



November 8, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Re: GNP Rly, Inc. Petition for Exemption, STB Finance Docket No. 35407;
GNP Rly, Inc. Petition to Vacate NITU or Abandonment, STB Docket Nos. AB-6
(Sub. No. 463X) and AB-6 (Sub. No. 465X)**

The City of Redmond's Comments in Opposition

Dear Ms. Brown:

Please find enclosed the original and 10 copies each of a Public Version and a Confidential Version of the City of Redmond's Comments in Opposition to GNP Railway, Inc.'s Petition for Exemption and Petitions to Vacate Notices of Interim Trail Use filed in the above-captioned dockets. Redmond is filing two versions of its Comments because the information contained in one of the exhibits—Exhibit D—is the subject of a motion for protective order filed by King County in which Redmond joins.

Because of the volume of the exhibits associated with these Comments, we are not duplicating the entire set of exhibits and verified statements for filing along with the Confidential Version. Instead, we have provided the original and 10 copies of the Public Version of the supporting exhibits and statements and the original and 10 copies of the one confidential exhibit. Also enclosed are two compact discs. One contains the Public Version of both the Comments and the supporting exhibits and verified statements. The other contains the Confidential Version of those documents.

We are providing a copy of both the Public and the Confidential Version to counsel for GNP Rly Inc. at this time, and will provide the Confidential Version to other parties upon the issuance by

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Seattle, Washington 98101
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Cynthia Brown
November 8, 2010
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this Board of a protective order in this proceeding. All other parties are receiving only the Public Version at this time.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Matthew Cohen
Counsel for City of Redmond, Washington

**Case Title: GNP RLY, INC.--ACQUISITION AND OPERATION
EXEMPTION--REDMOND SPUR AND WOODINVILLE SUBDIVISION
Docket No. 35407 and
STB Docket Nos. AB-6 (Sub No. 463X and Sub No. 465X)
CERTIFICATE OF SERVICE**

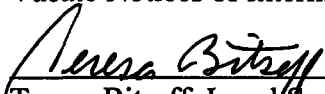
I hereby certify that I am providing a copy of the Public Version and the Confidential Version of The City of Redmond's Comments in Opposition to GNP Railway Petitions for Exemption and to Vacate Notices of Interim Trail Use – with Exhibits and Statements – upon John Heffner, counsel for GNP Rly. Inc.

And a copy of the Public Version of The City of Redmond's Comments in Opposition to GNP Railway Petitions for Exemption and to Vacate Notices of Interim Trail Use (hard copy) – with Exhibits and Statements (CD) – upon all parties of record set forth below.

<u>Filed By</u>	<u>Address</u>	<u>Email</u>	<u>Filed For</u>
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13 Karl Morell	Ball Janik LLP 1455 F Street NW, Suite 225 Washington, DC 20005 Tele: 202-638-3307 Fax: 202-783-6947	kmorell@bjllp.com	BNSF Railway Co
14 Jordan Wagner	401 S Jackson St. Seattle, WA 98104	jordan.wagner@soundtransit.org	Sound Transit

I certify that I have this day sent by Express Mail to the STB an original and 10 copies (Confidential Version Filed Under Seal) and an original and 10 copies (Public Version) of The City of Redmond's Comments in Opposition to GNP Railway Petitions for Exemption and to Vacate Notices of Interim Trail Use – with Exhibits and Statements.



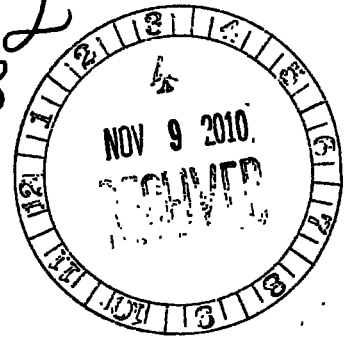
 Teresa Bitseff, Legal Secretary

STOEL RIVES LLP

Dated: Monday, November 08, 2010

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**THE CITY OF REDMOND'S
COMMENTS IN OPPOSITION TO GNP RAILWAY PETITIONS FOR EXEMPTION
AND TO VACATE NOTICES OF INTERIM TRAIL USE**

EXHIBITS AND VERIFIED STATEMENTS

PUBLIC VERSION

**ENTERED
Office of Proceedings**

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ORIGINAL

EXHIBITS

Exhibit A	Map of Woodinville Subdivision
Exhibit B	Map of Redmond Spur
Exhibit C	Letter of July 7, 2008 from Thomas Payne to John Creighton
Exhibit D	GNP Rly. Inc. and Ballard Terminal Railroad Company LLC, Proposal for Third Party Operator for the Woodinville Subdivision
Exhibit E	Railroad Right of Way License Agreement between Port of Seattle and GNP Rly, Inc.
Exhibit F	Letter of November 25, 2009 from Thomas Payne to Dan Thomas and Joe McWilliams
Exhibit G	Letter of December 9, 2009 from Thomas Payne to Craig Watson and Joe McWilliams
Exhibit H	Letter of December 10, 2009 from Joe McWilliams to Thomas Payne
Exhibit I	Transcript of Scott McDonald's Deposition Testimony
Exhibit J	Building Permit Letter and Conditions from Redmond to UniSea dated Sept. 11, 1989
Exhibit K	Aerial Map of Building Specialties
Exhibit L	Real Estate Purchase and Sale Agreement between the Port of Seattle and the City of Redmond
Exhibit M	Memorandum of Understanding Regarding Acquisition of the Woodinville Subdivision
Exhibit N	Transcript of March 30, 2010 Redmond City Council Study Session
Exhibit O	Letter of May 19, 2010 from Doug Engle to Carolyn Hope
Exhibit P	Email of June 3, 2010 from Doug Engle to Carolyn Hope
Exhibit Q	Transcript of Randy Mann's Deposition Testimony
Exhibit R	Aerial Map of UniSea, Inc.
Exhibit S	Aerial Map of Steeler, Inc.
Exhibit T	Aerial Map of Building Specialties Neighboring Properties
Exhibit U	GNP Power Point Slide Presentation dated May 11, 2010
Statements	Verified Statement of Carolyn Hope
Statements	Verified Statement of Hunter Ferguson

Exhibit A

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



Woodinville Subdivision

(From north Renton to Snohomish)

Date: 10/5/10



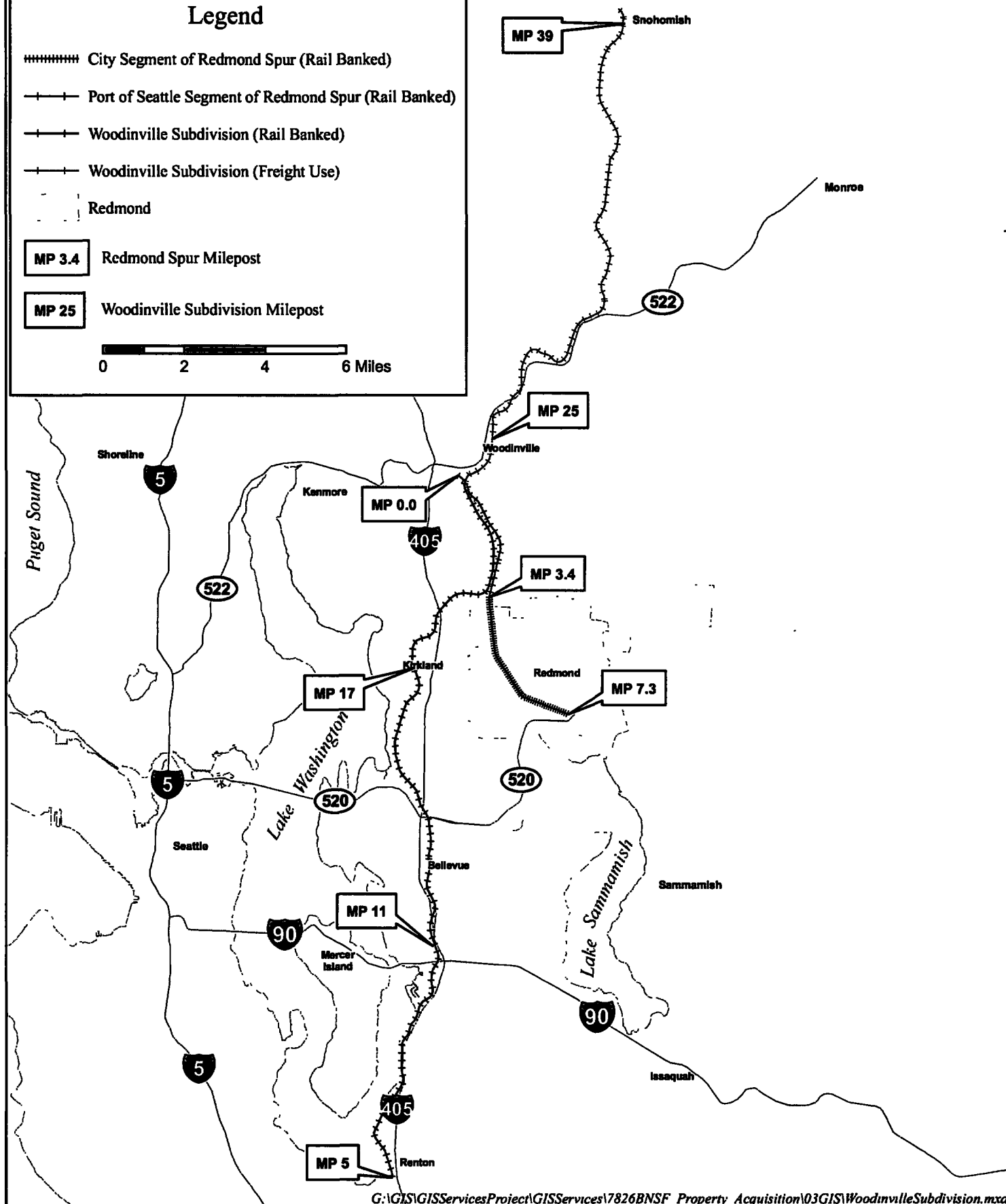
Legend

- City Segment of Redmond Spur (Rail Banked)
- Port of Seattle Segment of Redmond Spur (Rail Banked)
- Woodinville Subdivision (Rail Banked)
- Woodinville Subdivision (Freight Use)
- Redmond

MP 3.4 Redmond Spur Milepost

MP 25 Woodinville Subdivision Milepost

0 2 4 6 Miles



G:\GIS\GISServicesProject\GISServices\7826BNSF_Property_Acquisition\03GIS\WoodinvilleSubdivision.mxd

Disclaimer: This map is created and maintained by the GIS Division, Finance & Information Services Department, of the City of Redmond, Washington, for reference purposes only. The City makes no guarantee as to the accuracy or completeness of the features shown on this map.

