the 5th day of the month in which it is due.
- On December 31, 2019 and on December 31, 2024 the annual lease rate will be increased based on inflation, calculated by using the November 2014 CPI-w and the November 2019 CPI-w and the November 2024 CPI-w as published by the U.S. Bureau of Labor and Statistics.
- CWCP will be responsible for paying the leasehold excise tax assessed by the state during the lease term.
- All parties will agree to permitted and prohibited uses to present to Council for approval.
- The purchasers will have a five year option to purchase the land within or adjacent to the loop for \$25,000 per acre.
- There will be a limited non-compete clause in place during the term of the lease where the city cannot or will not offer for sale or lease of property within or adjacent to the loop to third parties engaged in business in direct competition of CWCP or their partners.
- CWCP and its partners will maintain and manage the rail loop during the term of the lease.
- CWCP and its partners will submit to the city a maintenance plan and a rail operations plan prior to closing. Both parties need to agree to the maintenance and operations plan terms in order to close.
- There will be a "without cause" and "with cause" termination section in the agreement in order to protect the city from breaches of contracts as well as other reasons that may come up in the long term.
- CWCP and its third parties will be held to city and state regulatory compliance rules related to environmental, code, and other nuisance concerns.
- There will be a buyback provision in the contract that will give the city an option to purchase the rail improvements if the city determines that they would like to terminate the contract without cause. If there is a breach of contract and the breach is not remedied, the city will not compensate the purchasers for the rail loop.

Land Purchase

- The proposed price for the land purchase will be approximately \$675,000.00 (\$22,500 per acre for 30 acres). Commodities Plus is planning to build two office buildings, storage area, and a silo on this property for their bulk trans-loading business.
- There will be a limited "non-compete" clause for sales and lease for the area within the "Rail Loop Interior".
- The city will stub utilities ten (10) feet into the property. This is part of our standard development practices.

- There is a reversionary clause within the purchase and sale agreement which will allow the city to repurchase the property if the purchasers fail to submit a building plan application for approval within six months, or do not initiate construction of the facility or fail to build the loop track within 18 months.

Financing Assistance

- CWCP and Commodities Plus are requesting the city's assistance for approximately 2,400 lineal ft. of roadway improvements from Battelle Blvd. to the loop. Staff is researching and preparing cost estimates to see if these proposed LRF improvements are feasible.

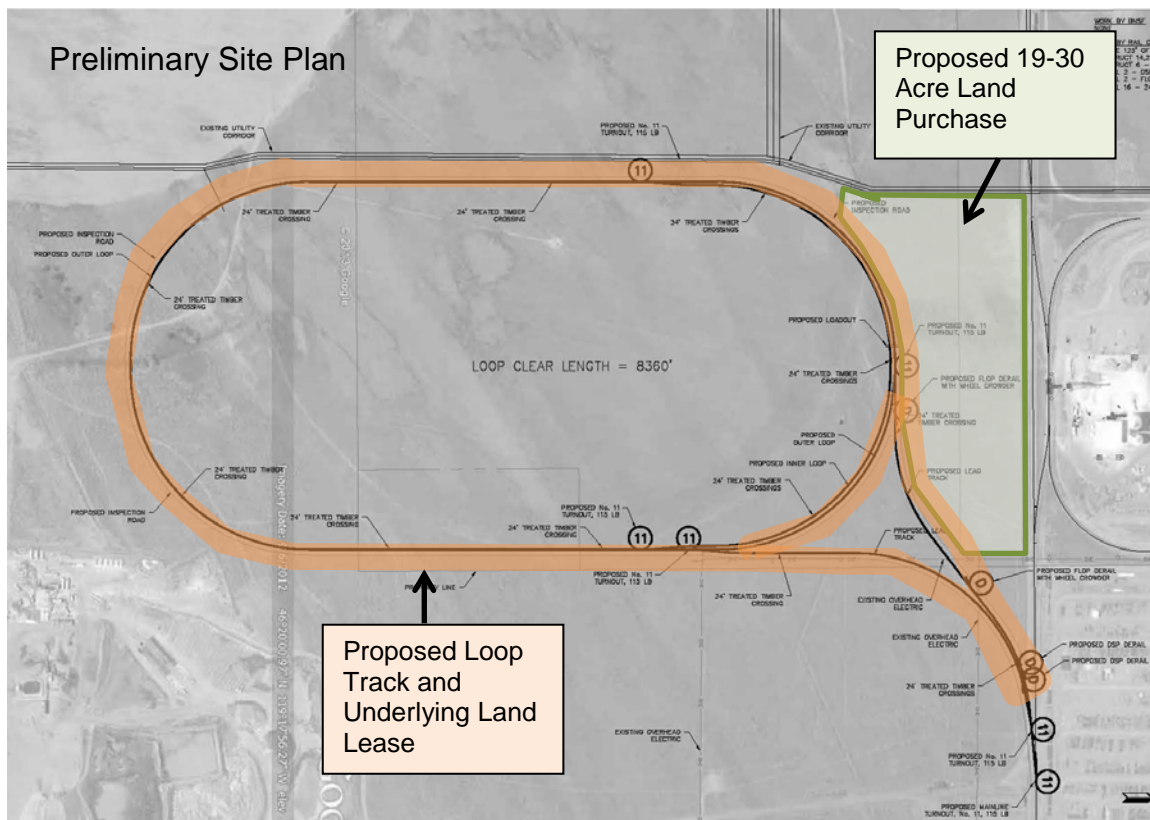
Recommendation:

Staff supports Commodities Plus and Central Washington Corn Processors proposed lease, purchase and financing request at the Horn Rapids Industrial Park for a proposed loop track, office buildings, storage and silo with a positive recommendation.

Proposed Motion:

I move that the Economic Development Committee make a positive recommendation to the Richland City Council to authorize the proposed lease, purchase and financing request (dependent on staff cost estimates) at the Horn Rapids Industrial Park for a proposed loop track, office buildings, storage and silo.

PREPARED BY: Sally Mohr, RE Marketing Specialist





MEMORANDUM
Economic Development Office

TO: Economic Development Committee
FROM: Economic Development Office
DATE: August 26, 2013
SUBJECT: American Rock Products, Repurchase of 20 Acre Property and Cancellation of Option and Mineral Extraction License Agreement - Horn Rapids Industrial Park

Note: Dollar amounts were generated in August 2013 and have been modified as contract specifications have been resolved. – SCM, 11/14/2013

As part of the Economic Development Committee's responsibility to review proposals of potential land sales and leases, the Economic Development staff is asking for the EDC to review and provide a positive recommendation to Council for the proposed repurchase of land, cancellation of option and a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park (HRIP).

Summary:

In April 2004, the City and American Rock Products (ARP) entered into a Purchase and Sale Agreement and closed on the purchase for approximately 20 acres in the Horn Rapids Industrial Park (shown on map as Parcel A). Simultaneous with the execution of the Purchase and Sale Agreement, the City and ARP also entered into an Option Agreement allowing ARP to purchase 5 acre increments of land south of Parcel A (shown in the map as Parcel B).

At this time, the City would like to buy back that same 20-acre property from ARP and cancel ARP's option on the adjacent property. ARP is willing to sell the purchased property back to the City and agrees to the cancellation of its option in return for a mineral extraction agreement to mine, produce, store and remove aggregate materials from the Horn Rapids Industrial Park for a set period of time.

This purchase and sale agreement with the option cancellation and the mineral extraction license agreement are tied to the Central Washington Corn Processors' proposed loop project. If the proposed loop project does not move forward for any reason, neither will the buy-back agreement with the option cancellation nor the mineral extraction license agreement.

Purchase and Sale Agreement and Option Cancellation:

- The City will pay American Rock Products \$270,875.27 for the repurchase of the 20 acre property that American Rock Product (same price ARP paid in 2004) and \$20,000.00 for the cancellation of the Option Agreement.
- This will allow the City to move forward with the development of a proposed loop project encompassing parcel A, which in turn will allow for more development of the Horn Rapids Industrial Park.

Mineral Extraction License Agreement:

- In addition, the City agrees to enter into a Mineral Extraction License Agreement to allow American Rock Products to conduct, at no further charge from the City, the removal and processing of sand and gravel and related activities on the property described as Parcels A & B and portions of the land within the interior of and adjacent to the Rail Loop.
- ARP will be allowed to extract, produce, store and remove aggregate materials for a two-year period.

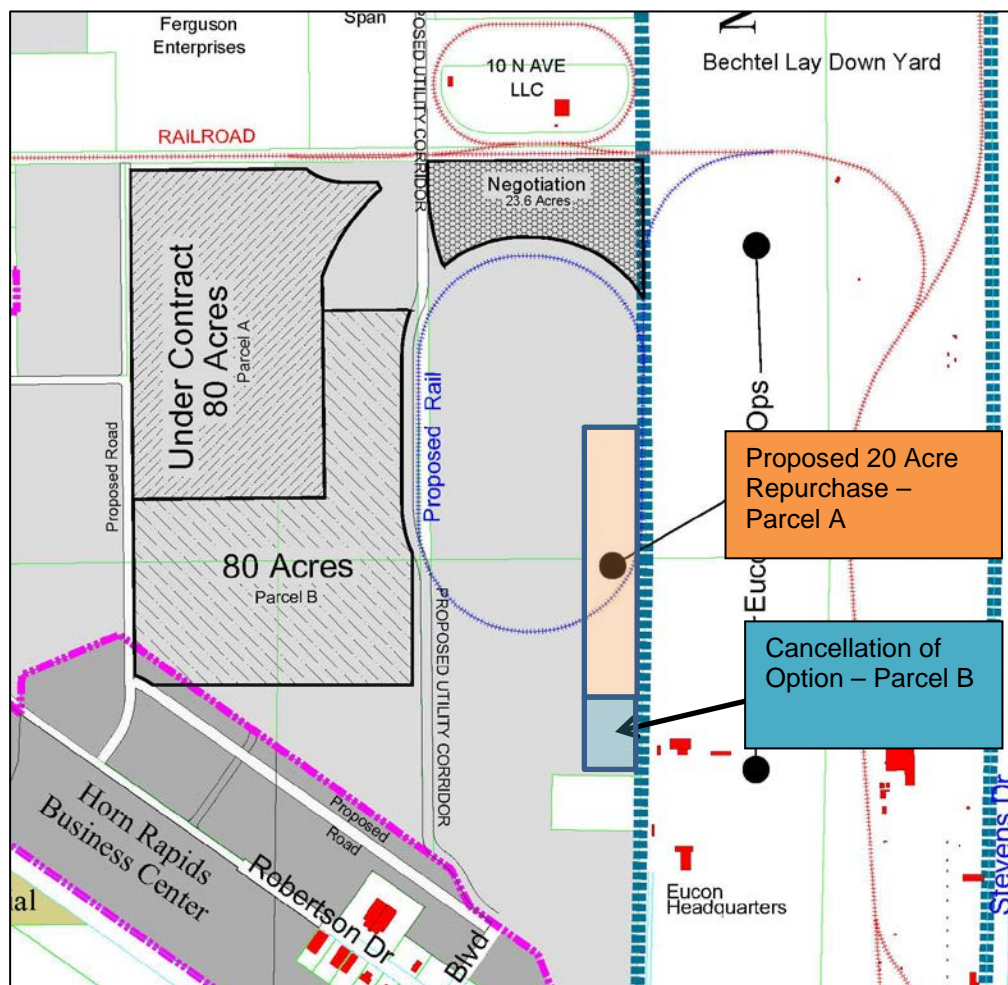
Recommendation:

Staff supports the City's proposal to the repurchase of land, cancellation of the option agreement and a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park.

Proposed Motion:

I move that the Economic Development Committee make a positive recommendation to the Richland City Council to authorize the repurchase of the 20-acre parcel of land, the cancellation of the existing option agreement and entering into a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park.

PREPARED BY: Sally Mohr, RE Marketing Specialist



**GROUND LEASE AGREEMENT
BETWEEN
THE
CITY OF RICHLAND
AND
WASHINGTON TRANSFER TERMINAL, LLC.**

This Agreement is made and entered into by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereinafter referred to as “City,” and **CENTRAL WASHINGTON TRANSFER TERMINAL LLC.**, a Delaware limited liability company, hereinafter referred to as “Lessee.”

WITNESSETH:

WHEREAS, the City of Richland has identified in its long-term strategic plan the desire to develop industries served by rail; and

WHEREAS, the Lessee desires to enter into an Agreement leasing a portion of industrial park to construct, maintain and operate a rail “loop track” and uses ancillary to and dependent upon the rail industry;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and the terms and conditions hereof, the parties agree as follows:

**SECTION 1
PREMISES, TERMS, AND RENEWAL**

- 1.1 Premises.** The Premises shall be approximately twenty-five (25) acres of land for a rail loop track and service road. The approximate location is set forth herein as Exhibit A and shall be supplemented by as-built drawings upon completion of the track. The twenty-five (25) acres assumes eighty-four hundred (8,400) feet of rail loop track and fifty (50) feet from the centerline of the track on both sides, labeled as Area 1 as well as Area 2 depicted in Exhibit A. The final lease legal description will be based on the actual length of track.
- 1.2 Inspection of Property.** Lessee has inspected the Property and agrees to take the Property in its present condition. Lessee is relying on its own inspections of the Property to determine whether to enter this Lease, and Lessee is not relying on any representation made by City, its employees or agents. The taking of possession by Lessee under this Lease shall be deemed conclusively to establish that the Property is in good and satisfactory condition, and Lessee accepts the Property “as is,” having had a full and complete opportunity to inspect the same.
- 1.3 Effective Date.** This Lease Agreement, although executed on the date of signature of the second party, shall become effective fifteen (15) calendar days

after closing on the Purchase and Sale Agreement between the City of Richland and Washington Transfer Terminal, LLC for purchase of the 25 acres upon which the rail loop shall be constructed. In the event the City of Richland and Central Washington Transfer Terminal fail to close on the Purchase and Sale Agreement referenced herein, this Lease Agreement shall terminate, and the parties shall have no obligations hereunder.

- 1.4 Term.** The permission herein granted to the Lessee shall be for a period of fifteen (15) years from the effective date as determined under Section 1.3 above, and shall cease and terminate at 11:59 p.m. on the fifteen-year anniversary of the effective date.
- 1.5 Renewal.** Upon application of the Lessee, and provided that the Lessee is not in uncured breach of this Agreement, the City and Lessee shall negotiate a renewal of this lease in increments of additional five (5) year terms. Negotiations for extension of this Lease Agreement shall commence upon written request of Lessee given to City no later than six (6) months prior to the end of each lease term.
- 1.6 Expiration.** If, upon the end of the initial fifteen (15) year term, a renewal is not successfully negotiated, this Lease shall terminate and be subject to Section 5.2(b) of this Agreement.
- 1.7 Lease Rate.** The lease rate for the Premises described in Section 1.1 during the initial term of this Agreement shall be \$2,000 (two thousand) per acre (calculated at \$25,000 land value x 0.08 rent rate = \$2,000 per acre) paid in twelve (12) equal monthly installments as follows:
1. Upon execution of this Lease Agreement, Lessee commits to pay a security deposit equal to one year's rent plus applicable leasehold excise tax. This deposit shall be paid in lieu of the first year's monthly lease payments, and shall be delivered to the City no later than ten (10) business days after the effective date of this Agreement as defined in Section 1.3 above. Thereafter, monthly rent payments on the annual amount due shall commence on either: 1) the beginning of the 19th month after the effective date of this Agreement (the month of signing counts as month one); or 2) the first full month post-completion of the loop track, whichever occurs earlier. The security deposit shall be applied to the first year's rent, and all rent payments thereafter shall be paid on a monthly basis and due by 1600 hours (4:00 p.m.) on the 5th day of the month in which it is due. If the 5th day of the month falls on a weekend or holiday, Lessee's rent payment is due the first business day after the 5th when the City of Richland is open to the public for business transactions.
 2. On December 31, 2019 and December 31, 2024, respectively, the annual lease rate will increase based on inflation, calculated by using the November 2014 CPI-W, the November 2019 CPI-W, and the November 2024 CPI-W as

published by the U.S. Bureau of Labor and Statistics. This is calculated by taking the current rent and multiplying as follows: $[1 + (\text{CPI-W } 2019 - \text{CPI-W } 2014) / \text{CPI-W } 2014]$ for the rent increase effective January 1, 2020, and $[1 + (\text{CPI-W } 2024 - \text{CPI-W } 2019) / \text{CPI-W } 2019]$ for the rent increase effective January 1, 2025.