Exhibit B

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



Redmond Spur

Date: 10/18/10

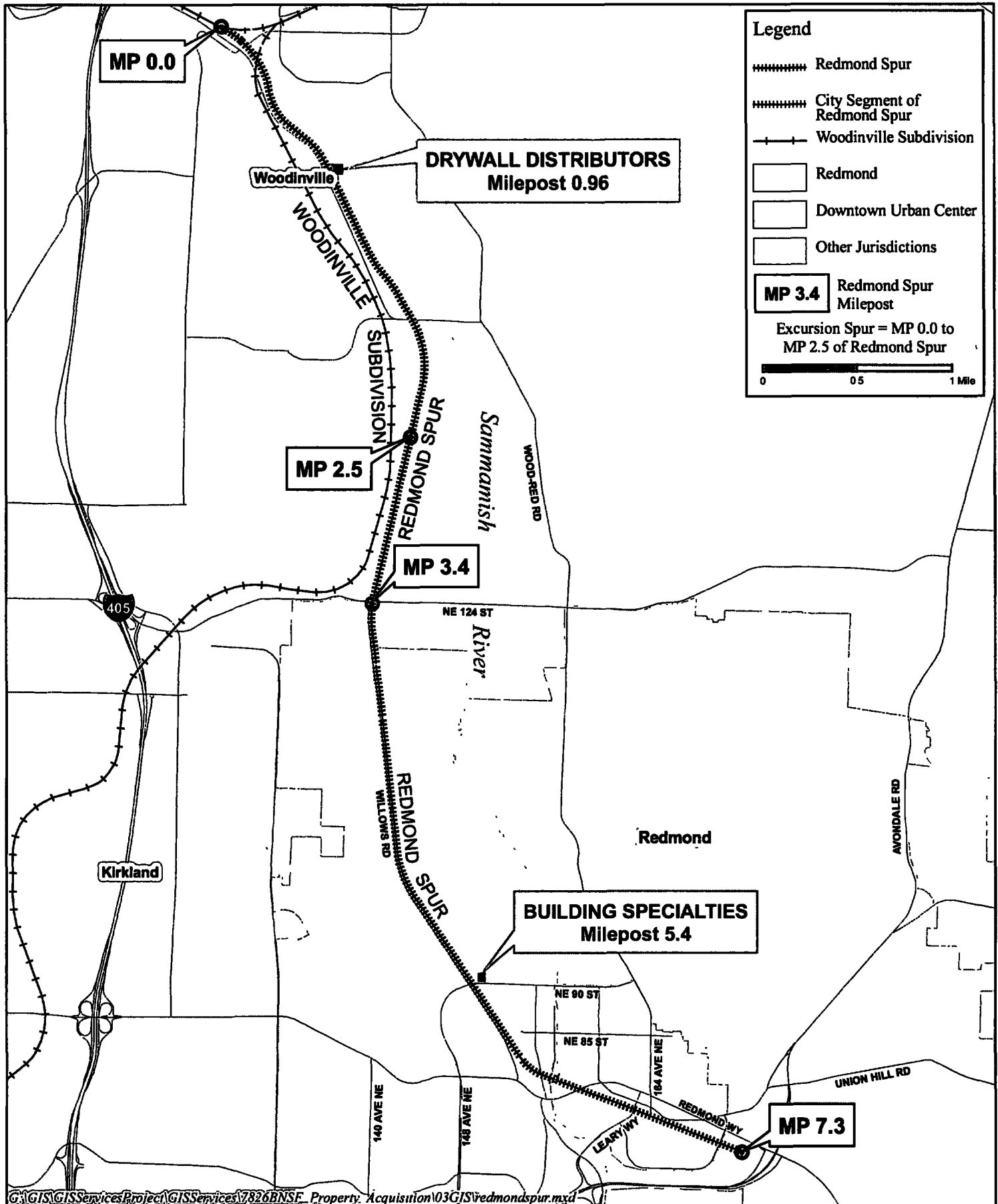


Exhibit C

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

GNP RLY. INC.
403 GARFIELD STREET, #20
TACOMA, WA. 98444

7 July 2008

Mr. John Creighton
President
Seattle Port Commission
Pier 69, 2711 Alaskan Way
Seattle, Washington 98121

Dear Mr. Creighton;

Please accept our congratulations on completing your filing with the STB, which was docketed on June 4, 2008. It is our understanding that the processing time of those filings is approximately 120 days, which would indicate that the file should be completed by mid October of this year.

We were earlier advised by BNSF (and yourselves) that the selection of a freight operator would be made soon after the STB filing in a timely manner in order to ensure that a third party operator freight operator was ready to resume common carrier responsibility for the line as of the date of closing.

To prepare for that eventuality, GNP has made several preparations:

- We will be filing, this week, for our certificate of public convenience and necessity.
- We have completed arrangements with the Ballard Terminal Railroad Company LLC to mutually cooperate with each other to provide the Port with satisfactory freight services as locally based service providers.
- We have completed inquiries with respect to supply of equipment; all required equipment is available to us on reasonable notice from CEECO.
- We have written to Boise Cascade to commence discussions to determine their needs and requirements as a shipper, and we are pleased to advise that our service design and operating concept is compatible with their desires. They have communicated with BNSF to advise that we have made enquiry of Boise, and that they are having conversations with us.
- Insurance cover has been located in satisfactory amounts.
- We are continually meeting and discussing planning and policy issues with various public authorities.

We have reviewed your filings and are familiar with the provisions of the proposed contract for freight operations and maintenance; we note with interest that the contract provides for the Port, in company with BNSF, to select an operator for various types of service including commuter service. The proposed structure of that agreement is generally satisfactory, however, in our view, some of the proposed clauses would unreasonably restrict the earning capacity of the line for freight as well as other services.

...2/

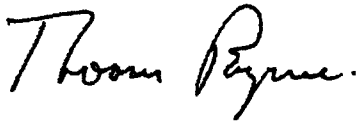
Creighton

Page: 2

Needless to say, there are many practical issues that have to be completed prior to operations on the line, which, in the absence of the selection of an operator by the Port and BNSF, are difficult to conclude. Ballard, Boise, and ourselves wish to immediately commence discussions with you and BNSF on a detailed basis to provide the requisite third party operator services which meets the needs and requirements of all of the parties as soon as possible.

We look forward to our discussion with you tomorrow. I remain,

Yours truly,

A handwritten signature in black ink, appearing to read "Thomas Payne". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Thomas Payne
Chairman and Chief Operating Officer

Cc: Byron Cole, Ballard Terminal Railroad
Chuck Bromley, Boise Cascade

Exhibit D

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

Exhibit E

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

**RAILROAD RIGHT OF WAY LICENSE
BETWEEN
PORT OF SEATTLE
AND
GNP RLY. INC.**

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RAILROAD RIGHT OF WAY LICENSE

THIS RAILROAD RIGHT OF WAY LICENSE ("License") is entered into as of the 18 day of ~~DECEMBER~~ NOVEMBER, 2009 ("Execution Date"), between the Port of Seattle, a Washington municipal corporation ("Port") and GNP Rly. Inc., a Washington corporation ("TPO").

RECITALS

A. Pursuant to the Purchase and Sale Agreement and the Donation Agreement between Port and BNSF Railway Company, a Delaware corporation ("BNSF"), both dated as of May 12, 2008 (together, the "Acquisition Agreements") Port acquired BNSF's right, title and interest in BNSF's railroad right of way (i) from milepost 5.0 in Renton, Washington to and including the railroad bridge at milepost 38.25 in Snohomish County, Washington, and (ii) from milepost 0.0 in Woodinville south to milepost 7.3 in Redmond (the "Redmond Spur") (together, the "Port Property").

B. Port and TPO have entered into an Operations and Maintenance Agreement ("O&M Agreement") setting forth their respective rights and obligations with respect to Freight Rail Service, Excursion Rail Service, and maintenance on portions of the Woodinville Subdivision from milepost 23.8 in Woodinville, King County, Washington north to milepost 38.25 in Snohomish, Snohomish County, Washington ("Corridor"), as described in Exhibit A attached hereto and incorporated herein.

C. TPO also desires the right to use and operate the Excursion Spur, a portion of the Woodinville Subdivision and further described below, for Excursion Rail Service (as defined in Section 1.6 below).

D. Upon acquisition of the Corridor by the Port, the Excursion Spur, along with the railroad right of way (i) from milepost 5.0 in Renton, Washington to milepost 23.8 in Woodinville, Washington, and (ii) within the Redmond Spur, was "railbanked." King County ("County") was approved as an Interim Trail User by the Surface Transportation Board ("STB") for the purpose of railbanking, and County is accordingly subject to certain legal obligations related to the Excursion Spur, which are referred to herein as the "Railbanking Obligations." The Railbanking Obligations consist of those obligations imposed through Section 8(d) of the National Trails System Act, also known as the Rails-to-Trails Act, 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29 (collectively, and as any of the foregoing may hereafter be amended or interpreted by binding judicial or administrative authority, the "Railbanking Legislation"), the Notice of Interim Trail Use ("NITU") related to the Excursion Spur issued by the STB and any conditions or requirements imposed related thereto; the Trail Use Agreement ("TUA") entered into between BNSF and County related to the Excursion Spur under which County agreed to accept, exercise, and fulfill all of the legal rights, duties, and obligations of an Interim Trail User, and the Statement of Willingness to Accept Financial Responsibility ("SWAFR"). To carry out the Railbanking Obligations, County has been granted by the Port a Public Multipurpose Easement dated 12/18/09 and recorded under recorded number 20091218001538 under which County acquired certain rights on the Excursion Spur and the other portions of the Corridor

subject to railbanking, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

E. Port is willing to grant TPO the right to use and operate the Excursion Spur in the manner described in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this License and other good-and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Section 1. Definitions.

1.1 Additions and Alterations - Means any improvements constructed by or on behalf of either party on the Excursion Spur after the Execution Date, including, without limitation, additions, alterations and betterments of any Facilities, and any construction, reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

1.2 Automatic Warning Devices - Means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry.

1.3 Corridor is defined in Recital B.

1.4 Environmental Law - Means any and all applicable laws, statutes, regulations, enforceable requirements, orders, decrees, judgments, injunctions, permits, approvals, authorizations, license, permissions or binding agreements issued, promulgated or entered into by any governmental agency having jurisdiction over the environmental condition of the Excursion Spur, relating to the environment, to preservation or reclamation of natural resources, or to the management, release or threatened release of contaminants or noxious odors, including, without limitation, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1990, the Toxic Substances Control Act of 1976, and any similar or implementing state law, and all amendment or regulations promulgated thereunder.

1.5 Excluded Conduct - Is defined in Section 8.4.

1.6 Excursion Rail Service - Means the deployment and operation of trains using the facilities for excursion passenger service and not for commuter rail passenger service or any other service, except for head and tail operations as referred to Section 1.11.

1.7 Excursion Spur - Means that portion of the Redmond Spur from milepost 0.0 in Woodinville south to milepost 2.5 in Woodinville, Washington.

1.8 Execution Date - Means the date on which this License is executed and becomes effective.

1.9 Facilities - Means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, Automatic Warning Devices, traction power substations, overhead catenary systems, bumpers, roadbed, embankments, bridges, trestles, culverts, buildings and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing.

1.10 FRA - Means the Federal Railroad Administration.

1.11 Freight Rail Service - Means only (a) the common carrier freight rail operations conducted by TPO or TPO's tenants or assignees on the Corridor and (b) the head and tail operations associated therewith and conducted on the Excursion Spur in accordance with this License, and no other freight service.

1.12 Hazardous Materials - Means any material or substance: (a) the presence of which requires investigation or remediation under any Environmental Law; or (b) which is defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any Environmental Law; or (c) the presence of which on, under or over adjacent properties constitutes a trespass by the owners of the Excursion Spur and poses a hazard to the health or safety of persons on adjacent properties; or (d) the presence of which on, under, or over the Excursion Spur causes a nuisance on adjacent properties and poses a hazard to the health or safety of persons on adjacent properties.

1.13 Invoice - Is defined in Section 10.1.

1.14 Loss or Losses - Means all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expense (including, without limitation, costs of investigation, defense, expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death or injury to persons, including, without limitation, employees or tenants of the parties, or damage to or destruction of property, including, without limitation, property owned by either of the parties or their tenants, in connection with Excursion Rail Service on the Excursion Spur.

1.15 Multipurpose Easement - Means that certain easement between Port and King County, a home rule charter county and political subdivision of the State of Washington ("County") pursuant to which the County acquired certain rights on those portions of the Woodinville Subdivision from (i) milepost 23.8 in Woodinville south to milepost 5.0 in Renton, and (ii) the

Redmond Spur, including the right to develop, construct and operate a recreational trail consistent with rail or other transportation uses thereon.

1.16 O&M Agreement - Has the meaning set forth in Recital B.

1.17 Port Property - Means the rights-of-way acquired by Port from BNSF under the Deed that are subject to TPO's rights under this Agreement; provided, that if Port transfers individual parcel(s) to third parties not affiliated with Port, and the transferred parcel(s) do not remain subject to this Agreement as provided in Section 13.8, such individual parcel(s) shall not be deemed "Port Property."

1.18 Track - Means any and all main track, sidings, yards, spurs and other track constructed or to be constructed upon and across the Excursion Spur.

Section 2. TPO's Rights and Obligations.

2.1 Subject to transportation uses permitted or performed by the Port as provided in Section 3, TPO shall have the exclusive right and obligation to provide, by itself and/or by or through any entity designated by TPO, Excursion Rail Service on and over the Excursion Spur.

2.2 TPO shall have the exclusive authority to manage, direct and control all activities related to the provision of Excursion Rail Service on the Excursion Spur, including, without limitation, the operation of all trains, locomotives, rail cars and rail equipment, and the movement and speed of the same on the Excursion Spur; provided, that TPO shall not transport or store on the Excursion Spur or on Port Property any toxic inhalation hazards ("TIHs") or poison inhalation hazards ("PIHs"). *Notwithstanding* the foregoing, TPO is prohibited from using the Excursion Spur at any time for the purpose of setting out or picking up rail cars.

2.3 TPO shall employ and discharge all personnel required to perform TPO's Excursion Rail Service, shall comply with all governmental laws, rules, regulations and orders applicable to TPO's Excursion Rail Service, and shall pay all real property taxes separately levied on TPO's rights under this License and for all utilities consumed by TPO in carrying out TPO's Excursion Rail Service. All improvements, equipment and materials required for TPO's Excursion Rail Service shall be provided by TPO at the sole cost and expense of entities other than Port except as provided in this License.

2.4 Subject to the rights of and coordination with the Port and those entities that the Port may authorize to provide transportation uses on the Excursion Spur pursuant to Section 3 and with County with regard to any then current or future trail use, and solely at the expense of entities other than the Port, TPO may modify, construct, maintain, replace and remove the Tracks upon and across the Excursion Spur as may be necessary in order to operate in accordance with this License, provided that TPO may not change the location of the Tracks.

a) In the event that construction of any Tracks requires the construction of new Facilities, or modifications to, existing Facilities, such construction or modifications shall be at the expense of entities other than Port.

b) The design, construction, modification or removal of any Tracks and any new, or modified Facilities necessitated thereby, shall not unreasonably interfere with the rights the Port may exercise or grant under Section 3.1 and 3.2 of this License and that the County may exercise with regard to any then current or future trail use, shall result in the location of any modified Facilities being unchanged and the condition of any modified Facilities being of equal or better condition and functionality than such Facilities were prior to the modification, and shall be subject to Port's prior review and written approval.

2.5 TPO acknowledges and agrees that the County is the grantee under the Multipurpose Easement and that this license is subject to and incorporates herein by this reference the terms of the Multipurpose Easement as set forth in Section 1.4 of that Easement. In the event that County acquires from Port additional rights, title and interests in the Excursion Spur, the incorporated terms of the Multipurpose Easement shall survive the expiration or extinguishment of the Multipurpose Easement through the doctrine of merger, provided that (a) if no "Trail Area" has been established under the Multipurpose Easement, then County may designate a Trail Area of sufficient size to accommodate a regional trail under generally applicable trail development standards as described in Section 2.1.1 of the Multipurpose Easement and provided further that (b) TPO shall be the beneficiary of the rights of "TPO" under such Multipurpose Easement that affect the Transportation Use and that apply to TPO's rights and responsibilities under this License. TPO agrees that it shall, at all times, cooperate fully with the County to accommodate any trail uses on the Excursion Spur adjacent to the Excursion Spur Facilities, and shall comply with all Railbanking Obligations.

2.6 TPO or its designee shall have the right to use existing Tracks in the Excursion Spur for performing Excursion Rail Service as described in this Section.

2.7 TPO acknowledges and agrees that, consistent with Section 3, the Port may itself perform or grant rights to or enter into agreements with one or more third parties for certain non-freight; passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License, that are not inconsistent with TPO's rights under this License. TPO shall cooperate with those parties authorized by the Port to ensure the accommodation of such passenger transportation uses on the Excursion Spur.

2.8 In addition to all other rights granted to TPO under this License, TPO shall have the right to utilize the Excursion Spur between milepost 0.0 in Woodinville and milepost 1.0 for all head and tail operations necessary for TPO's Rail Freight Service under the O & M Agreement, but shall have no right to operate other common carrier or contract freight rail service on the Excursion Spur.

Section 3. Port's Rights and Obligations.

3.1 Port shall have the right to use the Excursion Spur and to grant easements, licenses or permits affecting the Excursion Spur as long as such use, easements, licensees or permits do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License. TPO shall cooperate with any entity granted such easements, licenses or permits to ensure accommodation of the uses authorized by such easements, licenses or permits so long as such uses do not unreasonably interfere with or

create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.2 Port shall have the right to itself provide or grant rights to or contract with third parties for certain non-freight, passenger transportation uses on the Excursion Spur (e.g., commuter rail service or other public transportation) during the Term of this License so long as such uses do not unreasonably interfere with or create safety hazards for TPO's continuous and uninterrupted use of the Excursion Spur under the terms of this License.

3.3 Port, at Port's election, may perform a semi-annual joint inspection of the Excursion Spur by representatives of the Port upon reasonable advance notice for the first two (2) years, and annual joint inspections thereafter. Appropriate representatives from both Port and the TPO shall participate in and cooperate with the joint inspection(s) via hi-rail or other suitable means of railroad track inspection. The Port may perform more frequent inspections of the Excursion Spur, at its election, at any time during the term of this License so long as the following conditions are met: (1) Port provides advance notice to TPO in accordance with Section 7.5; (2) Port complies with all reasonable safety requirements of the TPO or as required by law applicable to the Excursion Spur; (3) Port obtains the appropriate authorizations from TPO to be on the designated portions of the Excursion Spur; (4) TPO will be allowed to participate in any inspection; and (5) the inspections are planned and coordinated with TPO to minimize any interference with TPO's operations on the Excursion Spur. The Port may request, at its sole discretion, that the inspections be performed by an authorized FRA inspector, whose findings shall be binding on the Port and the TPO.

3.4 In the event the TPO fails to or is unable to perform any work it is required to perform under this License, the Port may perform such work. Any such work by Port shall be performed in accordance with TPO's schedule and design, and the reasonable documented out-of-pocket cost thereof shall be reimbursed by TPO to Port in accordance with Section 10.1.

Section 4. Maintenance, Repair and Replacement Obligations.

4.1 General Maintenance, Repair and Replacement Obligations.

a) Except as otherwise provided in this License, TPO shall provide general maintenance and maintenance of way services, including without limitation, inspection, maintenance, repair, installation, alteration and replacement (as necessary) of all Tracks and Facilities, including without limitation, Automatic Warning Devices and grade crossings (including embankments, crossing panels or planking, pavement and curbing) to the extent the same are subject to governmental requirements in connection with grade crossings, located within the Port Property, including the Excursion Spur, in accordance with all applicable laws, rules and regulations, and in a condition reasonably suitable for TPO's intended use of the Excursion Spur.

b) Notwithstanding the provisions of subparagraph (a) above, any damage to or destruction of Facilities caused by a party or its employees, contractors, invitees or licensees shall be repaired or replaced at the sole cost of such party.

c) The TPO shall allow the Port to conduct inspections of the Excursion Spur as provided in Section 3.3.

4.2 Remedies.

a) In the event that TPO, as the responsible party for maintenance, repair and replacement of any item, fails to perform its maintenance obligations under this License, and such failure results in an imminent and substantial danger to human health or safety or to property, Port shall promptly notify TPO and the FRA. If TPO fails to perform its maintenance obligations, Port may perform such obligations immediately upon notifying TPO by telephone at the number set forth below. Port shall be entitled to full reimbursement from TPO within thirty (30) days after submission of a written Invoice therefor.

b) In the event that TPO or Port discovers, or receives notice of, any malfunction of, or damage to, Automatic Warning Devices, the discovering party shall promptly notify the other party by telephone at the telephone number set forth below, and TPO shall follow its usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Port Duty Officer Telephone No.: _____

TPO Duty Officer Telephone No.: _____

4.3 Grade Crossing Reconstruction - The parties acknowledge that certain maintenance procedures may cause an increase in the surface elevation of grade crossings, and that TPO may, from time to time, need to perform additional maintenance or reconstruction work in order to prevent unsafe elevation differentials between the tracks used by TPO and other tracks. TPO will be responsible for any such maintenance and reconstruction work of any such grade crossings.

Section 5. Construction of Additions and Alterations.

5.1 Design and Construction Standards - The design and construction of any Additions and Alterations on the Excursion Spur shall comply with all applicable laws, rules and regulations. The party constructing Additions and Alterations shall follow customary safety procedures in accordance with good practice in the railroad industry and with applicable laws, rules and regulations and shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to unreasonably interfere with, delay or endanger the equipment, Facilities or other facilities of the other party.

5.2 Design Review - In the course of designing Additions and Alterations, the constructing party shall reasonably notify and consult with the other party with respect to the design and construction of the Additions and Alterations. If requested by the other party, the constructing party shall deliver to the other party for review and comment copies of each set of plans for Additions and Alterations during the planning and design process. The other party shall notify the constructing party in writing within fifteen (15) days after its receipt of the plans as to whether it wishes to comment on the plans. If so, then the other party shall have the right to provide the constructing party, within thirty (30) days after the other party's receipt of any such

set of plans, written comments and suggestions regarding such plans. If the other party timely disapproves such plans, the parties shall meet within fifteen (15) days after disapproval to negotiate in good faith to develop plans acceptable to both. If the parties are unable to agree upon changes to the plans, either party may submit the matter to arbitration pursuant to Section 12. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other party for review to ensure the incorporation of all agreed-upon changes to the plans.