3. **Leasehold Excise Tax.** In addition to the rent amount as identified and calculated above, Lessee is also required to pay to the City of Richland leasehold excise tax as assessed by the Washington State Department of Revenue pursuant to RCW 82.29A, or as hereafter amended. The City shall calculate and notify Lessee of its monthly excise tax obligation, which shall be paid simultaneously with Lessee's monthly rent obligation. City shall remit Lessee's monthly leasehold excise tax to the Washington State Department of Revenue on Lessee's behalf. The 2013 leasehold tax rate is 12.84% of taxable rent; Lessee shall pay each year per the current adjusted rate for the year in which payment is made.
 4. **Late Payments.** Any rent or leasehold excise tax payment not paid within ten (10) days of the due date shall accrue interest on the unpaid amount 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.
- 1.8 Permitted Uses.** The Lessee shall use the Premises for the purpose of receiving, shipping, and trans-loading of rail cars holding products listed in Exhibit B. All storage and handling of materials shall meet code requirements as established in the Richland Municipal Code.
- 1.9 Prohibited Uses.** The Lessee shall not use the Premises for the purpose of receiving, shipping, storing, or trans-loading of rail cars holding products listed in Exhibit C.
- 1.10 Uses Requiring City Approval.** For uses not identified in Exhibits B and C as incorporated by reference in Sections 1.6 and 1.7 herein, Lessee shall submit a written request to the City's Economic Development Manager requesting authorization for the use. Upon receipt, City staff shall review the proposed use, and may authorize a temporary, one-time thirty (30) day approval for the transport and/or storage of said use, or the City may deny Lessee's request. Either decision rests within the City's sole discretion. Any request by Lessee to permanently expand the uses allowed under Exhibit B of this Agreement must be submitted in writing to the City's Economic Development Manager and presented to Council for approval.

SECTION 2

TRACK CONSTRUCTION, MAINTENANCE, RIGHTS, FEES & OPTION

- 2.1 Purchase Option.** For a period of five (5) years after completion of rail loop track infrastructure, Lessee shall have an option to purchase real property located within the rail loop track at a price of \$25,000 per acre. Thereafter, the purchase price shall be negotiated in good faith based upon City listings for similarly-situated property. Approval of any purchase during the Option period shall be subject to the City's approval of the intended use of the property, and shall also be subject to a reversionary clause in the event the property is not developed consistent with the intended use or City-prescribed construction schedules.
- 2.2 Limited Non-Compete.** During the term of this initial Lease, the City shall not offer for sale or lease property within the loop track to third parties engaged in the business of shipping or trans-loading commodities used for animal feed. Exhibit D identifies the properties to which this limited non-compete applies. This limited non-compete shall expire after the initial 15-year term.
- 2.3 Option to Purchase Remaining Interior Property.** Once development has occurred on no fewer than sixty (60) acres of the interior rail loop property, Lessee shall have the option to buy the remaining interior property within the rail loop, as well as the land underlying the loop that is the subject of this Lease. This option shall be separately negotiated between the parties upon written notice by Lessee of Lessee's intent to execute the option to purchase. For purposes of this section, development is defined as physical improvements built on the property (e.g., development storage space or buildings).
- 2.4 Loop Parcel Marketing.** The City may market for lease or sale the property within or adjacent to the loop track subject to the limitations set forth in Section 2.2.
- 2.5 Track Rights and Charges.** During the term of this Lease, unless otherwise agreed in writing by the Parties, Lessee shall be responsible for scheduling and use of the track by Lessee and any third parties subject to a Rail Operations Plan that includes the following:
1. Lessee shall provide tariffs for use of the loop track which shall be approved by the City. The tariffs may have yearly escalators based upon the Consumer Price Index ("CPI") for King County, Washington.
 2. Lessee shall establish hours of operation and operational details for third party users. The final Rail Operations Plan shall be submitted no later than sixty (60) business days prior to commencement of the use of the rail loop track. Lessee is required to obtain City approval of the final Rail Operations Plan no later than fifteen (15) days prior to use of the loop track. Upon approval, the final Rail Operations Plan shall become Exhibit E of this Agreement. If a draft and final Rail Operations Plan is not agreed upon by

both Parties by said dates, this Agreement shall terminate unless an extension is mutually agreed upon in writing.

3. Lessee, or its agents or assigns, shall perform maintenance on the loop track, at all times maintaining the Premises and Lessee's improvements in a clean and safe condition and in good repair and operating condition in accordance with industry standards. The rail loop track and rail leads shall be maintained to the standards described in Exhibit F herein, referred to as the Rail Track Maintenance Standards.
4. Neither Lessee, nor any third party, shall utilize the loop track for storage of rail cars. All entities must trans-load in accordance with the applicable demurrage time schedules detailed in the final Rail Operations Plan.
5. The Lessee shall allow BNSF Railway and the Union Pacific Railroad, or their agents, to deliver trains directly to the Lessee and/or third parties using the rail loop track so long as tariffs are paid in accordance with the final Rail Operations Plan.
6. Lessee and City are each authorized to grant access to third parties for use of the rail loop track.
7. Lessee agrees to keep the rail loop track clear when not in use by a unit train in order to allow other third parties to exercise access rights.
8. Under no circumstance shall Lessee use the Rail Wye Tracks for the storage of rail cars.
9. Lessee shall comply with all city, state, and federal codes, and shall be in compliance with relation to noise, dust, and odor, and other regulations not specified herein.

2.6 Lessee Improvements.

1. Lessee Construction. No construction activities shall occur until an authorized City representative has issued a Notice to Proceed (NTP).
2. Rail Loop Track. The Lessee shall, within eighteen (18) months of the effective date of this Lease, construct and build an operational rail loop track on the Premises, at Lessee's sole cost and expense, as generally shown on Exhibit A ("Rail Loop Track"). At a minimum, the Rail Loop Track must meet FRA Class II railroad guidelines and be approved for unit train operation by BNSF Railway and Union Pacific Railroad.
3. Additional Track and Minimum Standards. Lessee shall, within twelve (12) months of the effective date of this Lease, construct and build rail tracks connecting the City's rail line to the rail loop track, at Lessee's sole cost and expense, as also generally shown on Exhibit A ("Rail Wye Tracks"). The Rail Wye Tracks will be located on City and Port property. At a minimum, the Rail Wye Tracks must meet FRA Class II railroad guidelines and be approved for unit train operation by BNSF Railway and Union Pacific Railroad.

4. Service Road. Lessee shall, within twelve (12) months of the effective date of this Lease, construct and build an operational road along the perimeter of the Rail Loop Track and along the Rail Wye Tracks, at Lessee's sole cost and expense ("Service Road"). The Service Road must be capable of accommodating service inspections of rail cars and unit trains, as well as provide emergency vehicle access to the interior of the rail loop. The Service Road must be in compliance with City codes and permitting. Rail operations shall not occur until service roads are constructed and in place.
5. Site Plans. Construction of the rail loop is subject to approval of the City's planning process. Failure to receive the proper approvals through the building application process will result in City's termination of this Lease without penalty. Lessee shall be responsible to pay for and obtain all necessary permits for Lessee-initiated improvements.
6. Insurance Requirements of Contractors/Subcontracts. Lessee is solely responsible for determining the insurance coverage and limits required for all contractors or subcontractors involved in construction of the improvements contemplated under this Lease Agreement, which determination shall be made in accordance with reasonable and prudent business practices.
7. Protection of Property from Construction Liens. Lessee shall not permit any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work or improvement performed by or for Lessee to be enforced against the Premises, however it may arise. Lessee may withhold payment of any claim in connection with a good faith dispute over an obligation to pay, so long as City's property interests are not jeopardized. Lessee shall defend and indemnify City against all liability and loss of any type arising out of the construction of improvements on the Property by Lessee. Unless caused by City, its agents or contractors, Lessee shall reimburse the City for all sums paid according to this paragraph, together with the City's reasonable attorney's fees and costs plus interest on those sums at the legal rate.

2.7 Right to Mine, Mineral License, American Rock Products. During the term of the Lease, Lessee shall allow American Rock Products (ARP) the exclusive right to mine, process, remove and store aggregate materials. ARP shall not use the License Location for any other purpose without the written consent of the City. The City shall not use the License Location, nor grant any other party the right to use the License Location, for any other purpose without the express written consent of ARP. Upon Lessee's commencement of construction of the railroad spur and loop, the City shall send ARP written notice that ARP's exclusive right to mine, process, store and remove aggregate materials from the License Location shall now be limited to two (2) years from date of the City's written notice, or until such time as ARP gives notice to the City of its intent to cease mining operations and thereafter completes its reclamation obligations, whichever occurs first. Neither Lessee, nor Lessee's agents or assigns, shall interfere with ARP's ability to mine, process, remove or store aggregate materials from the License Location, and shall, to the extent practicable, prevent, minimize

and/or remove physical obstacles to ARP's mining operation caused by the rail loop construction.

- 2.8 Performance and Maintenance Bond.** Lessee shall provide the City with a performance bond, or other agreed form of security in an amount not less than the annual rent under the lease times fifteen (15) years, which is equal to the total value of this Lease Agreement. Lessee or its primary contractor shall also provide a construction bond in an amount of not less than four million five hundred thousand dollars (4.5 million), which is equal to the value of all improvements contemplated under this Lease Agreement. Each bond shall be executed on forms provided by the City, and must be issued by a company registered to do business in the State of Washington.
- 2.9 Approval Process.** In connection with Lessee's improvements, the City may impose reasonable requirements on Lessee and on operators, contractors and agents performing work for the Lessee, including, but not limited to, the requirement to submit: names of proposed contractor(s), proposed plans and specifications is such detail as is determined necessary by the City, a site-use plan, an erosion/sediment control plan, and environmental controls. The City shall have thirty (30) days from the submission of required information to approve or disapprove the proposed work, or to approve the proposed work subject to certain conditions. Lessee shall provide "as-built" drawings to the City within thirty (30) days after completion of any work. This approval process is in addition to any permitting or regulatory process to which the city may be a party.
- 2.10 Joint Rail Access.** No action shall be taken by Lessee to restrict the fair, equal, and competitive joint use or access opportunity of the BNSF Railway or the Union Pacific Railroad, or their agents, to operate on the Premises with their equipment and employees.
- 2.11 City Inspections.** A joint inspection by the City and Lessee of the Premises and Lessee's improvements shall be performed annually each September during the Lease Term, at an agreed-upon reasonable time, to assess the condition of the entire Premises and Lessee's improvements, including the environmental condition, and to document any necessary maintenance and repairs. The joint inspection shall be documented in writing by the City, and shall include a list of all necessary maintenance and repairs to the Premises and improvements as agreed by the parties during the joint inspection. A copy of the joint inspection report produced by the City shall be provided to Lessee within thirty (30) days after completion of the joint inspection. Lessee shall expeditiously correct all condition deficiencies identified in the joint inspection report to the satisfaction of the City.
- 2.12 Monthly Reporting.** Beginning the second full month that the rail loop is operational, Lessee shall provide a monthly report to the City summarizing all rail activity and rail car counts (volumes) on the Premises during the preceding

month. This report shall, at a minimum, show the number of rail cars broken down by railroad, as well as rail content handled on the Premises. Lessee shall immediately notify the City of all emergencies, accidents, and incidents occurring on the Premises, and shall contact emergency responders when warranted by the circumstances of any such emergency, accident or incident.

2.13 City Obligations. The City shall be obligated to perform the following:

1. Acquire an access/easement to City property for the purpose of Lessee's construction of the Rail Wye Tracks.
2. The City reserves the right to add rail switches and associated rail trackage to the Rail Loop Track to tie third-party rail spurs into the Rail Loop Track, the Rail Wye, or any other trackage. The City may construct new rail infrastructure, including new rail tracks, on the Premises, provided the construction or existence of such infrastructure does not materially interfere with Lessee's operations.

SECTION 3 STANDARD CONDITIONS

- 3.1 Anti-Discrimination.** Lessee shall not discriminate against any person or persons because of race, religion, color, sex, national origin, or sexual orientation in the conduct of its operation hereunder.
- 3.2 Assignment.** The permission herein granted shall not be assignable or transferable by operation of law, nor shall the Lessee assign, transfer, mortgage, pledge or encumber the same or any structure or thing erected, constructed or maintained by the Lessee pursuant to the permission herein granted, except with the prior written consent of the City. Notwithstanding the above, any easements granted shall run with the property.
- 3.3 Contracting Officer.** The Economic Development Manager for the City of Richland or his/her designated representative shall be the contracting officer who shall act as the agent of the City under this Agreement. Lessee shall be responsible for notifying the City of a current contact person for the Lessee in the event of an emergency.
- 3.4 Emergency Services.** The Lessee shall coordinate with the City of Richland Fire Department in all matters concerning fire safety and emergency vehicle access. City reserves the right at all times and without notice to access the Premises for emergency services.
- 3.5 Indemnification/Hold Harmless.** Lessee shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Lessee's, or its

contractor's or subcontractor's use of premises, or from any activity, work or thing done, permitted, or suffered by the Lessee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

- (a) In enforcing this obligation, Lessee shall also bear sole responsibility for all losses or damages arising from the operation of the rail loop track, including:
 - 1. The condition, use, occupancy, repair, or maintenance of the Premises.
 - 2. Lessee's non-observance or non-performance of any law, ordinance, or regulation applicable to the rail loop track or the Premises.
 - 3. Willful or negligent acts or omissions of the Lessee.
 - 4. Costs incurred by the Lessor in obtaining possession of the Premises after default by the Lessee.
 - 5. Costs incurred by the Lessor upon surrendering possession or early termination of the term of this Lease by Lessee.
 - 6. Enforcement of any covenants in this Agreement. This includes, without limitation, any liability for injury to the person or property of Lessee, its agents, officers, employees, or invitees.
- (b) Lessee waives all claims against City for damages for loss of business, damage to equipment used in or upon or about the Premises, or for injury to Lessee, its agents, officers, employees, invitees in or about the Premises, or from any cause arising at any time for any reason, other than for City's sole negligence or willful misconduct.
- (c) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Lessee and the City, its officers, officials, employees, and volunteers, Lessee's liability hereunder shall be only to the extent of the Lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

3.6 Insurance. Lessee shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with Lessee's operation and the use of the leased Premises. Additionally, the City shall require any third party lessees or lot owners

to acquire property and casualty insurance naming Lessee as an additional insured and requiring a certificate of insurance naming Lessee as an additional insured.