5.3 Grade Separation Projects - In the event of a public grade separation project, TPO shall be solely responsible for any costs assessed thereunder. If TPO determines that a proposed grade separation project is desirable and is not feasible unless TPO contributes more than the costs that would be assessed to TPO under applicable laws, then Port agrees to consider in good faith the desirability of the proposed project and whether TPO's additional contribution should be reimbursed by Port; provided, however, that Port shall have no obligation to reimburse TPO for such additional contribution except to consider it in good faith as provided above.

Section 6. Execution Date and Term of the License.

6.1 The initial term of this License shall expire on the 10th anniversary of the Execution Date. So long as TPO is not in default with respect to a material term or condition of this License, TPO may elect to continue this License for one (1) additional renewal term of ten (10) years by giving Port written notice of such intent at least one (1) year prior to the expiration of the initial term. ("Term"). *Notwithstanding* the foregoing, this License shall terminate sixty (60) days after written notice by Port to TPO that TPO is in default with respect to a material term or condition of this License, which default has not been cured on or prior to such 60th day. In the event the O&M Agreement is terminated under Section 12.2 thereof but Excursion Rail Service is allowed to continue on the Corridor as authorized in Section 12.2, TPO may, with Port's written approval and so long as TPO is not in default under this License or the O & M Agreement, continue to provide Excursion Rail Service over the Excursion Spur.

6.2 TPO may terminate this License by giving Port not less than sixty (60) days' notice of termination. Upon such termination, TPO shall have no further right under this License to use the Excursion Spur.

6.3 TPO or its designee shall commence excursion passenger service as referred to in Section 1.6 of this License on the Excursion Spur no later than two years after the Execution Date. If TPO does not commence excursion passenger service by that time, or if TPO ceases excursion passenger service for more than two years, Port may terminate the right to provide excursion passenger service under this License by giving TPO not less than sixty (60) days notice of such termination. In such case, this License will be limited in scope to allow for only head and tail operations as referred to in Section 1.11.

Section 7. Reciprocal Access and Notice Rights.

7.1 Port and any entity to which it has granted rights in the Excursion Spur consistent with the terms of this license ("Port Grantees") may enter upon the Excursion Spur and/or use the Facilities located on the Excursion Spur, provided that the exercise of such rights by Port shall not unreasonably interfere with Excursion Rail Service of TPO or its designees.

7.2 Port may enter upon the Excursion Spur for the purposes set forth in Sections 3 and 4.

7.3 In the event the Port becomes aware of or is notified of an emergency of any kind, Port shall provide immediate notice of such events to TPO's duty officer at the contact number set forth in Section 4.2.(b).

7.4 Security personnel of either party in pursuit of a criminal suspect may enter upon the Excursion Spur for the purpose of apprehending the suspect.

7.5 Any entry by Port (or its contractors, invitees or licensees) or Port Grantees on any portion of the Excursion Spur within twenty feet (20') of the track center of the Excursion Spur shall, except for (a) scheduled commuter rail or other transit operations, (b) any use related to an existing or planned trail in the Excursion Spur, or emergencies when reasonable notice under the circumstances shall be given, be preceded by at least forty-eight (48) hours prior telephonic notice, and shall not enter upon the Excursion Spur until a valid work permit is issued by TPO and arrangements have been made for flagging.

7.6 Hazardous Materials may be brought by TPO onto the Excursion Spur only to the extent necessary for the operation of trains or when TPO is performing head and tail operations as authorized under Section 8 of this License, and in all events in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, TPO shall not transport, bring onto, or store on the Excursion Spur or Port Property any THIs or PHIs.

7.7 In the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials by TPO (including, without limitation, by explosion) on the Excursion Spur, TPO shall give Port prompt notice of such event, and at its sole cost and expense, clean or remediate the Excursion Spur to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, TPO shall promptly and fully pay such fine, penalty, cost or charge. TPO shall be responsible for any such leakage, spillage, release, discharge or disposal by any third party it admits to the Excursion Spur. TPO shall indemnify, protect, defend, and hold harmless Port, its trustees, directors, officers, employees, agents, contractors, parent corporations and subsidiaries from and against any and all liabilities or claims for all loss, damage, injury, and death arising as a result of any such leakage, spillage, release, discharge or disposal. The provisions of this Section are in addition to and not in limitation of the provisions of hereof, and shall survive the termination of this License.

Section 8. Liability.

8.1 Hazardous Materials and Environmental Liability

a) If the performance of this License creates any solid or Hazardous Materials (e.g., the removal of any materials from the trains that require disposal), said Hazardous Materials shall be properly disposed of in accordance with federal, state and local laws, at the expense of the TPO. In no event shall the Port be identified as the generator of the Hazardous Materials. The TPO shall notify the Port of any such Hazardous Materials and the Port shall receive a copy of the results of any tests conducted on the wastes. The TPO shall hold harmless, indemnify and defend the Port from any claims, costs, damages, fines or other penalties arising from the

disposal of any Hazardous Materials created by the performance of this License, regardless of the absence of negligence or other malfeasance by TPO. This provision shall survive the termination or expiration of this License.

b) At no time during the term of this License shall the TPO or its designee, without first obtaining the written consent of the Port, maintain, treat, dispose of, store or have on the Excursion Spur and/or Port Property, or permit any other party to have, maintain, treat, dispose of, or store on the Excursion Spur and/or Port Property, anything which is classified by federal, state or local laws as Hazardous Materials or which requires a permit for the storage, treatment, disposal, handling or maintenance of it from any government authority. This excludes (1) transport or storage of materials by or on rail for authorized head and tail operations as long as said transport or storage complies with all Environmental Laws, including the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, and Sections and of this License, and (2) petroleum products, lubricants, antifreeze and such other materials that may be normally consumed in the daily operations of a railroad. Any permits required in compliance with this provision and all federal, state or local laws shall be obtained at TPO's sole cost.

c) The TPO further agrees to indemnify and hold Port harmless from all costs, expenses, liabilities, demands, claims, causes of action at law or in equity whatsoever arising from its, or any of its contractors, agents or invitees', treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Excursion Spur and/or Port Property during the term of this License, including, but not limited to, the cost of clean-up, environmental damage assessments, defense and reasonable attorney's fees. The Port agrees to cooperate in the prosecution and collection of all costs, expenses, liabilities, demands, and claims, associated with any treatment, disposal, storage, maintenance or handling of any Hazardous Materials on the Excursion Spur and/or Port Property, including, but not limited to, the cost of clean-up, environmental assessments, defense and reasonable attorney's fees, prior to occupancy by the TPO, against any identified responsible party.

d) The provisions of Sections 8.2 through 8.6 shall in no way limit or reduce the application, enforceability or effect of this Section 8.1.

8.2 Assumption of Responsibility.

a) Except as otherwise expressly provided in this , TPO shall assume all Losses and will indemnify Port for all Losses which arise from TPO's presence on the Excursion Spur or on Port Property without regard to fault, failure, negligence, misconduct, malfeasance, or misfeasance of TPO or its employees, agents or servants.

b) The allocation of responsibility for Losses under this applies only to Losses proximately caused by incidents occurring on or adjacent to the Excursion Spur or Port Property, and arising out of TPO's presence on the Excursion Spur, or on Port Property.

c) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this including, without limitation, salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party

engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

8.3 Allocation of Responsibilities.

a) Invitees. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by TPO, except as otherwise provided in Section 8.3 a) i. and Section 8.4. Consultants and contractors of TPO, and any person who is on, or has property on, a train or other rolling stock operated by or for the account of TPO or admitted to operate on the Excursion Spur (other than an employee of TPO engaged in performing duties for TPO), shall rebuttably be presumed to be an invitee of TPO.

(i) If an invitee of Port is negligent and causes Losses to TPO or Port, Port will be responsible for such Losses and will indemnify TPO.

b) Persons Other Than Invitees. Except as provided in Section 8.4, Losses arising out of personal injury (including bodily injury and death) to, or property damage directly suffered by, any person who is not an invitee of Port or TPO (including, without limitation, Port, TPO, employees of Port or TPO while engaged in the performance of their duties as an employee, persons in adjacent public streets (including public sidewalks), and trespassers), shall be the responsibility of and borne and paid exclusively by TPO.

c) Unenforceability. If any of the provisions of this Section 8.3 would otherwise be prohibited by or unenforceable under the laws of Washington State (including a determination by a final judgment of a Washington State court with jurisdiction that indemnification under the circumstances involved is against the public policy of Washington State), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined by a final judgment of Washington State court with jurisdiction that any law or public policy of Washington State prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of this Section 8.3, those provisions shall be deemed to exclude the indemnification for such party's sole negligence but to permit full indemnification, as specified in this Section 8.3 if both parties were negligent.

8.4 Excluded Conduct - "Excluded Conduct" shall mean conduct by a supervisory level or higher employee of one of the parties, where such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under Washington State law, and actually results in an award of exemplary or punitive damages by a jury after trial of the issues and exhaustion of judicial appeals which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible or and bear the Loss in proportion to its relative degree of fault and be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If a part asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct.

8.5 Scope of Indemnification –

a) In any case where a party is required under the provisions of this to bear a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, trustees, directors, officers, agents, employees, shareholders, parent corporations, subsidiaries and affiliated companies, or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto.

b) TPO hereby waives, as respects the Port only, any immunity TPO may have under applicable workers' compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent TPO from asserting such immunity against any other person or entities. TPO AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

c) TPO is the rail carrier employer under the Railroad Unemployment Insurance Act (45 U.S.C.A. §§ 351 et seq.), Railroad Retirement Act (45 U.S.C. §231 et seq.), Railway Labor Act (45 U.S.C. Sec. 151 et. seq.), Federal Employers Liability Act (45 U.S.C. Sec 51 et. seq.), and is the entity with responsibility for compliance with the common carrier obligations pursuant to (49 U.S.C. Sec. 10101 et. seq.), and any Federal rail safety legislation, that arise from TPO's use of the Excursion Spur. TPO shall indemnify, hold harmless and defend Port and County from any and all cost, expense, liability, claim, damage or other obligation that is asserted against the Port and/or the County pursuant to the statutes and regulations listed in this Section.

8.6 Procedure.

a) If any claim or demand (short of a lawsuit) shall be made by any person against an indemnified party under this Section 8, the indemnified party shall, within thirty (30) days after actual notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. The indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this without either providing the indemnifying party with a full release with respect to such liability or obtaining the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed.

b) In the event any lawsuit is commenced against either party for or on account of any Loss for which the other party may be solely or jointly liable under this License, the party sued shall give the other party timely written notice of the pendency of such action, and

thereupon the party so notified may assume or join in the defense thereof. If the party so notified is liable therefor under this License, then, to the extent of such liability, such party shall defend, indemnify and save harmless the party so sued from Losses in accordance with the liability allocations set forth in this License. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this License, be bound by the final judgment of the court in such action.

c) Subject to the provisions of Section 8.6a), on each occasion that the indemnified party is entitled to indemnification or reimbursement under this Section 8, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party is entitled to indemnification under this and the indemnifying party does not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expense arising as a result of such proceeding.

d) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 12 of this License, except if the binding arbitration requirement is no longer in force as provided for in Section 12.1 of this License.

8.7 Compliance With Laws - Both parties shall comply with all applicable federal state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of either party to comply with such laws, regulations, rules or orders in respect to that party's use of the Excursion Spur results in any fine, penalty, cost or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party) and hold harmless the other party for such amount.

8.8 Delay/Interruption of Service - Port shall not be held liable for any delay or interruption to the trains, locomotives or cars of TPO unless due to Excluded Conduct or except as otherwise provided for in Section 8.3 a) i.

8.9 No Limitation on Risk Allocation - The provisions of this Section 8 shall apply notwithstanding the provisions of Section 9. In no event shall the indemnification provisions of this Section 8 be limited to the insurance coverage required under Section 9.

8.10 Statutory Defenses - All statutory defense and limitations applicable to Port shall be retained by Port with respect to parties other than TPO, and none are intended to be waived with respect to parties other than TPO by Port under this License.

8.11 Survival - The provisions of this Section 8 shall survive the termination or expiration of this License.

Section 9. Insurance.

9.1 Freight Rail Service Coverage - TPO shall obtain and maintain freight service general liability insurance written on an "occurrence" basis, with minimum limits of Five Million Dollars (\$5,000,000) per occurrence. The Port and the County shall be listed as additional insureds for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed One Million Dollars (\$1,000,000) provided that total coverage limits (self-insurance plus excess liability insurance) are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of the Port and County.

a) The policy required under this Section 9.1 shall include general liability property damage and bodily injury coverage for operation of Freight Rail Service, *provided*, that such Freight Rail Service shall be limited to head and tail operations on the Excursion Spur, along with any related operation, maintenance, and construction on or about the Excursion Spur and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Excursion Spur and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port and the County with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Five Million Dollars (\$ 5,000,000) in the aggregate.

b) The policy required under this Section 9.1 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate.

c) The policy limits required under this Section 9.1 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

9.2 Excursion Rail Service Coverage - TPO shall obtain and maintain general liability insurance with an excursion/passenger endorsement, and written on an "occurrence" basis, with minimum limits of Twenty-five Million Dollars (\$25,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count is 50 or less; and Fifty Million Dollars (\$50,000,000) per occurrence and in the aggregate for all Excursion Rail Service in which total passenger and crew count exceeds 50. The Port and County shall be listed as additional insureds for ongoing and completed operations. Coverage shall include contractual liability coverage with no exclusions relative to rail operation. Coverage for punitive damages shall be included to the extent such coverage is permitted under Washington State law. Insurance shall be placed with a company having a current A. M. Best's Insurance Guide Rating of at least "A" or equivalent, and admitted as an insurer by the Washington State Office of the Insurance Commissioner. TPO may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000) provided that total coverage limits (self-insurance plus excess liability insurance)

are at least to the amounts stated within this Section; provided further, that this sentence shall not inure to the benefit of TPO's successors or assigns without the reasonable written consent of Port and County.

a) The policy required under this Section 9.2 shall include general liability property damage and bodily injury coverage for operation of Excursion Rail Service along with any related operation, maintenance, and construction, on or about the Excursion Spur and Port Property by the TPO. If the policy excludes maintenance and construction on or about the Excursion Spur and Port Property, a separate railroad protective liability policy shall be issued in the name of the Port and County with minimum limits of Two Million Dollars (\$ 2,000,000) per occurrence for bodily injury and property damage, and Six Million Dollars (\$ 6,000,000) in the aggregate.

b) The policy required under this Section 9.2 shall also include pollution coverage whether incurred during operations or during maintenance or construction. If the general liability policy contains pollution exclusion, a separate pollution policy shall be purchased with minimum limits of Three Million Dollars (\$3,000,000) per occurrence, and Six Million Dollars (\$6,000,000) in the aggregate.

c) The policy limits required under this Section 9.2 shall be adjusted by the parties every three (3) years to reflect industry standards, liability claim trends and market conditions.

9.3 Automobile Coverage - TPO shall maintain general automobile liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage shall extend to all owned, non-owned, hired, leased, rented, or borrowed vehicles. The policy shall contain a waiver of subrogation in favor of the Port and County.

9.4 Evidence of Insurance - Prior to the Execution Date, and annually thereafter, TPO shall forward evidence of insurance as required in this Section including evidence of the Port's and the County's status as additional insureds for the Freight Rail Service and Excursion Rail Service policies; and a written copy of the waiver of subrogation for the automobile liability policy. Upon request from the Port, TPO shall forward certified copies, within 30 days of the request, of any binders, policies, and declarations of insurance that is required by this License.

9.5 No Port Deductible - No policies obtained by TPO for this License shall contain a deductible obligation for the Port or County. If the policy is issued with a deductible option, the TPO shall be liable for all deductibles, as well as any applicable allocated loss adjustment expenses if applicable. All costs incurred by a program of self-insurance, including self-insurance as identified in Sections 9.1 and 9.2 are to be borne by TPO.

9.6 Additional Documentation - Self-Insurance - If self-insurance is utilized for a portion of the coverage permitted in Sections 9.1 and 9.2, evidence must be provided to the Port and County of the TPO's net worth, a copy of the most recent audited financials, and a written description of the self-insurance program. This must be submitted with the other documentation required in Section 9.4.

9.7 Applicability of Workers' Compensation - TPO is fully responsible for ascertaining the applicability of Title 51 Industrial Insurance, of the Revised Code of Washington, as well as any federal laws that pertain to workers compensation coverage for railroad employees and operators, such as the Federal Employers' Liability Act (FELA). TPO shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self insurer. In the event FELA is the applicable coverage under this License, TPO shall provide the Port with evidence of coverage. An insurance certificate shall be additionally required to show evidence of other applicable worker compensation coverage.

a) In the event Title 51 of the Revised Code of Washington applies to this License, TPO shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of TPO worker compensation account prior to the Execution Date of this License. TPO shall list here their UBI Number 602-672-764 and their State Worker Compensation Account Number _____. TPO shall also provide the Port and the County with Washington State Stop Gap employers' liability insurance. This shall be in an amount of One Million Dollars (\$1,000,000) per accident and One Million Dollars (\$1,000,000) per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary general liability policies identified in Sections 9.1 and 9.2. To the extent applicable, there shall be no exclusions relative to railroad workers or workers covered under the Federal Employers' Liability Act.

9.8 Primary Insurance - TPO's insurance shall be primary with respect to its obligations under this License and with respect to the interests of Port and County as additional insureds. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it. In addition to the specific requirements in this License to name the Port and County as additional insureds on certain types of insurance, TPO shall also include Port and County as additional insureds on any other policy it maintains that provides coverage related to the Excursion Spur.

9.9 Maintaining Insurance Requirements - TPO's insurance requirements shall be maintained for the full term of this License and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days' prior written notice has been given to each insured and additional insured, including the Port and County.

9.10 Statutory Defenses - All statutory defenses and limitations applicable to TPO shall be retained by TPO with respect to parties other than the Port and the County, and none are intended to be waived by TPO with respect to parties other than the Port and the County by the acquisition of insurance by TPO or under this License.

9.11 Failure to Maintain Insurance - A failure of TPO to maintain the insurance required by this Section 9 shall not relieve TPO of any of its liabilities or obligations under this License.

9.12 Waiver of Subrogation - Every policy of insurance required under this License to be held by TPO shall include a waiver of all rights of subrogation against the Port and the County.

9.13 Other Insurance - TPO shall require that all of its contractors and sub-subcontractors carry a railroad protective liability policy with minimum limits of Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage, and with an aggregate policy limit of no less than Five Million Dollars (\$5,000,000). Said policy shall name the Port and County as additional insureds.

Section 10. Compensation and Billing.

10.1 Invoices - Any Invoice or Invoices submitted to the parties under this License ("Invoice or Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party with fifteen (15) days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

10.2 Audit - So much of the books, accounts and records (except for privileged or confidential records) of each party hereto as are related to the subject matter of this License shall at all reasonable times be open to inspection and audit by the authorized representatives and agents of the parties. All accounting records and other supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this License is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

10.3 Supporting Documentation - Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

10.4 As compensation for the rights granted under this License (as well as for the rights granted under the O&M Agreement), TPO shall pay the Port the fees described in Section 9.4 of the O&M Agreement.

Section 11. Coordination Committee - Port and TPO shall establish a Coordination Committee and shall invite the County to participate. The Coordination Committee shall consist of at least two (2) representatives of each party, and shall be a forum for the parties to share

information, discuss matters submitted by one party to the other party for review and/or approval, and seek resolution of any issues between the parties with respect to this License. The Coordination Committee shall meet regularly (in person or telephonically) and also as necessary to address issues between the parties that require prompt resolution.

Section 12. Binding Arbitration.

12.1 Controversies Subject to Arbitration - Any and all claims, disputes or controversies between Port and TPO arising out of or concerning the interpretation, application, or implementation of this License that cannot be resolved by the parties through the Coordination Committee or by negotiations shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, except as otherwise provided in this Section 12. If the AAA discontinues promulgation of the Commercial Arbitration Rules, the parties shall use the AAA's designated successor rules, and if the AAA does not designate successor rules, the parties shall agree on other rules. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the requirement for binding arbitration shall not apply to any dispute wherein the Port and TPO are included, either in the initial complaint or through subsequent pleadings, in a lawsuit brought by a third party. In such case, the dispute may be litigated in court. Further, the requirement for binding arbitration shall not apply if the Port assigns its rights and obligations under this License to the County or conveys its right, title and interest in the Excursion Spur to the County.

12.2 Selection of Arbitrator - In the event a claim, dispute or controversy arises, either party may serve a written demand for arbitration upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) days after the service of the demand, the matter shall be deemed submitted to arbitration. If within forty (40) days after service of the demand, the parties have not selected a single arbitrator, each party shall within an additional ten (10) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within ten (10) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. The two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within ten (10) days of the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

12.3 Expedited Arbitration Schedule.

a) In the event either party reasonably finds that the issues of any claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 12.2, an expedited arbitration procedure as set forth in this Section 12.3 solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction or injunction).

b) Within five (5) days after service of a demand for expedited arbitration, the parties shall agree on an arbitrator. If the parties fail to agree on an arbitrator within such five (5)

day period, each party shall within two (2) days thereafter select an arbitrator. In such case, if either party has not selected an arbitrator within two (2) days after receipt of notice that the other party has selected an arbitrator, the arbitrator selected by the other party shall arbitrate the claim, dispute or controversy. Otherwise, the two selected arbitrators shall select a third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator within two (2) days of the deadline for the selection of the two selected arbitrators, the AAA shall select the third arbitrator. The arbitrator(s) shall be disinterested.

c) The expedited arbitration hearing shall commence no later than ten (10) days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the day following the arbitration hearing.

d) Prior to rendering any decision, the arbitrator must find that the issues of the claim, dispute or controversy are likely to directly, imminently, materially and adversely affect human health or safety. In the event the arbitrator finds that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Sections 12.1 and 12.2; provided, however, that no new demand for arbitration need be served by the party demanding arbitration.