- (a) No Limitation. Lessee's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- (b) Minimum Scope of Insurance. Lessee shall obtain insurance of the types described below:
 - 1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
 - 2. Property insurance shall be written on an "all risk" basis.
 - 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (c) Minimum Amounts of Insurance. Lessee shall maintain the following insurance limits:
 - 1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence; \$6,000,000 general aggregate.
 - 2. Property insurance shall be written covering full value of Lessee's property and improvements with no co-insurance provisions.
- (d) Other Insurance Provisions. The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain:
 - 1. That they shall be primary insurance with respect to the City. Any insurance, self- insurance, or insurance pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it.
 - 2. Lessee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - (f) Verification of Coverage. Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.
 - (g) Waiver of Subrogation. Lessee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.
 - (h) Failure to Maintain Insurance. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of this Lease Agreement, upon which the City may, after giving five (5) business days' notice to the Lessee to correct the breach, terminate the Lease for cause.
- 3.7 Laws, Licenses and Permits.** The Lessee, at Lessee's own expense, shall comply with all federal, state and city laws and regulations with regard to construction, licenses or permits to do business, and all other matters. Further, Lessee shall comply with all laws and regulations governing rail operations.
- 3.8 Taxes.** All sales taxes, leasehold excise taxes, and other applicable taxes shall be coded to the City of Richland.
- 3.9 Sanitation.** In addition and without limitation, the Lessee shall at all times during the term of this Lease, at its own expense, keep and maintain the area identified in Exhibit A hereof free from litter or debris.
- 3.10 Utilities.** The Lessee shall, at its own expense, furnish and pay for all utilities as may be required under building and operating permits.
- 3.11 Construction.** Construction of facilities and all accessory amenities such as parking, access streets, utilities, etc. completed by the Lessee shall be the responsibility of the Lessee. All improvements shall be to City of Richland standards. All plans shall be submitted, reviewed, and approved by the City prior to construction.

SECTION 4 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

- 4.1 Definition.** "Hazardous Materials" as used herein shall mean:

- (a) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances or any dangerous waste or hazardous waste as defined in the Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105) or as defined in the Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
- (b) "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.) and Washington's Model Toxics Control Act ("MTCA") as now existing or hereafter amended (RCW Ch. 70.105); or
- (c) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

4.2 Use of Hazardous Substances. Lessee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, or above the property, except in accordance with all applicable laws.

4.3 Environmental Compliance.

- (a) Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter affecting the Premises, City's business, or any activity or condition on or about the Premises, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials, all laws relating to creation of noise, light and glare, the creation of dust, smoke or other emissions into the air and all other environmental laws relating to the improvements on the Premises, soil and groundwater, storm water discharges, or the air in and around the Premises, as well as such rules as may be formulated by the City ("the Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all the Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations that may be necessary at any time during the term of this Agreement to comply with the Laws.

- (b) Lessee shall not cause or permit to occur any violation of the Laws on, under, or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.
- (c) Lessee shall promptly provide all information regarding any activity of Lessee related to hazardous Materials on or about the Premises that is requested by the City. If Lessee fails to fulfill any duty imposed under this paragraph within a reasonable time, City may do so; and in such case, Lessee shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for all compliance therewith, and Lessee shall execute all documents promptly upon City's request. No such action by City and no attempt made by City to mitigate damages shall constitute a waiver of any Lessee's obligations under this paragraph.
- (d) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities ("the Authorities") under the Laws.
- (e) Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Agreement at or from the Premises and that is not the result of the acts or omissions of the City, or which arises at any time from Lessee's use of occupancy of the Premises, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such cleanup plans. Any such plans and cleanup are subject to City's prior written approval.
- (f) If a release of Hazardous Substances occurs in, on, under, or above the Property, or other property, arising out of any action, inaction, or event described or referred to in this document, Lessee shall at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substance. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed with all applicable laws, rules, ordinances, and permits. Lessee shall be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in this document.

4.4 Indemnification.

- (a) Lessee shall be fully and completely liable to the City for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any Authority with respect to Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Premises, common area, or buildings. Lessee shall indemnify, defend, and save the City harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon City (as well as City's attorney's fees and costs) by any Authority as a result of Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws.
- (b) Lessee shall indemnify and hold City harmless from any and all claims, liabilities, lawsuits, damages, and expenses including reasonable attorney's fees for bodily injury or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee or any of its agents, representatives or employees in, on, or about the Premises occurring during the term of this Agreement.
- (c) City shall indemnify and hold the Lessee harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees arising from third party actions brought against Lessee that are caused by or arise from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by City or any of its agents, representatives or employees in, on, or about the Premises.

4.5 Reporting Requirements. Lessee shall comply with the Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to City a full copy of such filing or report as submitted within fifteen (15) days of such submission.

4.6 Right to Check on Lessee's Environmental Compliance. City expressly reserves the right, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as City, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

4.7 Remedies. Upon Lessee's default under this Section, Hazardous Materials and

Environmental Compliance, City shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the City:

- (a) At City's option, to terminate this Agreement immediately, notwithstanding the notice of Section 6.8 and the buyback provisions of Section 5; and/or
- (b) At City's option, to perform such response, remediation and/or cleanup as is required to bring the Premises and any other areas of City property affected by Lessee's default into compliance with the Laws and to recover from Lessee all of the City's costs on connection therewith; and/or
- (c) To recover from Lessee any and all damages associated with the default, including, but not limited to, response, remediation and cleanup costs and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other adjacent area of City property, loss of business and sales by City and other City lessees, diminution of value of the Premises and/or other adjacent areas owned by City, the loss or restriction of useful space on the Premises and/or other adjacent areas owned by City, any and all damages and claims asserted by third parties, and City's attorney's fees and costs.

4.8 Remediation on Termination of Agreement. Upon the expiration or earlier termination of this Agreement, Lessee shall remove, remediate or cleanup any Hazardous Materials on or emanating from the Premises, provided that the presence of Hazardous Materials arises from Lessee's use or occupancy of the Premises or Lessee's acts or omissions exacerbate the cost of remediation and Lessee shall undertake whatever other action may be necessary to bring the Premises into full compliance with the Laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to City's prior written approval. If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, City may elect to perform such Termination Cleanup after providing Lessee with written notice of the City's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall be not less than ninety (90) days after such notice (unless City is given notice by a government agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time, in which case City shall give Lessee notice of such shorter time), to commence or resume the Termination Cleanup process. If City performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all City costs.

4.9 Survival. Lessee's obligations and liabilities under this Section, Hazardous Materials and Environmental Compliance, shall survive the expiration of this Agreement.

4.10 Third Parties. Lessee shall require of third party lessee or owner, within the interior or adjacent to the loop, to comply with Section 4 of this Agreement.

SECTION 5 TERMINATION & LOOP TRACK BUYBACK

5.1 Termination. This Agreement may be terminated as set forth below subject to the Buyback provisions contained herein.

- (a) For Cause. Any failure on the part of the Lessee to comply with any or all parts of this Agreement may result in termination of this Agreement for “just cause.” “Just cause” shall include, but is not limited to, repeated violations of minor aspects of this Agreement, or a single violation of this Agreement which causes or may cause significant property damage or threatens the health, safety or welfare of citizens of Richland or customers of the Lessee. Prior to termination, the parties will schedule a meeting within forty-eight (48) hours of receipt of written notice to resolve the problem or concern. Termination may be initiated for failure to cure any violation within sixty (60) days. Lessee may seek a hearing before the City Council if good cause exists for the failure to cure within the prescribed period. The Council may thereafter extend the cure period. Any waiver of an infraction by the City shall not be deemed to become a waiver of any other infraction which may occur.

Breach of Contract: Other defined events or thresholds that, if remain uncured with reasonable notice, provide the City the authority to terminate include:

1. Failure to maintain roads.
 2. Failure to comply with a City-approved tariff structure.
 3. Failure to allow use of the track to paying third parties.
 4. Failure to address nuisance activity.
 5. Failure to safely operate the track.
 6. Failure to comply with City code requirements.
 7. Failure to generate rail traffic (less than 1,200 cars annually).
 8. Failure to maintain insurance as provided herein.
 9. Other items that may be defined by mutual agreement and incorporated herein as an exhibit to this Lease Agreement.
- (b) Without Cause. Either party may terminate this Agreement without cause by giving the other party a minimum of ninety (90) business days' written notification. However, termination shall not preclude Lessee from access rights to the Rail Loop Track under the same terms as any third party user.
- (c) If the Lessee terminates the Agreement per Section 5.1(b), Lessee shall not be compensated. Lessee will remove the improvements at Lessee's

expense, or the City will have the option to take possession and ownership of the improvements (at no charge).

- (d) If the rail loop has been abandoned, vacated, and/or partially or fully removed, this Agreement shall be terminated and will be considered a “for cause” termination subject to Section 5.2(b). In the event of termination for the reason provided herein; and the Lessee does not remove within thirty (30) days’ written notice the stockpiled material, supporting structures, buildings and other improvements placed upon the Premises by the Lessee, the City may, at its option: 1) on the payment of one dollar (\$1.00) take title to said property and/or material; or 2) dismantle, remove and dispose of such property at the City’s discretion, and charge to the Lessee a fee for dismantling, removing, transporting and disposing of said property and/or material.

5.2 Buyback Provisions. Upon termination of this Lease Agreement, the City and Lessee have the following options:

- (a) If the City terminates this Agreement per Section 5.1(b) “without cause” and the loop track continues to be in use, the City shall have the option to purchase the rail loop track improvements at the value agreed upon in the buyback schedule shown in Exhibit G. In the event the City terminates “without cause,” the Lessee shall have a right as a third party to utilize the rail loop according to the Rail Operations Plan.
- (b) If the City terminates “for cause” under Section 5.1(a), the City has the option to either take possession and ownership of the improvements (at no charge) or require Lessee to remove the improvements at Lessee’s expense.

SECTION 6 MISCELLANEOUS PROVISIONS

6.1 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.

6.2 Dispute Resolution. City and Lessee agree to negotiate in good faith for a period of thirty (30) business days from the date of notice of any dispute between them prior to exercising their rights under this Agreement, or under law. All disputes between the City and the Lessee not resolved by negotiation between the parties may be arbitrated only by mutual agreement of the City and the Lessee. If not mutually agreed to resolve the claim by arbitration, the claim will be resolved by legal action. Venue shall be Benton County Superior Court. Arbitration of all claims will be in accordance with the Mandatory Arbitration Rules of Benton & Franklin Counties. In any dispute, the substantially prevailing party shall be entitled to reasonable attorney fees and costs.

- 6.3 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected.
- 6.4 Integration.** This Lease Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither party shall be liable to the other for any representations made by any person concerning the premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by Lessor and Lessee or their lawful successors and assigns subsequent to the date hereof.
- 6.5 Survival of Obligations.** In the event of termination of this Agreement for any reason, the obligations of Lessee to restore the Property, and to indemnify the City as set forth above, shall survive termination.
- 6.6 Exhibits and Addenda.** All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references herein. References made to "this Lease" include matters incorporated by reference.
- 6.7 Captions.** 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 any part or parts of this Lease.
- 6.8 Notice.** Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO LESSEE:

Central Washington Transfer
Terminal
Attn: Dennis Kylo
Central Washington Transfer
Terminal
Attn: Dennis Kylo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

TO CITY:

City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509)942-7583
FAX: (509)942-5666

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

6.9 Legal Relationship. No partnership, joint venture or joint undertaking shall be construed from the existence of this Agreement, and except as herein specifically provided, neither party shall have the right to make any representations for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person.

6.10 Warranty of Authority. The persons executing and delivering this Lease on behalf of City and Lessee each represent and warrant that each of them is duly authorized to do so, and that execution of this Lease is the lawful and voluntary act of the person or entity on whose behalf they purport to act.

IN WITNESS WHEREOF, the City has executed this Agreement on the date shown next to its signature and Lessee has accepted on the date shown next to its signature.

Signed this _____ day of _____, 2013

CITY OF RICHLAND - Lessor

WASHINGTON TRANSFER TERMINAL
Lessee

By: Cynthia D. Johnson Date
Its: City Manager

By: Dennis Kylo Date
Its:

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me DENNIS KYLLO, to me known to be the individual described in and who executed the within and foregoing Ground Lease Agreement, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND and the person who executed the within and foregoing Ground Lease Agreement and acknowledged that the said instrument is 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 were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My Commission Expires: _____

EXHIBITS

- Exhibit A - Map of Rail Loop Track on Leased Property
- Exhibit B – Permitted Uses
- Exhibit C- Non-Permitted Uses
- Exhibit D – Map of Purchase Option and Non-Compete Areas of Property
- Exhibit E – Final Operations Plan
- Exhibit F - Rail Track Maintenance Standards
- Exhibit G – Buyback Schedule

DRAFT

HORN RAPIDS RAIL LOOP LEASE-EXHIBIT A

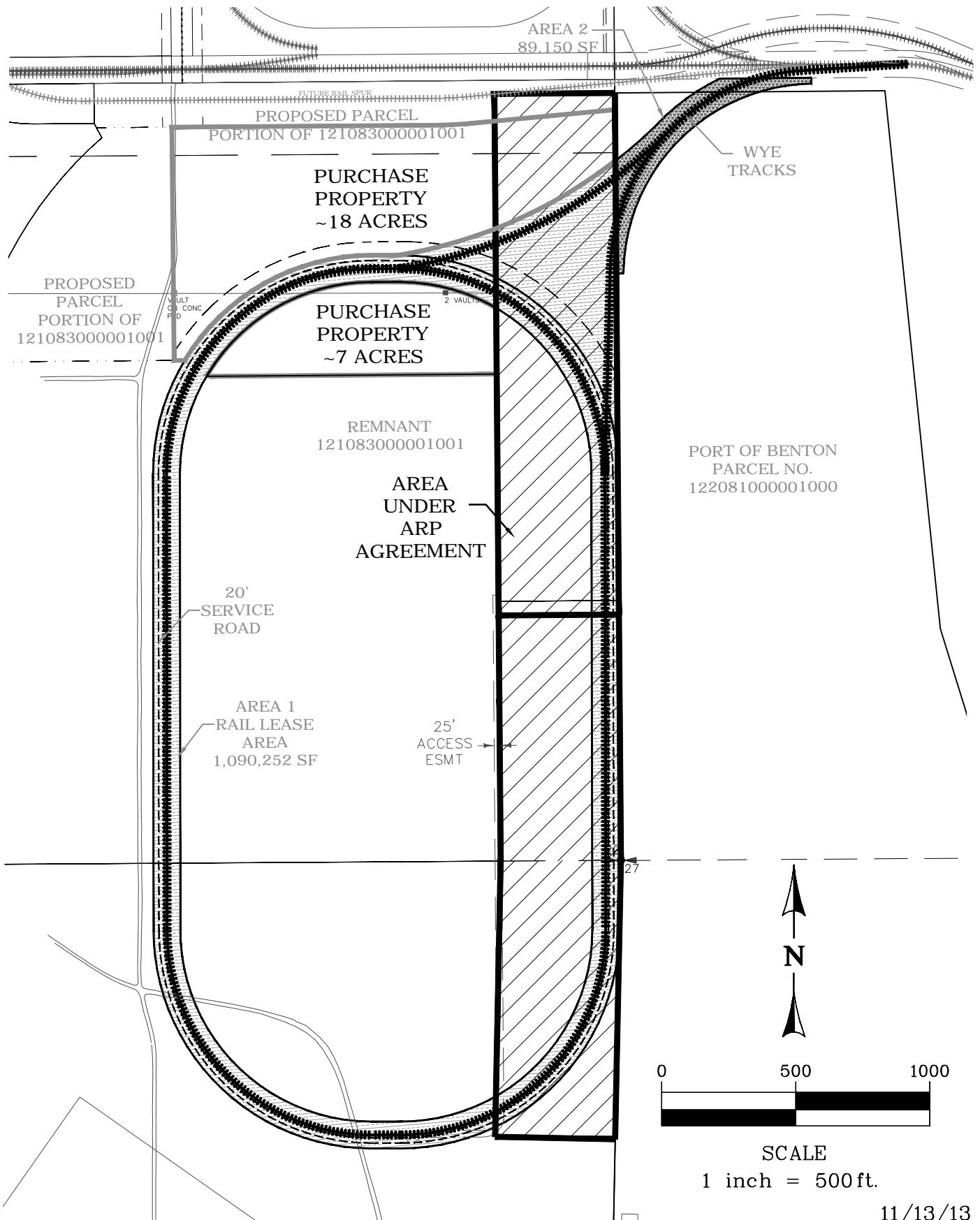


Exhibit B – Permitted Uses

The following list is items that might be shipped to or from the proposed loop track to be built in Richland. This list is general in nature and is **not** meant to be exclusive of products outside of the “not allowed” list.