12.4 Pending Resolution - During the pendency of such arbitration proceedings, the business and the operations to be conducted, and compensation for service under this License, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

12.5 Cost of Arbitration - Each party solely shall bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration; provided, however, the arbitrator shall have the power to award attorneys' fees and costs to either party if the arbitrator determines in its reasonable discretion that the position of the other party to the arbitration was frivolous.

Section 13. Miscellaneous Provisions.

13.1 Binding Successors; Assignment - This License shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns, except that TPO may not assign its rights and obligations under this License without the prior written consent of the Port, which consent may not be unreasonably withheld, denied, delayed or conditioned. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void. Port may assign its rights and obligations under this License freely. If Port desires to assign its rights and obligations under this License or to convey its right, title and interest in the Excursion Spur, then TPO and the potential assignee or acquiring entity shall negotiate in good faith to revise the terms of this License to address their respective interests.

13.2 Notices - Except as otherwise expressly provided in this License, all notices and other communications under this License shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or (b) at the earlier of actual receipt or the third business day following deposit in the United States

mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Port: Port of Seattle
P. O. Box 1209
Real Estate Division
Seattle, WA 98111
Attention: Joe McWilliams
Telephone No. 206-728-3722

If delivered:
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

TPO: GNP Rly. Inc.
403 Garfield Street #20
Tacoma, WA 98444
Attention: Thomas Payne
Telephone No. 253-459-9702

13.3 Headings - The section and subsection headings in this License are for convenience only and shall not be used in its interpretation or considered part of this License.

13.4 Integration, Amendment, and Waiver - This License controls all the rights and obligations of TPO and Port as to the operation of the Excursion Rail Service on the Excursion Spur. The O&M Agreement controls all the rights and obligations of TPO and Port as to the operation of freight rail service and Excursion Rail Service on the Corridor. This License is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this License shall be binding unless executed in writing by both of the parties. No waiver of any provision of this License shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.5 Counterparts - This License may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile signatures shall be deemed original for all purposes.

13.6 Governing Law - This License shall be construed and interpreted in accordance with the laws of Washington State and/or federal law where applicable, and the parties shall be entitled to all remedies in law and equity as provided for thereunder.

13.7 Time of Essence - Time is of the essence of each and every provision of this License.

13.8 Changes to Port Property - Any parcel transferred by the Port to an unaffiliated person or entity for purposes other than rail operations or trail use that does not contain any facilities used in connection with the rail operations intended by this License shall be deemed removed from the Excursion Spur or Port Property as applicable.

13.9 Not for the Benefit of Others - This License and each and every provision herein are for the exclusive benefit of the parties to this License and County and not for the benefit of any third party, except County. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties to this License.

13.10 Attorneys' Fees - If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this License, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this License, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding in addition to any other relief to which it or they may be entitled.

13.11 TPO Operating Data - In the event of termination of TPO's operations, TPO shall, at the Port's request and expense, provide to the Port or the Port's designee all data associated with TPO's operations on the Excursion Spur, including, but not limited to, car tracing, identification and rates, and accounting records. Provided, that in the event TPO's operations terminate as a result of TPO transferring its rights to another operator, with the Port's consent, such operating data shall be transferred by TPO to its successor at TPO's cost or that of TPO's successor.

13.12 Removal of TPO's Property - Upon termination of this License, TPO shall have ninety days from the date of termination to remove all of TPO's personal property and trade fixtures, so long as such removal does not damage the Excursion Spur or Port Property. If damage results to the Excursion Spur or to Port Property as a result of TPO's activities under this Section 13.12, TPO shall, at its sole expense, restore or reimburse the Port for the cost to restore the Excursion Spur or Port Property to as good condition as they were prior to TPO's removal activities, normal wear and tear excepted. If TPO fails to remove any of the personal property and trade fixtures within the time authorized under this Section, the Port may remove TPO's property at TPO's expense, subject to offset by any net proceeds received by the Port from the sale of TPO's property. TPO's obligation to (i) restore the Port for any damage to the Excursion Spur or Port Property, and (ii) repay the Port for the cost of any property removal shall survive the termination of this License. All other property or improvements placed on the Excursion Spur or Port Property by TPO during the term of the License that do not constitute personal property or trade fixtures, shall become the property of the Port upon termination of this License.

13.13 Railbanking Requirements in Event of Abandonment - If TPO or any successor, assignee or designee of TPO (each an "Abandonment Applicant") elects to seek authority from the Surface Transportation Board or any successor agency to abandon or discontinue its freight common carrier obligation over some or all of the Corridor, then such Abandonment Applicant shall consent to a request by any or each of County, the Port, the Central Puget Sound Regional Transit Authority or the successor or designee of any of them (each a "Trail Use Applicant") for the implementation of interim trail use in accordance with Section 8(d) of the National Trails System Act, codified at 16 U.S.C. 1247(d), and 49 C.F.R. 1152.29, as such provisions may be amended or interpreted by binding judicial or administrative authority. The Abandonment Applicant shall cooperate with any or each Trail Use Applicant in any application for authority to implement interim trail use over all or any portion of the Property on which the Abandonment Applicant seeks authority to abandon or discontinue its freight common carrier obligation. If TPO or any successor, assignee or designee of TPO ceases operations on the Corridor but fails within a reasonable period of time to (a) seek abandonment authority, and (b) respond to inquiries from any potential Trail Use Applicant as to the status of its operations, any Trail Use Applicant may elect to seek authority from the Surface Transportation Board or any successor authority for a third-party abandonment and interim trail use over some or all of the Corridor on which operations have ceased. TPO and any successor, assignee or designee shall not oppose any such action by a Trail Use Applicant.

13.14 Railbanking Conditions - As part of the approvals for railbanking the Excursion Spur, the STB conditioned its approval concerning salvage activities and archaeological remains, which conditions must be complied with by TPO. TPO agrees that:

(a) Prior to beginning any salvage activities,

- (i) To consult with Washington Department of Ecology ("WDE") regarding possible impacts of abandonment activities on wetlands located along the line and to ensure compliance with the Clean Water Act's National Pollution Discharge Elimination System ("NPDES") permitting requirements, and
- (ii) To consult with the Army Corps of Engineers ("Corps") regarding possible impacts of abandonment activities to water bodies and wetlands, and to ensure compliance with Corps permitting requirements; and

(b) In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, TPO shall immediately cease all work and jointly with Port and County notify the STB's Section of Environmental Analysis ("SEA"), interested Federally recognized tribes and the Washington State Historic Preservation Officer ("SHPO"), pursuant to 36 CFR 800.13(b). SEA shall then consult with the SHPO, interested Federally recognized tribes, TPO, Port and County, and any other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

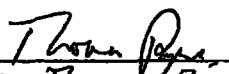
13.15 Encumbrances - TPO may pledge or otherwise encumber its rights under this license to secure its obligations under any loan agreement or similar or related document; provided, however, that notice of such pledge is provided to Port, and that such pledge or other encumbrance shall be subject to and subordinate to the rights of the Port and its assigns as licensor hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this License effective as of the Execution Date.

PORT OF SEATTLE
a Washington municipal corporation

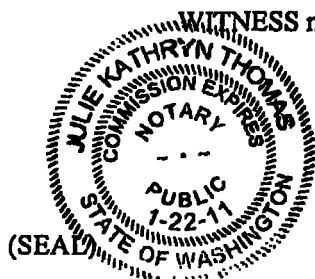
By: 
Name: Tay Yoshitani
Title: Chief Executive Officer

GNP RLY. INC.
a Washington corporation

By: 
Name: Thomas Payne
Title: Chairman & C.O.O.

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On Dec. 17, 2008, before me, a Notary Public in and for said County and State, personally appeared Guy Yoshitani, of the Port of Seattle, a Washington municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

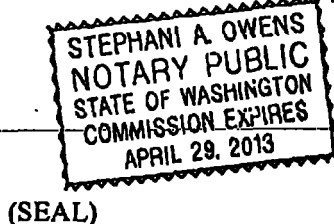


Julie Kathryn Thomas
Printed Name
Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of
Washington, residing at Bothell, WA
My commission expires 1-22-11

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

On 12-18, 2008, before me, a Notary Public in and for said County and State, personally appeared Thomas D. Owens, of GNP Rly. Inc., a Washington corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Stephanie A. Owens
Printed Name
Stephanie A. Owens
NOTARY PUBLIC in and for the State of
Washington, residing at Bothell
My commission expires 4-29-2013

Exhibit F

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



25 November 2009

Mr. Dan Thomas, Chief Financial Officer

and

Mr. Joe McWilliams, Managing Director, Real Estate Division
Port of Seattle
Pier 69
2711 Alaskan Way
Seattle, WA 98121

Re: BNSF corridor

Gentlemen;

Thank you for your time yesterday. Our discussion covered the following outstanding matters arising from your memo of 20 November 2009:

- (a) Term of the O&M and License agreement
- (b) The franchise fee; and
- (c) Limitations of expansion of excursion train service.

Additionally, we touched on the scope of the agreement and the working limits of the operations on the Redmond spur.

We have the following comments with respect to each of these issues:

- (a) Term of the O&M and License agreement.

I understood that your objection to the extension of the term of the agreements was that extending the term of the license to 35 years would be tantamount to conveying a "fee" interest in the land and that the Port did not have legal authority to convey the fee interest. I do not fully understand the Port's position on this issue. The O&M Agreement on the northern portion of the subdivision and the Railroad Right of Way License on the southern portion grant GNP only limited rights to use the property. The Port retains the right, for example, to use the property for trail purposes and to grant others the right to use the property for excursion rail purposes and for other purposes, such as for a water pipeline. Consequently, what the Port will convey to GNP would not be a "fee interest" even if granted in perpetuity. In addition, I understand that the Port has entered into even longer term lease agreements with other parties, including for example, the 50-year lease of the Seattle grain terminal to Cargill and the 40-year lease of Terminal 5 to APL/Eagle Marine Services. (These two leases are available on-line.) In any case, I believe that a 35-year term is consistent with other Port transactions and should be

within the power of the Port to provide for this transaction as well.

The business point is that the current term, both for freight and excursion service of 10 + 10 years does not allow for depreciation of assets in accordance with generally accepted accounting principles for railways. The term of the agreement should be in alignment with the actual and accounting life of new assets required to keep the railway whole. This is a question which affects both freight and excursion service, and pervades the financial structure and viability of any railroad.