Ag-Products:

- Wheat & its by-products such as screenings, Millfeed, midds, flour, etc.
- Corn & its by-products such as screenings, DDG, corn gluten, germ, hominy, meals, etc.
- Beans & its by-products such as oil, meal, soy hull pellets, etc.
- Sugar beets
- Molasses
- Hay (grasses or alfalfa)
- Barley (Malt, sprouts, brewery products, etc.)
- Blood meal
- Citrus products
- Cotton seed, meal & oils
- Animal Fat
- Feather meal
- Fish products
- Linseed (meal & oils)
- Canola (meal & oils)
- Oats & by-products
- Meat & bone meal
- Peanuts & by-products
- Poultry by-products
- Rice & by-products
- Sunflowers & by-products
- Milk & By-Products
- Yeast
- Crop Seeds
- Fruits
- Vegetables

General Categories: (Agricultural-related)

- Fertilizers
- Phosphates
- Potash
- Amino Acids
- Minerals for feed
- Vegetable oils & meals
- Animal Fats

Non-Agricultural related:

- Metal goods (i.e. windmills, steel, pipe, etc.)
- Lumber products (i.e. wood, sawdust, wood chips, finished goods, etc.)
- Machinery (i.e. tractors, farm equipment, etc.)

Containerized items:

- For companies such as Wal-Mart, Target, Costco, etc.

Fuels:

- Ethanol
- Diesel

***Fuels: All fuel storage needs to be above ground and meets all city building and zoning codes.**

***All uses (such as woodchips, fuels, fertilizers, etc.) will have to be handled, stored and transported according to all safety, ecology, federal, state and local municipal standards.**

Exhibit C- Non-Permitted Uses

- Coal
- Radioactive waste,
- Hazardous waste
- Any other product that the City determines is a dust or odor nuisance per city of Richland code

DRAFT

HORN RAPIDS RAIL LOOP NON COMPETE AREAS LEASE-EXHIBIT D

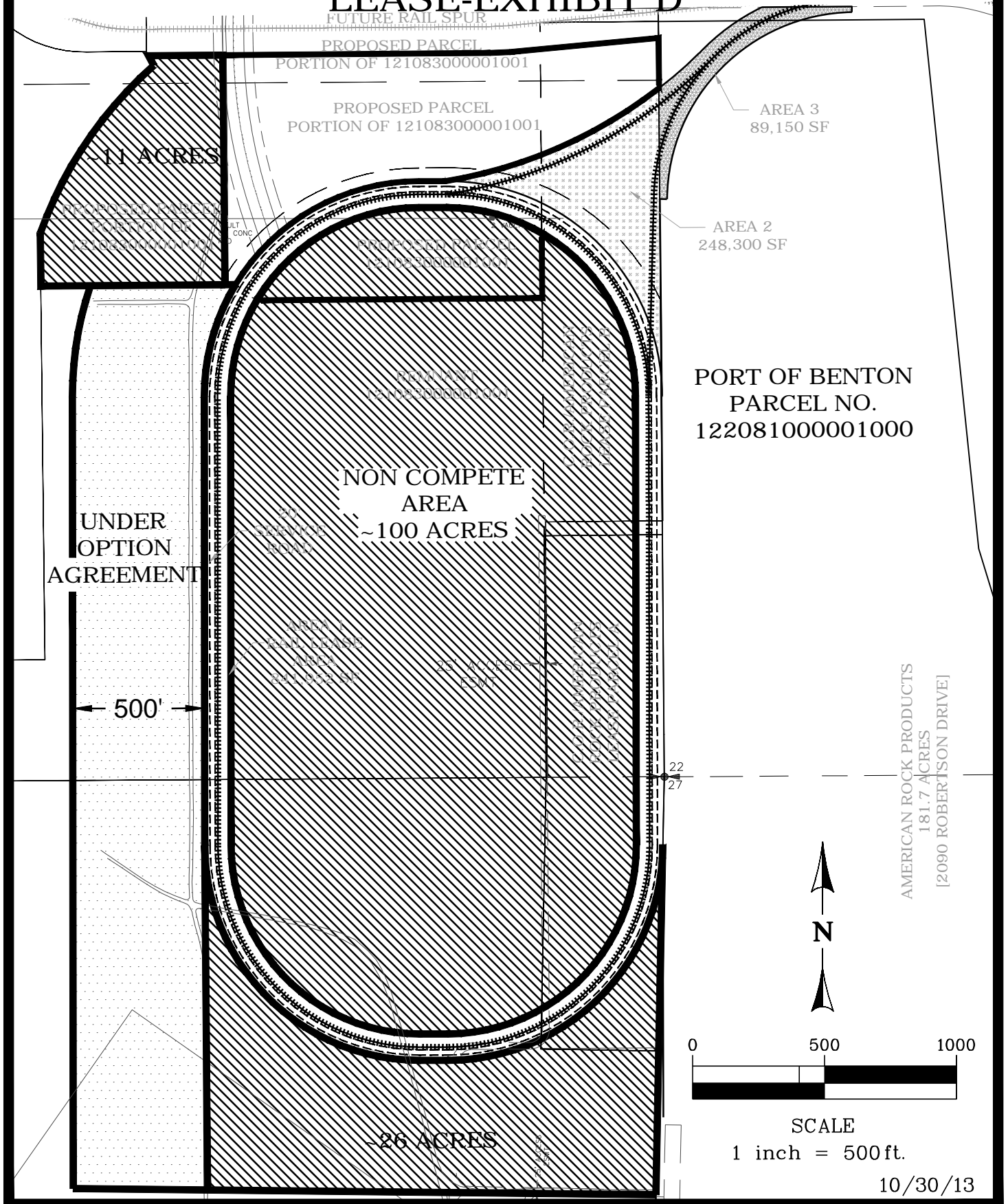


Exhibit E – Final Rail Operations Plan

[To be inserted after approved by City]

DRAFT

Exhibit F - Rail Track Maintenance Standards

The Rail Track shall be maintained, at a minimum, to the following standards:

1. The track improvements on the Terminal are maintained to FRA Class 2 standards or better regarding roadbed, geometry, track structure, and track appliances and other track related devices;
2. Roadbed is maintained so as to avoid the roadbed becoming compromised;
3. Ballast shall not show evidence of holding water, shall be full section with full fractured ballast, including full cribs, and have functional walkways consistent with the original plans;
4. Vegetation is not growing in the track structure and vegetation of the balance of the Terminal will be in a manageable condition;
5. 90% of the ties (cross and switch) shall be non-defective (as defined by the FRA) and no locations will exist where there are two adjacent defective ties;
6. Rail surface shall be free of visible defects and the rail profile shall be ground consistent with the original rail profile;
7. Maximum allowable head wear and gage face wear will not exceed 5/16 inch;
8. Joints shall be tight with all bolts, washers, and nuts present and tight;
9. Loaded track gage will be within ½ inch of unloaded standard gage;
10. Horizontal alignment will be within 1 inch of original As-built alignment and vertical alignment shall be within ½ inch deviation from uniform within a 62' cord;
11. All other track materials (small items such as tie-plates, spikes, bolts and anchors) and special track work components shall be present and in serviceable condition, consistent with the original As-built configuration; and
12. All switches, lights, crossings, and other related-rail improvements shall be present and in safe and serviceable condition, consistent with the original as-built configuration.

Exhibit G - Buyback Schedule

Commodities Plus Rail Loop - Buy Back Schedule

Proposed

Original Asset Spurs, switches, embankment, and track improvements
(beginning of operation) **\$ 4,500,000** Estimate, Exact amount to be determined and agreed to.

Year	Value	Buyback Amount	120% of remaining value
1	\$ 4,500,000	N/A	
2	\$ 4,200,000	\$ 5,040,000	
3	\$ 3,900,000	\$ 4,680,000	
4	\$ 3,600,000	\$ 4,320,000	
5	\$ 3,300,000	\$ 3,960,000	
6	\$ 3,000,000	\$ 3,600,000	
7	\$ 2,700,000	\$ 3,240,000	
8	\$ 2,400,000	\$ 2,880,000	
9	\$ 2,100,000	\$ 2,520,000	
10	\$ 1,800,000	\$ 2,160,000	
11	\$ 1,500,000	\$ 1,800,000	
12	\$ 1,200,000	\$ 1,440,000	
13	\$ 900,000	\$ 1,080,000	
14	\$ 600,000	\$ 720,000	
15	\$ 300,000	\$ 360,000	
16	\$0	\$0	

Value is estimate beginning of year. 1st year value is agreed value of approved asset.

Straight line depreciation of value based on 15 years.

Year of operation begins when rail loop is completely operational.

Can't buyback first year of operation. Buyback option starts at beginning of 2 year of operation.

*Estimated buyback schedule proposed by City.

[An adjusted buyback schedule based on exact amount of actual rail loop investment to be inserted after approved by City]

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property ("Agreement") is made and entered into this ____ day of November, 2013 between the **CITY OF RICHLAND**, a Washington municipal corporation (hereinafter referred to as "Seller"), and **CENTRAL WASHINGTON TRANSFER TERMINAL**, a Delaware limited liability company (hereinafter referred to as "Purchaser").

1. Purchase and Sale of Property. Seller agrees to sell and Purchaser agrees to purchase, on the terms hereafter stated, all of the following described property (collectively, the "Property"):

1.1. The Property. The land involved in this transaction is located in the City of Richland, Benton County, Washington, and is legally described as follows:

(See Exhibit A)

1.2 Scrivener's Errors. In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

1.3 Laws and Rights. It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are open and obvious on the ground.

1.4 Timing of Conveyance. The Property described in Section 1.1 shall be conveyed to Purchaser by a statutory warranty deed ("deed") subject to the permitted exceptions and at the time of payment. The deed shall be delivered to Purchaser at closing.

2. Purchase Price. The estimated purchase price for the Property is the sum of five hundred and sixty two thousand and five hundred dollars and no cents (\$562,500) computed on a price of twenty-two thousand and five hundred dollars and no cents (\$22,500) per acre for 25 (twenty-five) acres of property. The actual purchase price shall be calculated per actual acreage described in the legal description (Exhibit A). The actual purchase price shall be paid by Purchaser to Seller, and shall be deposited in an escrow account with Tri-City Title and Escrow ("Title Company"). The funds shall be deposited in the following manner: ten thousand dollars (\$10,000) earnest money shall be deposited within ten (10) business days after the date of execution of this Agreement by both parties, and the balance of the purchase price upon closing. For purposes of calculating time, the date of signing shall not count as the first business day. In the event the earnest money is not deposited in escrow by the close of business on the tenth (10th) business day after the date of execution of this

contract, this agreement shall automatically terminate. If, for any reason, the Purchaser terminates this Purchase and Sale Agreement after the due diligence period and prior to closing, the costs incurred by Seller for any services rendered for this specific project shall be deducted from the earnest money deposit. The Purchaser shall be entitled to any interest accrued on the earnest money deposit.

3. Conditions Precedent to Sale. This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

3.1. Title Review. Within ten (10) business days after the final parcel description is approved by the Seller and Purchaser, Seller shall request from Tri-City Title and Escrow a preliminary title report on the Property, and copies of all documents referred to therein. Said title report and related documents shall be provided to Purchaser as soon as possible, but in any event, no later than thirty (30) days before closing. Seller shall procure said title report and related documents at its sole cost and expense.

3.2. Due Diligence. Upon execution of this Agreement by both parties, Purchaser is granted a due diligence period until and including thirty (30) business days after receipt of the title report described in Section 3.1 above. Said due diligence period may be extended an additional thirty (30) business days upon written agreement by the Purchaser and Seller. Purchaser may conduct, at its own expense, a full review of legal, title, environmental, and any other related issues. Seller will promptly provide to Purchaser copies of all documentation and reports relating to the Property, including, but not limited to, soil tests, environmental reports and similar reports. If, in Purchaser's opinion, the results of said review are unsatisfactory, Purchaser may, at its option, terminate this Agreement by giving Seller written notice of termination prior to the end of the due diligence period. In the event of termination by Purchaser under this section, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other. Upon notice of termination during the due diligence period, receipted costs incurred by the Seller for any services rendered specific to this project shall be deducted from the earnest money deposit. The earnest money deposited under Section 2 of this Agreement shall be forfeited in its entirety to Seller as liquidated damages should Purchaser notify Seller of its intent to terminate this Agreement at any time after expiration of the due diligence period.

3.3. Council Approval. The closing of this transaction is contingent upon approval of this Agreement by the City Council of the City of Richland. In the event the Richland City Council determines not to approve this Agreement, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other.

4. Closing. On or before the date of closing, Purchaser shall deliver to Tri-City Title and Escrow the actual purchase price and closing costs for the Property in the

form approved by the escrow company less the earnest money previously paid and interest on the earnest money deposit. Seller shall deliver the deed, as approved by Purchaser, to Tri-City Title and Escrow for placing in escrow. Title Company shall be instructed that when it is in a position to issue a standard owner's policy of title insurance in the full amount of the purchase price, insuring fee simple title to the Property in Purchaser, then Title Company shall record and deliver to Purchaser the deed and issue and deliver to Purchaser the standard owner's policy of title insurance.

4.1. Closing Costs. Each party shall pay its own attorney's fees. Seller shall pay one-half of all transfer taxes, recording costs, escrow closing costs, if applicable, and the full premium for a standard owner's policy of title insurance. Purchaser shall pay one-half of all transfer taxes, recording costs and escrow closing costs. Any other closing costs not specifically addressed in this Agreement shall be apportioned according to the customary practices for commercial real estate transactions.

4.2. Closing Date. The closing of the transaction and delivery of all items shall occur at Tri-City Title and Escrow, and shall occur on a date specified by Seller and communicated in writing to Purchaser. Closing shall occur no later than thirty (30) business days after the execution of the Ground Lease Agreement between the City of Richland and Washington Transfer Terminal related to the construction, maintenance, and operation of a rail loop.

5. Title. Upon closing of escrow as set forth in Section 4, title to the Property shall be conveyed by Seller to Purchaser by a duly executed statutory warranty deed.

6. Covenants, Representations and Warranties.

6.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the closing date, the Seller shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property without the Purchaser's prior written consent.

6.1.2. During the contract period, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Property without Purchaser's prior consent.

6.1.3. Seller shall use its best efforts to remove all disapproved exceptions described in the preliminary title report.

6.1.4. During the contract period, Seller will operate and maintain the Property in a manner consistent with Seller's past practices relative to the Property and so as not to

cause waste to the Property.

6.1.5. Seller shall reasonably cooperate with Purchaser to obtain approvals and permits for the development of the Property.

6.1.6. Seller has or is able to comply with Washington law regarding the surplus and sale of the Property.

6.1.7. Utilities (water, sewer, and power) are available in the Logston Utility Corridor along the west border of the parcel. Purchaser will be required to extend utilities into the parcel to their new structures. Purchaser will be responsible for designing and constructing needed service laterals, and for obtaining all permits and paying all fees associated with utility connection and use.

6.1.8. The Seller will record necessary easements to provide ingress/egress to the Property. The Seller will consult with the Purchaser to locate a suitable ingress/egress location and agreed-upon dimensions for these easements to the property.

6.1.9. Seller and Purchaser further agree that other agreed-upon infrastructure improvements will be memorialized in a separate Infrastructure Agreement executed by both parties and herein incorporated by reference. In the event this Purchase and Sale Agreement is terminated by either party prior to the transfer of land ownership contemplated herein, the Infrastructure Agreement shall become null and void with no enforceability or continuing obligation by either party.

6.2. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the date hereof, throughout the contract period, and on the date of closing. Seller shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue.

6.2.1. With one exception, Seller has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Seller necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken. The one exception relates to an option agreement between the City of Richland and EUCON/American Rock Products (contract C126-04) dated April 19, 2004. To effectuate this transaction with Purchaser, Seller has renegotiated the option agreement with EUCON/American Rock Products and will repurchase the property from EUCON/American Rock Products at the closing of this purchase and sale with Purchaser. The City will close on the EUCON/American Rock Products property simultaneously with the CWTT agreements.

However, the City's repurchase of the EUCON/American Rock Products property must to be recorded first.

6.2.2. Seller is a Washington municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington.

6.2.3. Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.

6.2.4. Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Property.

6.2.5. Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation effecting the Property.

6.2.6. No special or general assessments have been levied against the Property except those disclosed in the preliminary title report, and Seller has not received written notice that any such assessments are threatened.

6.2.7. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.3. Purchaser's Representations. Purchaser hereby makes the following representations to Seller, each of which shall be true on the date hereof and on the date of closing:

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Purchaser necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken.

6.3.2. Purchaser represents that it has sufficient funds to close this transaction.

6.3.3. Purchaser is a limited liability company in good standing under the laws of its formation. In the event this statement is false, the person or person signing on behalf of the company shall be personally liable under this contract.

6.3.4. Purchaser represents that the property will be developed as a bulk trans-

loading facility utilizing an adjacent rail loop also proposed and anticipated to be developed by the Purchaser. Prior to closing, the Purchaser agrees to provide a site plan indicating how the twenty-five (25) acres will be developed. Deviation from the Purchaser's intended use must be authorized by the Seller in writing. Failure to obtain the Seller's permission for any deviation from the intended use stated herein shall subject the Property to the Reversionary Clause in Section 10.13. Nothing in this section alleviates the Purchaser from obtaining the necessary approvals, authorizations or permits required for the development of the Property for the intended use.

6.4. Survival of Covenants. The covenants, representations, and warranties contained in Section 6 of this Agreement shall survive the delivery and recording of the deed from the Seller to the Purchaser.

7. Casualty and Condemnation.

7.1. Material Casualty or Condemnation. If, prior to the closing date: (i) the Property shall sustain damage caused by casualty which would cost ten thousand dollars (\$10,000) or more to repair or replace; or (ii) if a taking or condemnation of any portion of the Property has occurred, or is threatened, which would materially affect the value of the Property, either the Purchaser or Seller may, at its option, terminate this Agreement by providing written notice to the other party within two (2) days' notice of such event. If, prior to the closing date, neither party provides said termination notice within such two (2) day period, the closing shall take place as provided herein with a credit against the purchase price in an amount equal to any insurance proceeds or condemnation awards actually collected by Seller. At closing, Seller shall assign to Purchaser Seller's full interest in any insurance proceeds or condemnation awards which may be due but unpaid to Seller on account of such occurrence.

7.2. Immaterial Casualty or Condemnation. If prior to closing date, the Property shall sustain damage caused by casualty which is not described in Section 7.1., or a taking or condemnation has occurred, or is imminently threatened, which is not described in Section 7.1., neither Purchaser nor Seller have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the Purchase Price equal to the cost to repair that portion of the Property so damaged by insured casualty, or an amount equal to the anticipated condemnation award, as applicable. At closing, Purchaser shall assign to Seller all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

8. Purchasers' Remedies. In the event of material breach of this Agreement by Seller, Purchaser shall have, as their sole remedies: (a) the right to pursue specific performance of this Agreement, (b) the right to terminate this Agreement and (c) all remedies presently or hereafter available at law or in equity. Purchaser hereby waives

all other remedies on account of a breach hereof by Seller.

9. Liquidated Damages. In the event of material pre-closing default by Purchaser in the performance of their obligations hereunder, Seller shall have the right to terminate this Agreement without further obligations to Purchaser and keep the earnest money deposit as liquidated damages. Purchaser agrees that it is difficult to assess the amount of damages incurred by the Seller in the event of a default by the Purchaser. The parties therefore agree that, as of the date of this contract, the amount of the earnest money deposit is a reasonable estimate of the damages incurred by Seller.

10. Miscellaneous.

10.1. Finder's Fee. Purchaser and Seller each agree that a real estate finder's fee ("Real Estate Compensation") is not due to each other or to any third party. Each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorney's fees, resulting from any claims for Real Estate Compensation by any person or entity other than provided herein. The provisions of this section shall survive the closing.

10.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

10.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO PURCHASER:

Central Washington Transfer Terminal
Attn: Dennis Kylo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

TO SELLER:

City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509) 942-7763

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

10.4. Assignments and Successors. Purchaser may not assign this Agreement

without Seller's consent. Any assignment made without Seller's consent is null and void, and does not relieve the Purchaser of any liability or obligation hereunder.

10.5. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

10.6. Exhibits. All exhibits attached hereto shall be incorporated by reference as if set out in full herein.

10.7. Binding Effect. Regardless of which party prepared or communicated this Purchase Agreement, this Purchase Agreement shall be of binding effect between Purchaser and Seller only upon its execution by an authorized representative of each such party.

10.8. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Purchase Agreement and that the normal rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Purchase Agreement or any amendment or exhibits hereto. This is a fully integrated Agreement. There are no additional terms, conditions, or obligations binding upon the parties unless specifically referenced herein.

10.9. Counterparts. This Purchase Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

10.10. Cooperation and Further Assurances. Each party shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold responses to requests for information, approvals, or consent provided for in this Agreement. The parties agree to take further action and execute further documents, both jointly or within their respective powers and authority, as may be reasonably necessary to implement the intent of this Agreement.

10.11. Full Performance and Survival. The delivery of the deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger and be deemed the full performance and discharge of the obligations on the part of Purchaser and Seller to be performed hereunder. Certain clauses, covenants, warranties and indemnifications specifically provided herein or that can only be performed after closing shall survive the closing.

10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this

Agreement, and both parties expressly agree to submit to personal jurisdiction in Benton County Superior Court.

10.13. Reversionary Clause and Option to Repurchase/Reclaim. This Property is being sold to Purchaser in anticipation of the development of a bulk trans-load facility. The Seller reserves a reversionary interest to reclaim title to the Property under the following circumstances:

- 10.13.1.** If Purchaser fails to submit an application to Seller for approval of building plans within six (6) months of closing; or
- 10.13.2.** If Purchaser does not initiate construction of its trans-load facility within eighteen (18) months of closing.

10.14. Reconveyance. Seller shall reclaim this Property by refunding the actual purchase price without interest. Seller will not assume any liability for expenses incurred by Purchaser in conducting this transaction. Purchaser agrees to reconvey title in fee to Seller within sixty (60) days of receipt of notice from Seller seeking reconveyance of Property pursuant to Section 10.13.2 of this Agreement. Purchaser may, in its sole discretion, remove any improvements or fixtures made or provided by Purchaser prior to reconveyance. This reversionary right is exclusive to the Seller and shall be exercised at Seller's sole discretion. Seller shall be under no obligation to exercise this reversionary right. This reversionary right survives forty-eight (48) months after closing or until such time as building commences, whichever is earlier. In the event Purchaser desires to sell to a third party during the forty-eight (48) month reversionary period, Purchaser must obtain Seller's approval for any resale of the Property within the forty-eight (48) month reversionary period. Seller shall grant or deny such approval for resale within its sole discretion.

10.15. Scrivener. The party drafting this Agreement is the City of Richland. The City of Richland makes no representations regarding the rights or responsibilities of Purchaser under this Agreement. Purchaser is encouraged to review the completed contract with counsel before signing this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the day and year first above written.

CITY OF RICHLAND - Seller

CENTRAL WASHINGTON TRANSFER
TERMINAL - Purchaser

By: Cynthia D. Johnson

By: Dennis Kylo

Its: City Manager

Its:

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me DENNIS KYLLO, to me known to be the individual described in and who executed the within and foregoing Agreement for Purchase of Real Property, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Benton)

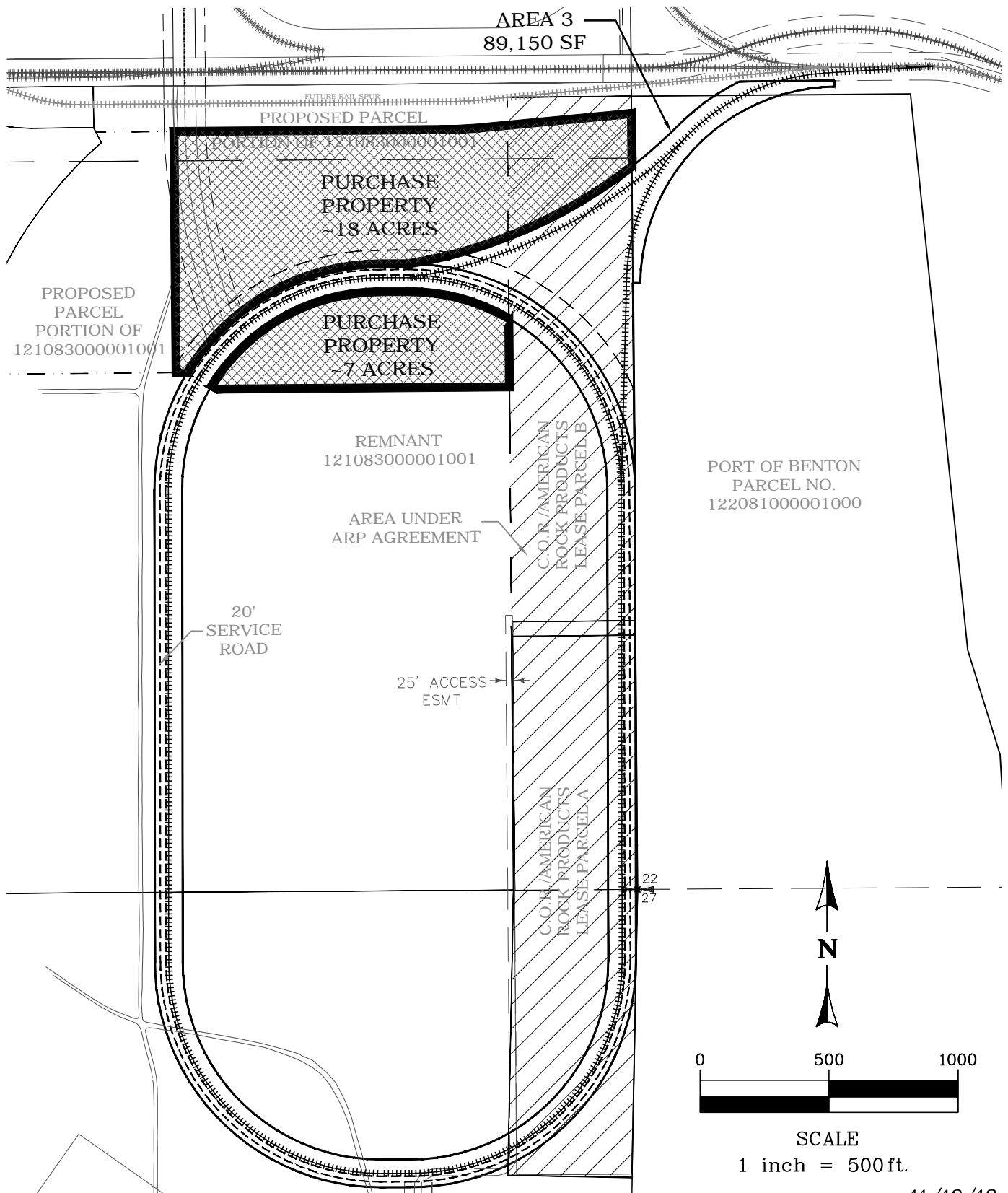
On this ____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND and this person that executed the within and foregoing Agreement

for Purchase of Real Property and acknowledged that the said instrument is 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 were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My Commission Expires: _____

HORN RAPIDS RAIL LOOP PURCHASE AND SALE AGREEMENT EXHIBIT A



City of Richland

Infrastructure Agreement

This Infrastructure Agreement ("Agreement") is made and entered into by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereinafter referred to as "City," and **CENTRAL WASHINGTON TRANSFER TERMINAL LLC.**, a Delaware limited liability company, hereinafter referred to as "CWTT." CWTT and City are sometimes herein individually referred to as a "Party" or collectively as the "Parties."

I. RECITALS

WHEREAS, CWTT has entered into an Agreement to purchase certain real property ("Purchase Agreement") consisting of approximately twenty-five (25) acres located along Battelle Boulevard, Richland, Washington, as more particularly described on attached Exhibit A and depicted on Exhibit B ("Owner Property"), which CWTT desires to develop, including the construction of several buildings; and

WHEREAS, City desires to facilitate CWTT's development by developing public infrastructure that will serve CWTT's property and City property, described as the construction of a public street, Logston Boulevard, starting from Battelle Boulevard and extending approximately two thousand (2,000) lineal feet of road south; and

WHEREAS, the development of public infrastructure under this Agreement will benefit property of both City and CWTT in the form of improved accessibility and increased property values;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

II. AGREEMENT

1. DEVELOPMENT OBLIGATIONS

- 1.1 *City Contribution.* City shall expend funds ("Development Funds") for the building of two thousand lineal feet of road (shown in Exhibit C) in an amount equal to the difference between the Benton County 2019 assessed value of Owner Property (shown in Exhibit B) less the 2013 Benton County assessed value of Owner Property, which is \$401,468.12 (\$16,058.72 per acre x 25 acres), multiplied by ten percent (10%). For clarity: (2019 assessed value – 2013 assessed value) x .10 = development fund amount].
- 1.2 *Development Funding True-Up.* On August 1, 2019, the Parties shall mutually cooperate to determine whether the actual amount City has then expended in Development Funds exceeds the development fund amount, and, if such an

excess exists, Owner shall pay the excess amount to City no later than August 31, 2019.