The available term of RRIF loans, 35 years, reflects this principle, is the current industry standard, and reflects a term that is more in keeping with current industry practice. Needless to say, longer term capital financing is of advantage to the railway. You asked why we did not bring this matter up at the time of the bid. Simply put, we noted that there was no opportunity afforded by BNSF to discuss this matter at the time of the bid. Further, every bidder and BNSF openly said in the Everett bidder's meeting that 10 years was a wholly inadequate period for rail investments. Additionally, this was the first thing we brought to the attention of the Port immediately following our selection as TPO.

We all desire the enterprise to succeed, and it is desirable to have the proper environment so to do. The opportunity for long-term low cost finance from RRIF is of great significance to us; and should be, we think, to the Port. It is an opportunity not to be missed. Our RRIF discussions are well advanced, and we have advised them that this matter is under discussion with you, and their continuing work is on hold pending our mutual resolution of this question.

Given the above, we wish to have your undertaking that the agreements will be amended to meet the term of financing which we may negotiate with RRIF.

(b) Franchise Fee and Limitation of Expansion of Excursion train service.

As we have worked together over the past few years to negotiate this transaction, we have come to expect that the Port would be the owner of the southern portion of the subdivision and that we would eventually have rights to operate excursion rail service to MP 11.7 in Bellevue. This was, we believe, a fundamental premise of the Port/King County May 12, 2008 Interlocal Agreement and the form of Public Multipurpose Easement incorporated therein (and incorporated as Exhibit L to the BNSF/Port Purchase and Sale Agreement.) Those agreements state that the Port and King County intended that the whole Subdivision "be used for regional recreational trail and other transportation purposes, including, but not limited to rail or other transportation purposes other than interstate freight service ('Transportation Use') and that "such Transportation Use will be carried out by a Third Party Operator". (Public Multipurpose Easement, recitals 4 and 5.) This incorporated form of Public Multipurpose Easement reflects the accommodation reached between the Port and King County that allows and protects the dual use of the corridor and establishes the Port's role as the advocate for and protector of the Transportation Use. In the incorporated form of Public Multipurpose Easement, King County also acknowledges that Port or the TPO may undertake Transportation Use of Property outside the Trail Area and that King County shall not interfere with the Transportation Use.

We have inferred from your recent comments and from the November 5, 2009 Memorandum of Understanding among the Port, King County and others that now King

County, not the Port, will be the long term owner of the southern portion of the subdivision and the licensor under the Railroad Right-of-Way License Agreement. If King County owns the fee interest in the southern portion, there would be no need for the Public Multipurpose Easement (in fact, even if the Port conveyed the easement to King County prior to the conveyance of the fee in the southern portion, the easement would merge into the fee title and have no further applicability.) Consequently, if King County becomes the fee owner of the southern portion of the subdivision, all of the painstakingly negotiated terms protecting and assuring viable dual use of the corridor would vanish.

While we recognize that the revised, final form of the Railroad Right of Way License provided GNP rights to Transportation Use on only MP 0.0 to MP 2.5 of the Redmond Spur and left to the Port the determination of whether and to what extent to expand these rights, it was reasonable -- given the context of all the other agreements (especially the incorporated form of Public Multipurpose Easement) and the expressly stated commitment of the Port to dual use -- for GNP to expect there to be an meaningful opportunity that the Port would expand GNP's rights under the License south of MP 23.8 and into Bellevue. GNP relied on this meaningful opportunity to expand its Excursion Rail rights to Bellevue in agreeing to pay a \$1 million fee at closing under the O&M Agreement. Now that King County is expected to own the fee of the southern portion and the critical "dual use" protections of the Public Multipurpose Easement will not apply, it is no longer reasonable for GNP to expect such an expansion.

In our view, this represents a substantial change to the basic premises of our agreements with the Port that substantially affects the viability of our proposal.

We consider that is in our mutual interest to close this transaction on the 15th of December. Given the risk that GNP may not gain Excursion Rail Service rights south of MP 23.8 into Bellevue, we believe that, until that question is settled, a reduced fee to the Port is in order and we would propose the following:

- (a) Franchise fee - \$10,000 onetime payment (from \$1M)
- (b) Freight - \$10.00/car (from \$20.00)
- (c) Passenger - \$0.10/person (from \$1.00)

and would request that you consider this proposal.

(c) Working Limits on Redmond Spur.

Given your present requirements, and in order to accommodate our operating requirements for excursion passenger services on the Redmond Spur we believe that extending our operations on the Redmond Spur mileage to the north curb of N124th St. in Redmond is necessary. Our current rights extend to MP 2.5, and we understand that the City of Redmond wishes to purchase to the city limits, which is N 124th street, MP 3.39. This extension would permit a conveniently located boarding location for the excursion train service on the Redmond Spur at a substantially shorter driving distance from the population centers of Bellevue and Seattle.

(d) Other matters.

When we commence excursion passenger services, we wish to discuss the insurance requirement increment. Given current insurance market conditions and the low speeds

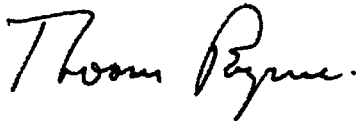
for the excursion service, we are of the view that an appropriate limit is \$10 million.

You asked what would be the consequence of failing to secure RRIF financing in the absence of commercial financing. In our experience, there is no commercial financing available for railway purchases, and that is why RRIF was created. There is a reasonable market for the leasing of equipment. Our answer to your question was that the freight operation would be continued in operation on a minimal "mom and pop" operation basis which would meet our obligations as TPO. The excursion passenger service would also be operated, initially on a weekend basis as equipment may be acquired or leased and delivered as contemplated in the agreements. Both Ballard and we are familiar and comfortable with those types of operation.

Finally, as the closing date of December 15 is rapidly approaching, GNP needs to prepare for assuming operational responsibilities for Freight Rail Service. We need to know whether or not the Port and BNSF expect GNP to assume these responsibilities on December 15 or on some future date.

We look forward to our discussions on Monday, and are confident that we shall reach a mutually satisfactory conclusion.

Yours truly,

A handwritten signature in cursive script, appearing to read "Thomas Payne".

Thomas Payne
Chairman, Chief Operating Officer.

cc: Byron Cole, BTR
Douglas Engle, CFO, GNP
Jim Greenfield, GNP, Counsel
Craig Watson, POS, General Counsel
Isobel Safora, POS, Counsel

Exhibit G

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



9 December 2009

Mr. Craig Watson, General Counsel
and
Mr. Joe McWilliams, Managing Director, Real Estate
Port of Seattle
Pier 69
2711 Alaskan Way
Seattle, WA 98121

Re. BNSF Corridor.

Gentlemen;

At our meeting yesterday with the Port and King County, we agreed we would proceed to closing under the present documents if those document were revised to reflect only:

- (a) That GNP's scope of operation under the License Agreement (as reflected in the definition of "Excursion Spur" in Section 1.7) would be extended on the Redmond Spur to MP 3.39 (NE 124th St.), and
- (b) That GNP shall provide freight service general liability insurance with a minimum limit of \$5 million per occurrence (as reflected in Section 9 of the License and Section 8 of the O&M Agreement), and
- (c) That the fees payable to the Port and subsequently to the County upon assignment of the License (as reflected in Section 9 of the O&M Agreement and Section 10 of the License) would be adjusted to the levels proposed in our letter of 25 November 2009.

You requested that we provide the Port with GNP's justification of these revisions.

In your e-mail to us of 20 November 2009, the Port advised GNP as follows:

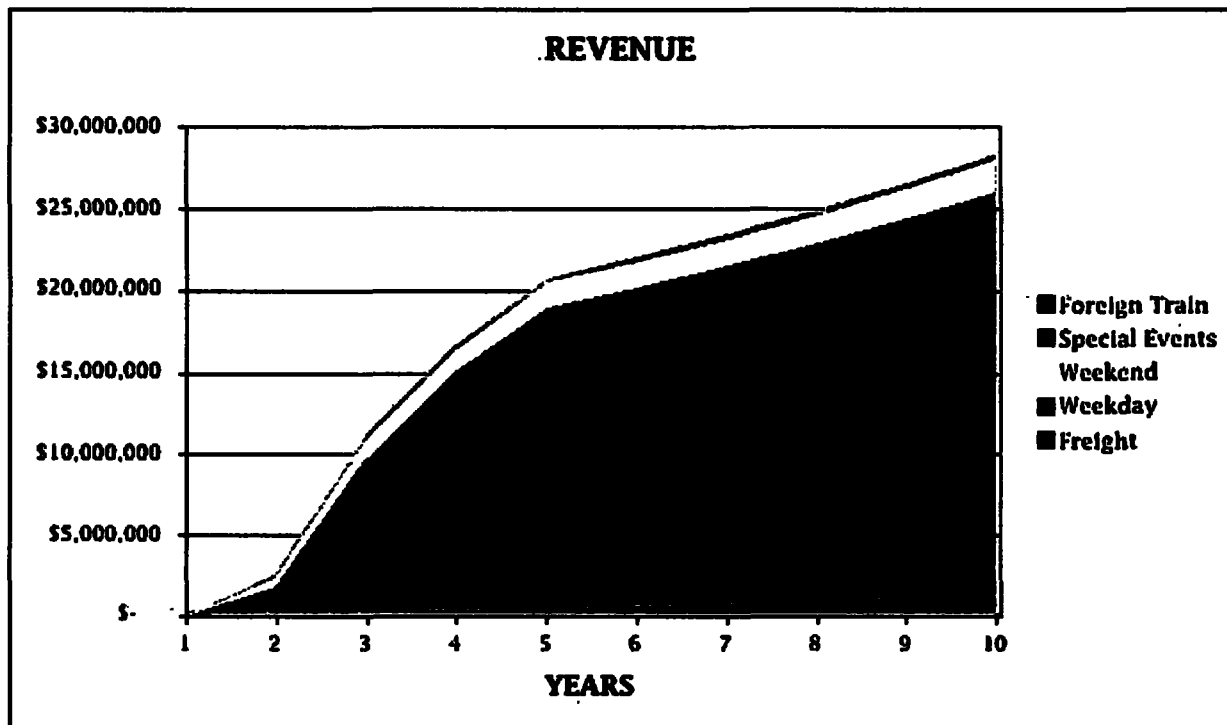
"You also need to give consideration to the limitations of expansion of excursion train service; given the dynamic nature of the ongoing negotiations with respect to the ultimate ownership of the corridor south of milepost 23.8, the Port will not be in a position to grant excursion service beyond what is already contemplated in the documents."

This advice to GNP led us to conclude that the present discussions between the Port and King County, Cascade Water Alliance, Puget Sound Energy, Sound Transit and the City of Redmond could have material adverse change effects on GNP's business plan. At today's meeting those concerns were proven to have been justified.

The current License agreement contemplates the extension of GNP's rights under the agreement to MP 11.9 in Bellevue, (Expanded Excursion Spur) after suitable public process and

discussion. At our meeting yesterday, King County advised that neither King County nor Sound Transit, as the proposed new owners of certain segments of the Corridor south of M.P. 23.8 in the city of Bellevue, would likely ever grant the extension of those rights to GNP.