2. CONDITIONS AND TERM

- 2.1 *Effective Date and Term.* This Agreement, although executed on the date of signature of the second party, shall become effective fifteen (15) calendar days after closing on the Purchase and Sale Agreement between the City of Richland and Washington Transfer Terminal, LLC for purchase of the Owner Property. In the event the City of Richland and Washington Transfer Terminal fail to close on the Purchase and Sale Agreement referenced herein, this Infrastructure Agreement shall terminate, and the parties shall have no obligations hereunder. This Agreement shall terminate on August 31, 2019, or upon full payment of any obligation due under Section 1.2 above, whichever date occurs last in time.
- 2.2 *CWTT Bid Notice.* Prior to commencement of construction of the infrastructure contemplated under this Agreement, the City shall provide CWTT with all bid award information. "Bid award information" includes the City's call for proposals, and the scope of work/specifications related to the project contemplated under this Agreement. Commencement of construction shall be conditioned upon CWTT approving, in writing, all bid award information. If CWTT does not approve all bid award information within a reasonable time, this Agreement shall automatically terminate and be of no further force and effect.
- 2.3 *Commencement of Construction.* Construction on the infrastructure contemplated under this Agreement shall commence once the rail loop is "under construction" as determined by the issuance of all necessary permits and the commencement of grading activities on site.

3. GENERAL

- 3.1 *Amendment.* No Amendment to this Agreement shall be made unless mutually agreed to by the Parties in writing.
- 3.2 *Assignment/Successors.* This Agreement shall be binding upon the heirs, successors, assigns of any or all of the Parties hereto.
- 3.3 *Entire Agreement.* This Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither party shall be liable to the other for any representations made by any person concerning the premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

- 3.4 *Governing Law/Forum Selection.* Unless otherwise controlled by federal law, the interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement. User expressly agrees to submit to personal jurisdiction in Benton County Superior Court.
- 3.5 *Notice.* Any notice or demand required or permitted to be given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, or by overnight courier, or hand delivered, to the address of the Parties set forth below. Any Party may give notice in the manner provided in this Section to the other Parties of a change of address. Any notice shall be deemed to have given on the date it is deposited in the U.S. Postal Service mail, delivered to the overnight courier, with postage prepaid, or upon hand delivery, as the case may be.

TO THE CITY:

City of Richland
Attn: Economic Development
Manager
P.O. Box 190, MS 18
Richland, WA 99352
Phone: (509) 942-7763

TO CWTT:

Central Washington Transfer Terminal
Attn: Dennis Kylo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

- 3.6 *Severability.* If any provision of this Agreement conflicts with applicable law or its application is found to be invalid, the remainder of this Agreement shall not be affected and to this end, the terms of this Agreement are declared to be severable.
- 3.7 *Legal Action.* In the event legal action is necessary to enforce any of the provisions of this Agreement, the parties agree that the prevailing party will be awarded its reasonable attorney's fees and costs in action.
- 3.8 *Notice of Agreement.* Either Party may record with Benton County a document providing notice of the existence of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day shown next to their signatures below.

CITY OF RICHLAND

CENTRAL WASHINGTON TRANSFER
TERMINAL

By: Cynthia D. Johnson Date
Its: City Manager

By: Dennis Kylo Date
Its:

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

EXHIBIT A- LEGAL DESCRIPTION OF PURCHASED PROPERTY

(To be inserted when purchase is executed)

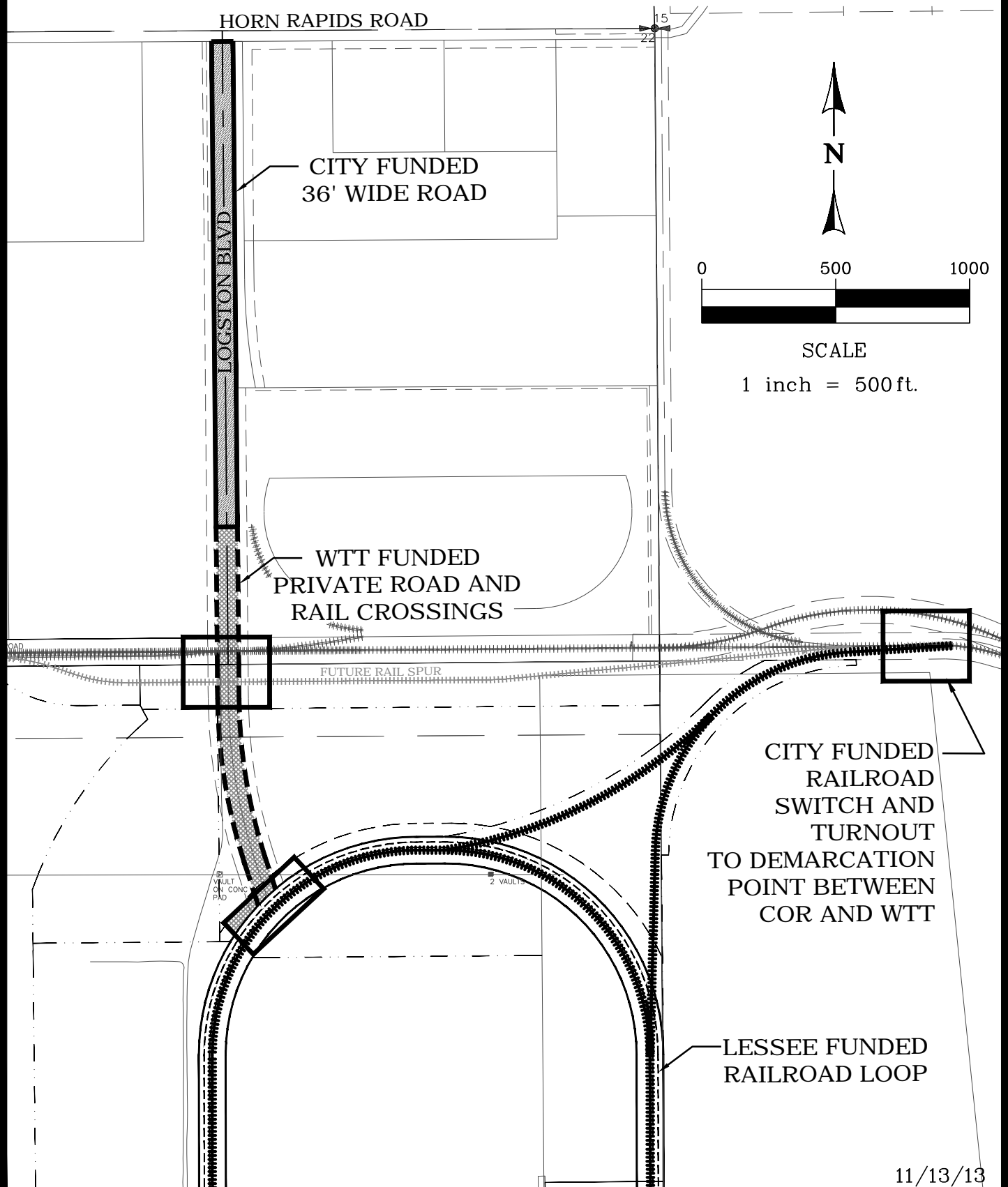
DRAFT

EXHIBIT B- MAP OF PURCHASED PROPERTY

(To be inserted when purchase is executed)

DRAFT

HORN RAPIDS RAIL LOOP INFRASTRUCTURE AGREEMENT EXHIBIT C



**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND
CANCELLATION OF OPTION**

AMERICAL ROCK PRODUCTS

This Agreement for Purchase and Sale of Real Property and Cancellation of Option ("Agreement") is made and entered into this ____ day of November, 2013, between **AMERICAN ROCK PRODUCTS**, a Washington Corporation (hereinafter referred to as "Seller" or "ARP"), and the **CITY OF RICHLAND**, a Washington municipal corporation (hereinafter referred to as "Purchaser" or "City").

RECITALS:

On or about April 26, 2004, the City as Seller and ARP as Purchaser entered into a Purchase and Sale Agreement relating to the real property legally described in Exhibit A hereto ("Purchased Property"). ARP became the owner of record of the Purchased Property on or about April 30, 2004. Simultaneous with the execution of the Purchase and Sale Agreement, the City as Seller and ARP as Purchaser entered into an Option Agreement governing a second parcel of real property legally described in Exhibit "B" hereto ("Option Property").

To facilitate the development of the Horn Rapids Rail Loop, the City desires to reacquire the Purchased Property from ARP and cancel ARP's Option on the Option Property. ARP is willing to sell the Purchased Property to the City, and further agrees to the cancellation of its option on the Option Property, pursuant to the terms and conditions set forth herein.

1. Property and Sale of Property. ARP agrees to sell and City agrees to purchase, on the terms hereafter stated, the Purchased Property legally described in Exhibit A hereto, situated in the City of Richland, Benton County, Washington, together with all improvements thereon (if any) and all mineral and resource rights, including ground water rights, held by ARP.

1.1. Scrivener's Errors. In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

1.2. Laws and Rights. It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are open and obvious on the ground.

1.3. Timing of Conveyance. The Purchased Property described in Section 1 shall be conveyed to City by a Statutory Warranty Deed ("Deed") subject to the permitted

exceptions and at the time of payment, which shall be rendered to ARP at the time of closing. The Deed shall be delivered to City at closing.

2. Cancellation of Option. At the time of closing of the purchase of the Purchased Property, ARP agrees to the cancellation of its option governing the Option Property described in Exhibit B hereto, situated in the City of Richland, Benton County, Washington, on the terms hereafter stated. Cancellation shall be evidenced and effectuated by the execution and recording of the Termination of Purchase Option attached hereto as Exhibit C.

3. Consideration. The consideration for both the sale of the Purchased Property and the release of the Option governing the Option Property is as follows:

- a. **Cash Consideration.** City shall pay ARP the Purchase Price of two hundred seventy thousand eight hundred seventy-five dollars and 27/100 cents (\$270,875.27) for the Purchased Property, and the sum of twenty thousand dollars and 00/100 cents (\$20,000.00) for the cancellation of the Option Agreement, said consideration collectively referred to hereafter as the cash consideration. The total cash consideration shall be deposited by City into an escrow account with Cascade Title Company, and shall be paid to ARP at closing subject to all adjustments and proration as may be provided for elsewhere herein.
- b. **Non-Cash Consideration.** In addition to the cash consideration to be paid to ARP, City hereby agrees to enter into a Mineral Extraction License Agreement in the form attached hereto as Exhibit D. The purpose of the License Agreement is to allow ARP, as part of the consideration for the property purchase and release of option provided herein by ARP, to conduct at ARP's sole expense (but at no further charge from the City), removal and processing of sand and gravel and related activities on the property described in Exhibits A and B hereto, and on such other real property as described in the License Agreement.

4. Conditions Precedent to Sale and Option Cancellation. This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

4.1. Title Review. Within ten (10) business days of executing this Agreement, City shall obtain a title report for the Purchased Property and the Option Property. For purposes of calculating time, the date of signing shall not count as the first business day. City expressly agrees that all exceptions, defects and encumbrances that were of record when City originally sold the Purchased Property to ARP and granted an option in the Option Property to ARP are hereby accepted by City in connection with this transaction.

4.1.1. New Exceptions. To the extent there are exceptions, defects and encumbrances of record that have arisen since the original closing, City will notify ARP in writing within ten (10) business days from the execution of this Agreement of any such

new exceptions, defects and encumbrances to which City objects ("title objections"). ARP shall then have ten (10) business days from receipt of City's notice of title objections to give City written notice either that: 1) ARP shall, before closing, remove all identified title objections at no cost to City, and in each such case ARP shall promptly provide City with evidence satisfactory to City of ARP's ability to so remove such title objections; or 2) ARP elects in its sole discretion not to cause one or more of such title objections to be removed. ARP's determination not to cause one or more title objections to be removed shall not constitute default, but shall entitle City to terminate this Agreement with no penalty by giving ARP notice thereof within ten (10) business days of receiving ARP's notice of non-removal. If City fails to deliver timely written notice of termination, then City shall be deemed to have waived its title objections.

4.1.2. Monetary Encumbrances. Notwithstanding anything in this Agreement to the contrary, ARP shall remove all monetary encumbrances and monetary defects that have not been prorated at or before closing. The terms "monetary encumbrances" or "monetary defects" as used herein mean encumbrances or defects to title that by their terms require the payment of money, whether in installments or at a fixed time or otherwise, including, but not limited to, mortgages, deeds of trust, mechanics' or materialmen's liens, but shall not include liens associated with public improvement districts and special assessments. If monetary encumbrances or monetary defects exist as to either the Purchased Property or the Option Property that are not cured or waived in a timely manner, this Agreement shall terminate with no penalty.

4.1.3. Other Due Diligence. City has conducted a full review of legal, title, environmental, archaeological and any other related issues and subject to the terms, conditions and representations herein, has completed its due diligence on both the Purchased Property and the Option Property with the current available information. ARP shall provide to City copies of all documentation and reports that it has in its possession (other than those documents and reports previously provided to ARP by City) relating to both the Purchased Property and the Option Property, including, for example, soil tests, environmental reports and similar reports. City reserves the right to terminate this Agreement with no penalty if, within fifteen (15) business days of receipt of additional reports and documentation from ARP, the City determines that the review of the reports is, in its sole opinion, unsatisfactory. In the event of termination by City under this section, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other.

4.2. Council Approval. The closing of this transaction is contingent upon approval by the City Council of the City of Richland. In the event the Richland City Council determines not to approve this Agreement, this Agreement shall immediately terminate with no penalty and be without further force and effect, and without further obligation of either party to the other.

4.3. Third Party Option Rights. Pursuant to this Agreement, ARP is releasing its Option interest on the Option Property, legally described herein in Exhibit A, as previously acquired pursuant to a 2004 Real Estate Option Agreement between the City of Richland

and American Rock Products. ARP makes no warranties or representations of any nature as to the existence (or lack thereof) of any other interests or encumbrances effecting the Option Property.

4.4. Proposed Loop Project. The City of Richland has the option to terminate this Agreement with no penalty in the event the Purchase and Sale Agreement with Central Washington Transfer Terminal for purchase of 25 acres terminates or does not reach closing for any reason.

4.5. Execution of Lease Agreement. Concurrent with closing on this Purchase and Sale Agreement and Cancellation of Option, the parties shall execute a License Agreement authorizing ARP's ongoing gravel and sand removal on the subject properties as described in said License Agreement attached as Exhibit D. In the event this Purchase and Sale Agreement and Cancellation of Option with ARP terminates or does not reach closing, neither party has any further obligation to enter said License Agreement.

5. Closing. On or before the date of closing, as described below, City shall deliver to the escrow company, Cascade Title Company, the total cash consideration in the form of a certified or cashier's check. ARP shall deliver the statutory warranty deed, as approved by City, to Cascade Title Company for placing in escrow. ARP shall also deliver the executed Termination of Purchase Option to Cascade Title Company, and the parties shall have executed the License Agreement and delivered a copy thereof to Cascade Title Company. Cascade Title Company shall be instructed that when it is in a position to issue a standard owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Purchased Property in City, Cascade Title Company shall record and deliver to City the deed; and issue and deliver to City the standard owner's policy of title insurance. Cascade Title Company shall also record the Termination of Purchase Option and Memorandum of License Agreement in the form attached hereto as Exhibit G.

5.1. Closing Costs. Each party shall pay its own attorney's fees. ARP shall pay all transfer taxes, recording costs, and escrow closing costs, if applicable. City will pay the full premium for a standard owner's policy of title insurance. Real property taxes (excluding assessments) for the then-current tax year relating to the Purchased Property shall be prorated. All unpaid assessments, if any, existing as of the closing date shall be prorated between City and Seller as of the closing date. Any other closing costs not specifically addressed in this Agreement shall be apportioned according to the customary practices for commercial real estate transactions.

5.2. Closing Date. Closing on this Purchase and Sale Agreement is contingent upon the City's successful closing of the Purchase and Sale Agreement with Central Washington Transfer Terminal. Therefore, the closing of this transaction with ARP shall occur simultaneously with the City's closing on the Purchase and Sale Agreement with Central Washington Transfer Terminal, or within two business days thereafter. The closing of this transaction, and delivery of all items, shall occur at Cascade Title Company.

6. Covenants, Representations and Warranties.

6.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the closing date, Seller shall not make any material alterations to the Purchased Property, or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Purchased Property or the Option Property, nor enter into any leases or agreements pertaining to the Purchased Property or the Option Property without City's prior written consent.

6.1.2. From the date of this Agreement through the closing date, ARP shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Purchased Property or against the Option Property without City's prior consent.

6.1.3. From the date of this Agreement through the closing date, ARP will operate and maintain the Purchased Property in a manner consistent with ARP's past practices relative to the Property and so as not to cause waste to the Purchased Property.

6.2. Seller's Representations and Warranties. ARP hereby makes the following representations and warranties to City, each of which shall be true on the date hereof, throughout the contract period, and on the date of closing. ARP shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue. In addition to any other remedies available at law or in equity, City may elect to terminate this Agreement without penalty upon notice from Seller prior to closing that one or more of the representations or warranties contained herein are incorrect or untrue.

6.2.1. ARP has full power and authority to enter into and carry out the terms and provisions of this Agreement, and to execute and deliver all documents which are contemplated by this Agreement. All actions of ARP necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken.

6.2.2. ARP is a Washington corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington. ARP holds title to the Purchased Property in fee subject to any encumbrances of record, and is legally authorized to transfer ownership of said property.

6.2.3. ARP has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Purchased Property or the Option Property are pending or threatened.

6.2.4. ARP has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Purchased Property or the Option Property.

6.2.5. ARP has not received any written notice from any governmental authority or regulatory agency that ARP's use of the Purchased Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation effecting the Property.

6.2.6. No special or general assessments have been levied against the Purchased Property except those disclosed in the Preliminary Title Report, and ARP has not received written notice that any such assessments are threatened.

6.2.7. ARP is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.2.8. ARP represents and warrants that, to the best of its knowledge and belief, there are no hazardous substances in, on, or under the Purchased Property that are in quantities or in concentrations that violate any applicable state, federal or local laws. For purposes of this representation, "Hazardous Substances" means any substance, material or waste that is designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including, without limitation petroleum or natural gas.

6.2.9. Seller represents and warrants that, to the best of its knowledge and belief, the Purchased Property is not an archeologically significant site.

6.3. Purchaser's Representations and Warranties. City hereby represents and warrants to ARP as follows:

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Purchaser necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken.

6.3.2. City is a municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington.

6.3.3. Purchaser represents that it has sufficient funds to close this transaction.

6.4. Survival of Covenants. The covenants, representations, and warranties of the ARP and the City contained in Section 6 of this Agreement shall survive both the

delivery and recording of the deed from the ARP to the City, and the cancellation of the Option.

7. Casualty and Condemnation.

7.1. Material Casualty or Condemnation. If, prior to the closing date: (i) the Purchased Property shall individually sustain damage caused by casualty which would cost ten thousand dollars (\$10,000.00) or more to repair or replace; or (ii) if a taking or condemnation of any portion of either the Purchased Property has occurred, or is threatened, which would materially affect the value of the property, either City or ARP may, at its option, terminate this Agreement by providing written notice to the other party within two (2) days' notice of such event. If, prior to the closing date, neither party provides said termination notice within such two (2) day period, the closing shall take place as provided herein with a credit against the purchase price in an amount equal to any insurance proceeds or condemnation awards actually collected by ARP. At closing, ARP shall assign to City all of ARP's interest in any insurance proceeds or condemnation awards which may be due but unpaid to ARP on account of such occurrence.

7.2. Immaterial Casualty or Condemnation. If, prior to the closing date, the Purchased Property shall sustain damage caused by casualty which is not described in Section 7.1., or a taking or condemnation has occurred, or is threatened, which is not described in Section 7.1., neither City nor ARP shall have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the purchase price equal to the cost to repair that portion of the Purchased Property so damaged by insured casualty, or an amount equal to the anticipated condemnation award, as applicable. At closing, City shall assign to ARP all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

8. City's Remedies. In the event of material breach of this Agreement by ARP, City shall have, as its sole remedies: (a) the right to pursue specific performance of this Agreement; (b) the right to terminate this Agreement; and (c) all remedies presently or hereafter available at law or in equity.

9. ARP's Remedies. In the event of material breach of this Agreement by City, ARP shall have, as its sole remedies: (a) the right to pursue specific performance of this Agreement; (b) the right to terminate this Agreement; and (c) all remedies presently or hereafter available at law or in equity.

10. Miscellaneous.

10.1. Finder's Fee. City and ARP each agree that a real estate finder's fee is not due to each other or any other. Each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a Finder's Fee made as a result of the indemnifying party's conduct. The provisions of this section shall survive the closing.

10.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

10.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO SELLER:

American Rock Products
Attn: Michael D. McKinney
4418 E. 8th Avenue
Spokane Valley, WA 99212
Phone: (509) 533-1683
Fax: (509) 533-1644

TO PURCHASER:

City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509) 942-7763
FAX: (509) 942-5666

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

10.4. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

10.5. Exhibits. All exhibits attached hereto shall be incorporated by reference as if set out herein in full herein.

10.6. Binding Effect. Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect between City and ARP only upon its execution by an authorized representative of each such party.

10.7. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and all related documents, and that the normal rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto. This is a fully integrated Agreement. There are no additional terms, conditions, or obligations binding upon the parties unless specifically referenced herein.

10.8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

10.9. Cooperation and Further Assurances. Each party shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold responses to requests for information provided for in this Agreement. The parties agree to take further action and execute further documents, both jointly or within their respective power and authority, as may be reasonably necessary to implement the intent of this Agreement. Provided, however, that nothing in this section affects a party's right to make any decision that is determined to be within that party's sole discretion.

10.10. Waiver of Disclosure Statement. City expressly waives the right to receive a Seller's Commercial Real Estate Disclosure Statement provided for by RCW 64.06.

10.11. Full Performance and Survival. The delivery of the deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger and be deemed the full performance and discharge of the obligations on the part of Purchaser and Seller to be performed hereunder. Certain clauses, covenants, warranties and indemnifications specifically provided herein or that can only be performed after closing shall survive the closing.

10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement, and both parties expressly agree to submit to personal jurisdiction in Benton County Superior Court.

10.13. Scrivener. The party drafting this Agreement is the City of Richland. The City of Richland makes no representations regarding the rights or responsibilities of ARP under this Agreement. ARP is encouraged to review the completed contract and all relevant documents with counsel before signing this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the day and year first above written.

CITY OF RICHLAND - PURCHASER

**AMERICAN ROCK PRODUCTS-
SELLER/OPTION RELEASOR**

By: Cynthia D. Johnson
Its: City Manager

By: _____
Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing Agreement for Purchase of Real Property and acknowledged that the said instrument is 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 were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing Agreement for Purchase of Real Property and Cancellation of Option, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

Exhibit A – Legal Description of Repurchase Property

Portion of West half of Section 22, Township 10 North, Range 28 East, and of Northwest quarter of Section 27, Township 10 North, Range 28 East, W.M., records of Benton County, Washington, described as follows:

Beginning at the South one-quarter corner of said Section 22, thence North $0^{\circ}5'15''$ East, along the North-South centerline of said Section 22, a distance of 917.34 feet; thence North $89^{\circ}35'5''$ West, 448.00 feet; thence South $0^{\circ}5'15''$ West, parallel to said centerline, 910.99 feet; thence South $2^{\circ}02'03''$ West, parallel to the North-South centerline of Section 27, Township 10 North, Range 28 East, W.M., 1,033.67 feet; thence South, $89^{\circ}35'05''$ East 448.17 feet to a point on the said North-South centerline of said Section 27; thence North $2^{\circ}02'03''$ East along said centerline, 1,027.31 feet to the Point of Beginning.

HORN RAPIDS RAIL LOOP

PSA AND CANCELLATION OPTION

EXHIBIT A

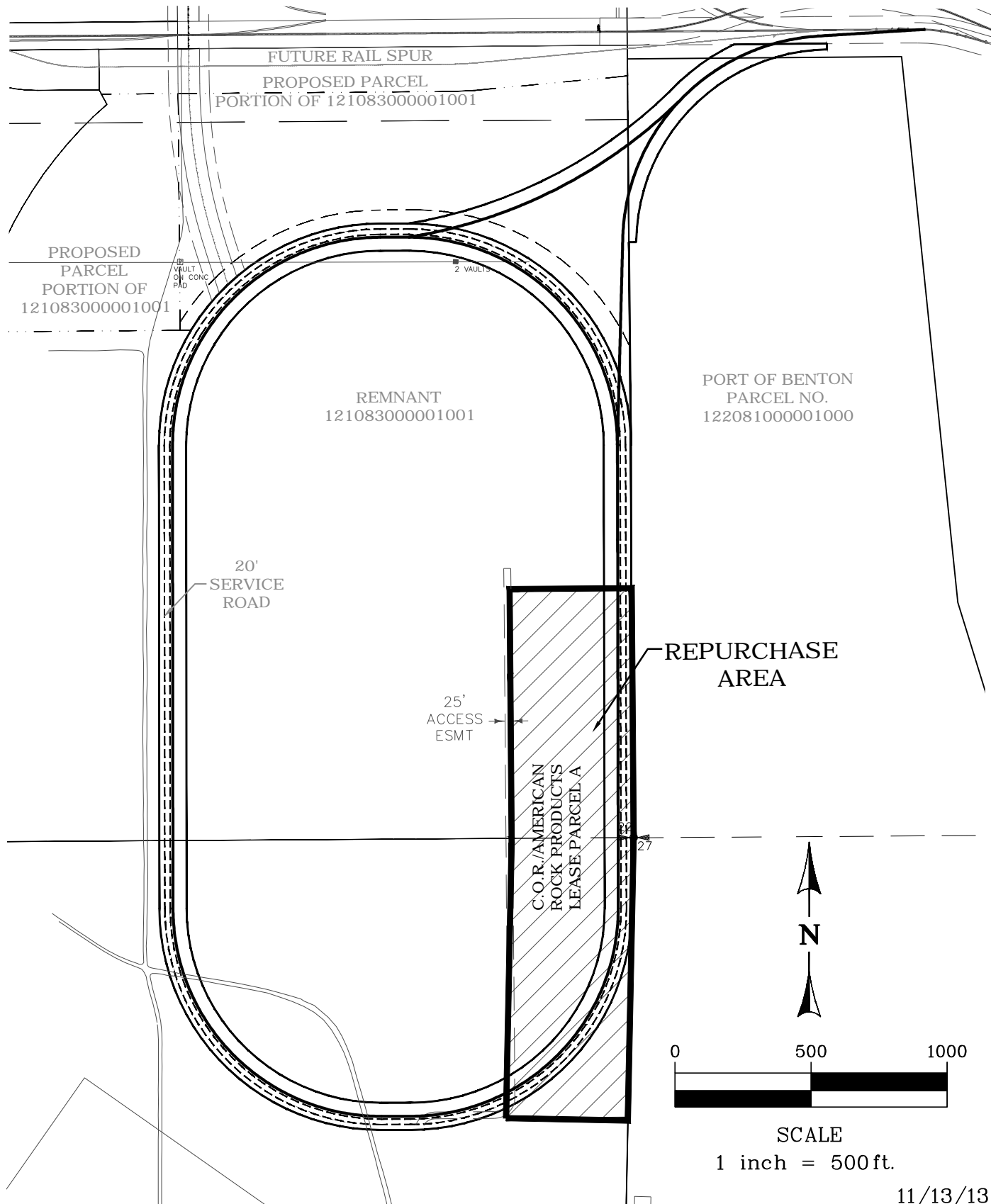


Exhibit B – Legal Description of Option Property

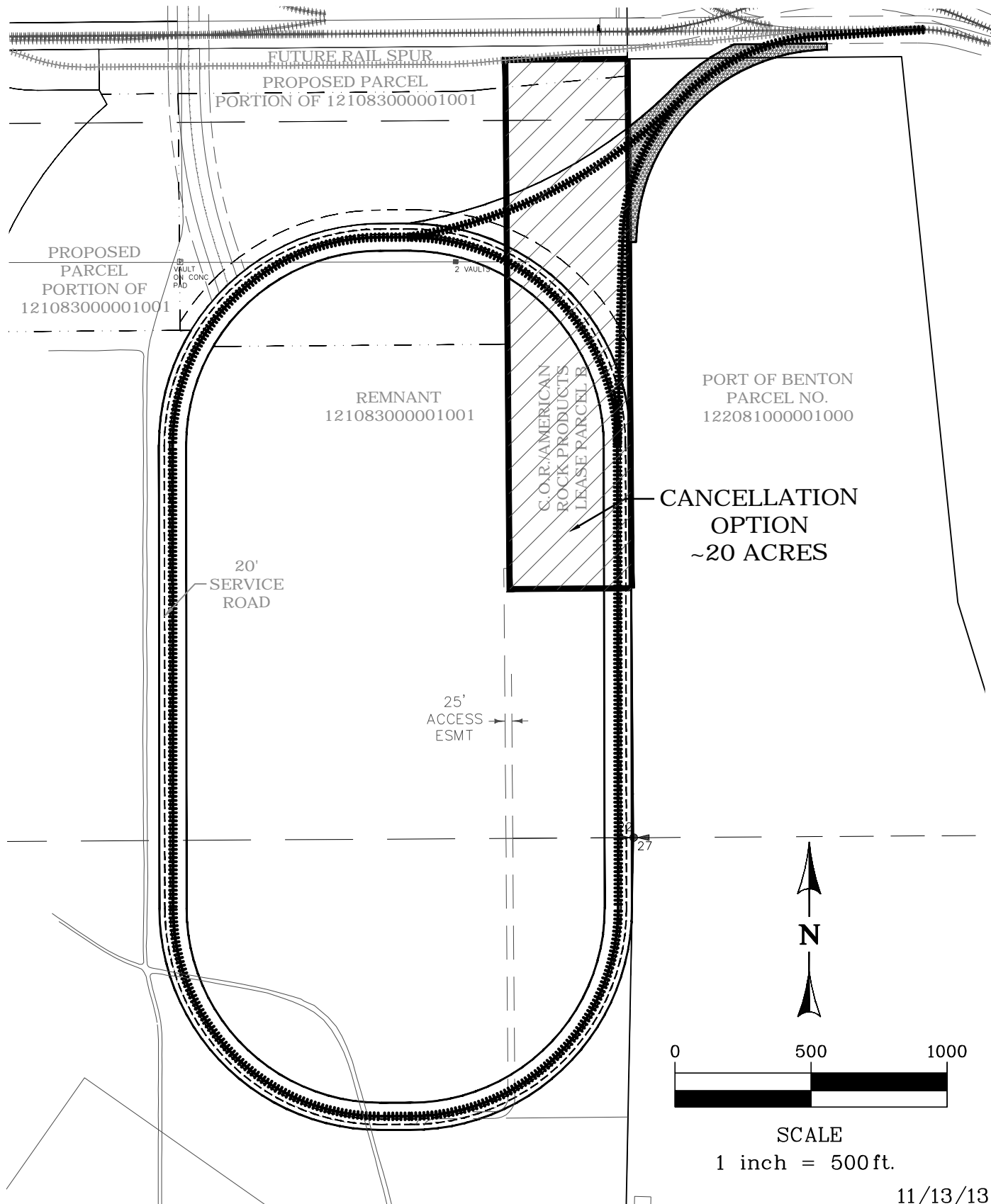
Portion of West half of Section 22, Township 1 0 North, Range 28 East, W.M., records of Benton County, Washington, described as follows:

Beginning at the South one-quarter corner of said Section 22, thence North $0^{\circ}5'15''$ East, along the North-South centerline of said Section 22, a distance of 917.34 feet to the True Point of Beginning,
Thence, continuing along said North-South centerline, North $0^{\circ}5'15''$ East, 1,944.65 feet; thence North $89^{\circ}35'5''$ West, 448.00 feet; thence South $0^{\circ}25'15''$ West, parallel to said centerline, 1,944.65 feet; thence South $89^{\circ}35'05''$ East, 448.00 feet to the True Point of Beginning.

HORN RAPIDS RAIL LOOP

PSA AND OPTION CANCELLATION

EXHIBIT B



***After recording please return to:
Heather Kintzley, City Attorney
City of Richland
P.O. Box 190 MS 07
Richland, WA 99352***

TERMINATION OF PURCHASE OPTION

This Termination of Purchase Option ("Termination") is dated as of November ____, 2013 by and between the **City of Richland**, a Washington municipal corporation (hereinafter referred to as "City"), and **American Rock Products**, a Washington corporation (hereinafter referred to as "ARP").

I. Recitals

WHEREAS, City and ARP entered into a Real Estate Option Agreement on April 19, 2004 relating to certain real property located in the City of Richland, County of Benton, State of Washington (the "Property") legally described as:

Portion of West half of Section 22, Township 10 North, Range 28 East of the Willamette Meridian, records of Benton County, Washington, described as follows:

Beginning at the South one-quarter corner of said Section 22, thence North 0°5'15" East, along the North-South centerline of said Section 22, a distance of 917.34 feet to the True Point of Beginning.

Thence, continuing along said North-South centerline, North 0°5'15" East, 1,944.65 feet; thence North 89°35'5" West, 448.00 feet; thence South 0°25'15" West, parallel to said centerline, 1,944.65 feet; thence South 89°35'05" East, 448.00 feet to the True Point of Beginning.

CONTAINS 20.0 ACRES MORE OR LESS; and

WHEREAS, City and ARP caused to be recorded under Auditor File No. 2004-014978 in the Official Records of Benton County, Washington a Memorandum of Real Estate Option Agreement in order to put interested parties on notice of the Purchase Option; and

WHEREAS, the Purchase Option has been terminated and is no longer of any force or effect; and

WHEREAS, City and ARP now desire to cause this Termination to be recorded in the Official Records of Benton County, Washington in order to put interested parties on notice that the Purchase Option has been terminated.

II. Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and ARP hereby (a) terminate the Purchase Option, (b) agree that the Purchase Option has terminated, and (c) agree that the Purchase Option is void and of no force or effect.

IN WITNESS WHEREOF, City and ARP have executed this Termination as of the date first written above.

CITY OF RICHLAND

By: Cynthia D. Johnson
Its: City Manager

AMERICAN ROCK PRODUCTS

By: _____
Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing Termination of Purchase Option and acknowledged that the said instrument is 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 were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing Termination of Purchase Option, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____

LICENSE AGREEMENT FOR MINING AND REMOVAL OF AGGREGATE

This License Agreement for mining and removal of aggregate ("License Agreement") is entered into this ____ day of _____, 2013, by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington (hereinafter referred to as "City"), and **AMERICAN ROCK PRODUCTS, INC.**, a Washington corporation, (hereinafter referred to as "ARP").

I. RECITALS

WHEREAS, simultaneous to the execution of this License Agreement, the Parties have entered into a "Agreement for Purchase and Sale of Real Property and Cancellation of Option" ("Purchase and Option Cancellation Agreement") whereby City has agreed to reacquire from ARP the parcel of real property it sold to ARP in 2004, described in Exhibit A, herein; and

WHEREAS, in addition to the sale to City of the real property identified in Exhibit A, ARP has also agreed to cancellation of an option that was previously granted to it by City to purchase real property described in Exhibit B herein; and

WHEREAS, the non-cash consideration for the transaction described in the Purchase and Option Cancellation Agreement included the granting by City to ARP of the right to mine and remove aggregate from parcels A and B as identified on Exhibits A and B, and from that portion of an adjacent parcel identified as the Railroad Loop site and depicted on the map attached hereto as Exhibit C. Collectively, the two parcels identified in Exhibits A and B, and the Railroad Loop portion of Exhibit C herein shall be referred to as the License Location; and

WHEREAS, this Agreement is necessary to grant permission to ARP to mine, process, remove and store aggregate materials from the License Location to fulfill City's non-cash consideration obligation supporting the Agreement for Purchase and Option Cancellation Agreement executed in connection herewith.

NOW THEREFORE, in consideration of the agreements and covenants contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and ARP agree as follows:

II. AGREEMENT

1. Terms of License. While this License Agreement is in effect:

- a) ARP shall have the exclusive right to mine, produce, store and remove aggregate materials from the License Location. ARP shall mine no closer than 5 (five) feet above groundwater level as shown on Exhibit B.
- b) ARP shall not use the License Location for any other purpose without the written

consent of the City.

- c) City shall have the right to construct a railroad spur and loop across the License Location in the approximate area depicted on Exhibit C.
 - d) The City shall not use the License Location, nor grant any other party the right to use the License Location, for any other purpose without the express written consent of ARP.
 - e) ARP and the City shall coordinate the timing of construction of the railroad spur and loop, and the timing and location of ARP's mining, storage and production activities so as to maximize the mining resource located on the License Location, the economic recovery of the resource by ARP, and to facilitate the most efficient and cost effective construction possible of the railroad spur and loop.
 - f) In the event City does not construct the railroad spur and loop at the License Location, ARP shall still have the exclusive right to mine, produce, store and remove aggregate materials from the License Location in accordance with the terms of this Agreement, and City will not develop or engage in the construction of any building or improvement on the License Location (other than the railroad spur and loop) without the express written consent of ARP.
2. Duration of License. This License Agreement shall be in effect from the date of closing of the purchase and sale and cancellation of option transactions contemplated by the Purchase and Option Cancellation Agreement, and shall continue in effect for a period of five (5) years, or until ARP gives notice to the City of its intent to cease mining operations and thereafter completes its reclamation obligations, whichever occurs first.
- a) City shall give ARP written notice when construction on the proposed rail loop is imminent. Once construction of the rail loop commences, ARP has an option for up to two (2) years to extract the aggregate from within the rail loop. Further, once construction of the rail loop commences, ARP cannot store material within the rail loop area, and shall be required to reclaim the ground after gravel removal in order to level the ground for use.
 - b) Once the rail loop is constructed and is operational, ARP shall schedule any resource recovery operations that need to take place inside the loop area during the months of December through April. If, after loop operations have begun, ARP has a need to conduct resource recovery operations outside of this anticipated resource removal season (December - April), ARP shall coordinate and schedule such use and access with the City and the rail loop operator(s) in such a manner so as to minimize any potential disruption of the rail loop and ARP's operations.

3. Reclamation Plan. ARP has previously permitted and filed a Reclamation Plan covering the real property described in Exhibits A and B. The Reclamation Plan delineates the condition in which the parcels described in Exhibits A and B shall be left by ARP after removal of the aggregate. The City, at its election, may excavate the Railroad Loop property depicted on Exhibit C. If the City chooses to do so, ARP shall be entitled to remove the aggregate produced by the City's excavation from the Railroad Loop area, and any reclamation of the Railroad Loop area shall be the responsibility of the City. In the event ARP excavates the Railroad Loop area, the City shall identify the precise boundaries for excavation and notify ARP by written notice. ARP shall be responsible for actual excavation, and for returning the property to the condition required by any reclamation plan agreed to between the City and ARP, and/or required by any local or state agencies. The City shall be responsible for any permitting obligations related to its use of the License Location. ARP will provide the City a copy of the Reclamation Plan already provided to Washington Department of Natural Resources.
- a) Based upon the City's development plans for the License Location, the City may direct ARP to deposit topsoil in certain areas, and to deposit other types of fill materials in other areas. ARP shall cooperate with the City in the manner of the restoration of the overburden and fill to the extent the City's directions are consistent with the Reclamation Plan previously developed for Parcels A and B, and any future reclamation plan developed for the Railroad Loop area, and provided that such directions do not materially increase the cost to ARP to restore and reclaim the License Location.
 - b) To the extent reasonably practicable, any topsoil or overburden which is removed shall be stored on-site or in the most operationally-practical location as determined by ARP.
4. Aggregate Storage. ARP may also use the License Location for storage of aggregate removed from the License Location so long as such use does not interfere with the City's use of the Property. The term "aggregate" shall include all rock, sand or other materials mined from the License Location for use, storage, removal or resale by ARP. This term shall not include any top soil or overburden which is removed, but remains on the Property for eventual reuse for reclamation of the Property.
5. Access to License Location. At all times during the term of this Agreement, ARP shall have adequate access to the License Location to allow ARP to conduct the activities contemplated by this Agreement in an economical and efficient manner. This shall include access over any railroad spur that may ultimately be constructed on the License Location.
6. Inspections. The City shall have the right enter the License Location at any time to inspect the License Location to ensure that ARP is performing in accordance with the provisions of this Agreement. The City shall notify ARP of its intent to inspect,

and shall conduct any such inspections at reasonable times so as not to disrupt ARP's operations.

7. Maintenance of the License Location. ARP shall at all times maintain the areas it is actively using within the License Location, including storage areas, free from waste and debris related to its operations and use of the property. ARP shall have no duty to maintain areas used by the City or other invitees of the City.

8. Indemnification/Hold Harmless.

- a) Indemnification/Hold Harmless of City by ARP. ARP shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Licensee's, or its contractor's or subcontractor's, use of the Premises, or from any activity, work or thing done, permitted, or suffered by the Licensee in or about the Premises, to the extent such injury or damage shall have been caused by the negligence or intentional conduct of Licensee or any of its employees or agents.

It is further specifically and expressly understood that the indemnification provided herein constitutes ARP's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and does not include or extend to any claim by ARP's employees directly against ARP. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- b) Indemnification/Hold Harmless of ARP by City. The City shall defend, indemnify and hold harmless ARP, its officers, directors, employees and agents from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the City's, or its contractor's or subcontractor's, use of the Premises, or from any activity, work or thing done, permitted, or suffered by the City in or about the Premises, to the extent such injury or damage shall have been caused by the negligence or intentional conduct of the City or any of its employees or agents.

It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and does not include or extend to any claim by the City's employees directly against the City. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance. ARP shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may

arise from or in connection with the performance of the work hereunder by ARP, their agents, representatives, employees or subcontractors.

- a) No Limitation. ARP's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of ARP to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- b) Minimum Scope of Insurance. ARP shall obtain insurance of the types described below:
 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. There shall be no endorsement or modification of the Commercial General Liability Insurance for liability arising from explosion, collapse or underground property damage.
 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- c) Minimum Amounts of Insurance. ARP shall maintain the following insurance limits:
 1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
- d) Other Insurance Provision. ARP's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of ARP's insurance, and shall not contribute with it.

- e) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
 - f) Verification of Coverage. ARP shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of ARP before commencement of the work.
 - g) Subcontractors. ARP shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.
 - h) Notice of Cancellation. Within two (2) business days of receipt of such notice, ARP shall provide the City and all additional insureds for this work with written notice of any policy cancellation.
 - i) Failure to Maintain Insurance. Failure on the part of ARP to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to ARP to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.
10. Taxes, License and Permits. ARP agrees to pay for all labor, employee benefits, materials, equipment, and tools necessary for the performance of its work at the License Location, and to obtain all applicable state and local licenses and permits necessary for the performance of said activities. ARP shall pay all state and local taxes which may become due and payable as a result of ARP's use or occupation of the License Location, which may be due and payable as a result of ARP's mining, processing, removal, storage or sale of materials removed from the License Location. ARP accepts the full and exclusive liability for payment of all such costs and expenses, and shall hold the City harmless from any liens, claims, judgments, expenses or costs, including attorney's fees, arising from a claim for the payment of such costs and expenses. The City shall be liable for all real estate property taxes and assessments for the License Location, if any.
11. Protection of Property from Construction Liens. ARP shall not permit any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work performed by or for ARP to be enforced against the Property, however it may arise. ARP may withhold payment of any claim in connection with a good faith dispute over an obligation to pay, so long as City's Property interests are not jeopardized.
12. Default. In the event of any default by ARP or City under this Agreement, the non-defaulting party shall give the defaulting party written notice of default.

- a) If the default creates an imminent danger of injury to persons or property, the defaulting party shall promptly undertake to cure the default, and shall have cured the default within three (3) days of the receipt of the notice of default.
 - b) Other defaults shall be cured within thirty (30) days of the receipt of the notice of default. In the event the nature of the default is such that it cannot be cured within thirty (30) days, the defaulting party shall submit a plan to the non-defaulting party for curing the deficiencies within the same thirty (30) day period, and if accepted by the non-defaulting party, the defaulting party will thereafter have a reasonable amount of time consistent with the plan to cure the default.
 - c) If the non-defaulting party fails to cure a default (or otherwise submit an acceptable plan for doing so) within the time provided, then the non-defaulting party shall have all remedies available to it at law and equity, including but not limited to, termination of this Agreement and the right to seek damages therefrom. Notwithstanding the foregoing, the termination of this Agreement shall not terminate ARP's obligation to restore any of the property in accordance with any filed Reclamation Plan.
13. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:
- | | |
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| <p>TO ARP:</p> <p>American Rock Products
Attn: Michael D. McKinney
4418 E. 8th Avenue
Spokane Valley, WA 99212
Phone: (509) 533-1683
Fax: (509) 533-1644</p> | <p>TO THE CITY:</p> <p>City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509)942-7583
FAX: (509)942-5666</p> |
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- Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.
14. Assignment. ARP may assign this Agreement to a wholly-owned subsidiary of Eucon Corporation without the prior written consent of the City. No other assignments of this Agreement shall be made without the written consent of City, which shall be made or denied in its sole discretion. No assignment shall relieve ARP of its obligations under this Agreement.

15. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral. Neither party shall be liable to the other for any representations made by any person concerning the Premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by the parties or their lawful successors and assigns subsequent to the date hereof.
16. Governing Law/Forum Selection. Unless otherwise controlled by federal law, the interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement. User expressly agrees to submit to personal jurisdiction in Benton County Superior Court.
17. Attorney's Fees. In any action arising under this Agreement, the prevailing party shall be entitled to recover all costs incurred in such action including reasonable attorney fees. For the purposes of this paragraph, an arbitration or administrative hearing shall be considered an action.
18. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected.

IN WITNESS WHEREOF, the parties have entered into this Agreement the day and year first above written.

CITY OF RICHLAND

AMERICAN ROCK PRODUCTS

By: Cynthia D. Johnson
Its: City Manager

By: _____
Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing License Agreement for Mining and Removal of Aggregate and acknowledged that the said instrument is 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 were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing License Agreement for Mining and Removal of Aggregate, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ____ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of
Washington, residing at: _____
My commission expires: _____