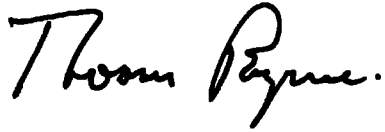
When GNP made its proposal in 2008, it reasonably had hoped for an opportunity to work with the Port to gain the right to provide weekday excursion rail service between Bellevue and Snohomish. The new deal structure in which King County and Sound Transit become the fee owners of the corridor south of MP 23.8 makes this substantially less likely. This material adverse change will reduce GNP's revenues by approximately 80%. The following graph showing GNP's projected revenue assuming an opportunity to provide weekday excursion rail service between Bellevue and Snohomish. The projected revenue from weekday excursion rail service is shown in red. Without this opportunity, GNP revenues will be reduced by that substantial amount. Additionally, opportunities to expand the freight business on the line will be limited. This will reduce the amount of revenue from freight (shown in blue) GNP may reasonably expect.



GNP has reconsidered this business opportunity in light this adverse material change made by the Port and the dramatic reduction in reasonably expected revenue. As we said in yesterday's meeting, GNP has concluded that, even with this material adverse change, it will have a viable business operating excursion and freight rail service on the limited line, with the changes we discussed to the scope of the Excursion Spur, the amount of freight insurance and the fees.

With the changes contemplated in the first paragraph of this letter, we look forward to the closing of this transaction and successful GNP operations on the line.

Yours truly,

A handwritten signature in black ink, reading "Thomas Payne." The signature is written in a cursive style with a large, stylized 'T' and a long, sweeping underline.

Thomas Payne
Chairman, Chief Operating Officer

Exhibit H

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



P.O. Box 1209
Seattle, WA 98111-1209
Tel: (206) 728-3000
www.portseattle.org

December 10, 2009

Thomas Payne
Chairman and COO
GNP Railway
403 Garfield Street, #20
Tacoma, WA 98444

Dear Mr. Payne:

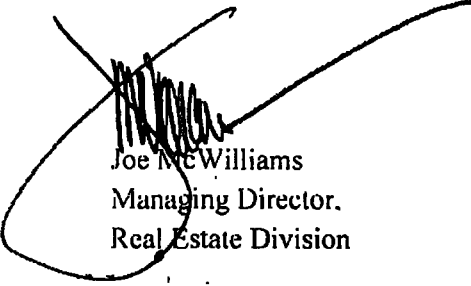
The purpose of this letter is to clarify several of the points made in your letter of earlier today to Joc McWilliams and in the meeting yesterday between GNP, the Port and the County.

1. Extension of Excursion Service to Bellevue: You accurately note in your letter that the Port and the County will not permit excursion service to Bellevue. Thus, you should not rely on an extension to Bellevue to support your business plan. Because we anticipate that both the County and Sound Transit will have fee interests in the Bellevue segment of the corridor, the documents need to adequately reflect the understanding of all parties, including the anticipated future owners. *Since GNP has concluded that it can have a viable freight and excursion operation without service to Bellevue and the Port, the County and Sound Transit will not permit service to Bellevue, the Port will require the deletion of Sections 2.7 and 3.2 from the License as a condition to making the changes set forth in paragraphs 2, 3 and 4 below.*
2. Excursion Service on the Redmond Spur: GNP had previously requested extension of the excursion service area on the Redmond Spur from milepost 2.5 to milepost 3.39 at 124th Street, north of the City of Redmond. Both the Port and the County agreed to extend the excursion service area to milepost 3.39 provided that certain other terms in the license could be revised. The Port and County did not agree to have GNP conduct freight service to milepost 3.39. *Freight use of the Redmond Spur remains unchanged under the License and will be limited solely to perform head and tail operations that permit turning into the Y tracks.*

3. Insurance Requirements: In response to GNP's request to lower the insurance limits to "industry standards," I sent you an email dated November 20, 2009, stating that the Port agreed to lower insurance limits for the freight operations only. *Existing insurance requirements for excursion service will not change at this time given the different risks involved in excursion operations, but the Port reserves the right to adjust such requirements depending on increased risk.*
4. Fees to the Port: The Port's CEO, Tay Yoshitani, will brief the Port Commission about GNP's changes to the previously proposed fee as set forth in your November 25, 2009 letter. Barring objections from the Port Commission, the Port will close the transaction with those proposed fees. However, the Port will not eliminate the \$1 Million Dollar payment from the agreement. *Rather, we propose revising the agreement to require that GNP pay the amounts proposed in your letter of November 25th and pay the Port \$1 Million when it obtains financing.* The split in fees that would occur if the County acquires the Redmond Spur remains to be determined.
5. Term of the Operations and Maintenance Agreement (O & M) and License Agreement: The Port will not agree to GNP's request to extend the term of the O & M to 35 years. The County similarly indicated that it would not agree to a term of 35 years for the License.

Please contact me at your earliest convenience if you need to discuss anything further.

Sincerely,



Joe McWilliams
Managing Director,
Real Estate Division

Exhibit I

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35407
GNP RLY INC.
-ACQUISITION AND EXEMPTION-
REDMOND SPUR AND WOODINVILLE SUBDIVISION

STP DOCKET NO. AB-6 (SUB. NO. 463X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA

STP DOCKET NO. AB-6 (SUB NO. 465X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA

DEPOSITION OF SCOTT McDONALD

Taken October 26, 2010
600 University Street, Suite 3600
Seattle, Washington

Reported by:
MARK HOVILA
CCR No. 2599

A P P E A R A N C E S

For GNP RLY INC.:

LORI M. BEMIS
Attorney at Law
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181

For the City of Redmond:

JOHN E. GLOWNEY and
HUNTER FERGUSON.
Attorneys at Law
600 University Street, Suite 3600
Seattle, WA 98101
(206) 624-0900

For King County:

ANDREW MARCUSE
Senior Deputy Prosecuting Attorney
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104
(206) 296-9015

Also in attendance:

CAROLYN J. HOPE
City of Redmond

I N D E X

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Examination by

Mr. Glowney

Ms. Bemis

Mr. Ferguson

Page

4, 76

71

81

Exhibits

Description

Page

1 Aerial photograph 1 pg

8

2 Letter to Honorable Anne K. Quinlan,

14

7/1/10, from Scott McDonald, 7/1/10

2 pgs

3 Aerial photograph 1 pg

18

4 Drywall Purchases 1 pg

28

1 top of the first page there.

2 A. Yes.

3 Q. Does that seem right to you?

4 A. Yes.

5 Q. I want to direct your attention to the
6 second full paragraph on the first page and the
7 sentence that says, "We are located directly in back
8 of, and contiguous to the Redmond spur that has
9 serviced our facility in the past." Do you see where
10 I'm reading?

11 A. Yes. That spur has never serviced the
12 operation. I think in the back here the spur that we
13 have used is the team track in Woodinville.

14 Q. Okay. So you don't mean that -- there's
15 been no direct service directly from the railroad
16 right to the facility, correct?

17 A. Correct. Correct.

18 Q. You're saying there's been service at some
19 other location?

20 A. Correct.

21 Q. And that some other place is someplace in
22 Woodinville?

23 A. Yeah. It was before my time.

24 Q. Before I mark either of these, does either
25 one help you?

1 Q. And had these gentlemen or any of them
2 visited your location before this?

3 A. One other time, one other time to introduce
4 themselves. I think it was the agent. I think his
5 name is Tom Jones. That they were -- he was
6 representing a railroad and that they wanted to put a
7 railroad down here, and if we would be interested in a
8 spur.

9 Q. So he introduced the idea of a siding or a
10 spur for you?

11 A. Correct.

12 Q. And when was that meeting, or contact?

13 A. The first contact, maybe 60 days or so
14 before the letter was produced to you guys on July
15 1st.

16 Q. So around early May, late April?

17 A. Yeah, ballpark. Springtime.

18 Q. Springtime? Okay. And this was a personal
19 visit to your facility? Telephone call?

20 A. I can't recall.

21 Q. And how long a conversation was it?

22 A. It was short. I can't recall.

23 Q. Under 15 minutes?

24 A. Oh, yeah.

25 Q. Under ten minutes?

1 A. 20 to 30 minutes.

2 Q. Did you talk about any sort of land use
3 issues related to it?

4 A. No.

5 Q. Do you know if it's feasible or not?

6 A. They promoted the idea.

7 Q. They promoted the idea to you?

8 A. Yes. That this is where it could go.

9 Q. Did you ask them about putting a spur there,
10 or siding there?

11 A. You know, I can't remember how the
12 discussion came out. But the discussion revolved
13 around this is probably the best spot for it.

14 Q. Had you ever discussed with anyone putting a
15 siding --

16 A. Zero.

17 Q. So when it came up, it came up on this
18 visit? That's the first time --

19 A. Of the siding location?

20 Q. The siding.

21 A. Yes.

22 Q. Well, the very idea of putting a siding
23 anyplace near your facility, is this the first time it
24 came up?

25 A. Yes.

1 Q. I think so.

2 A. When I view the spur, I -- when I view rail,
3 my thought pattern is accessing product, not selling
4 product.

5 Q. But your 40 cars estimate in your letter
6 included five to ten of outgoing, correct?

7 A. Yeah, but that's -- you know, I hadn't
8 given -- I haven't given a lot of thought to that.
9 And you asked for a number. Again, it's a speculative
10 number. So, yeah.

11 Q. And then in the past you've indicated that
12 your use for rail was directly related to sort of peak
13 time demand --

14 A. Uh-huh.

15 Q. -- when you were put on allocation by your
16 local suppliers.

17 A. Correct.

18 Q. So you don't have peak time demand now,
19 correct?

20 A. Correct.

21 Q. Haven't had it for a couple years?

22 A. Correct.

23 Q. The likelihood of that returning to peak
24 time demand is predictably a few years off? Would
25 that be fair to say?

1 done that.

2 Q. But I wanted to direct your attention to the
3 fourth line. You said you'd expect to receive 40 cars
4 a year, starting as soon as service is available,
5 hopefully fall 2010. Do you see that?

6 A. Uh-huh.

7 Q. We're now into fall 2010, correct? And as I
8 think you testified earlier, your actual demand has
9 actually fallen a little bit.

10 A. My demand is similar to 2009, which is way
11 off from 2006, '7 and '08.

12 Q. And I think you indicated that, you know,
13 when you said four truckloads you thought right now
14 it's a little closer to three.

15 A. Yes, I ran the numbers. Yes.

16 Q. And the plant in Phoenix is not up and
17 running, correct?

18 A. Correct.

19 Q. And you don't have peak time demand, and you
20 may not have it?

21 A. Correct.

22 Q. So you don't have any immediate need or
23 ability to use rail service now, correct?

24 A. Correct.

25 Q. And you may not have it for a number of

1 is a point of diminishing -- how much work you want to
2 do to make X amount of dollars. So labor was tight,
3 my trucks were all busy. I could have called and said
4 send me four truckloads, or semis to the team track in
5 Woodinville, if it's still there. And they would have
6 shipped it to me. They would have given me a loading
7 allowance. But frankly, the cost of running all my
8 equipment down there to unload it and running all my
9 equipment back and wearing out my people versus having
10 the rail siding at my location, you hit the balance of
11 cost. So I disagree with your statement.

12 Q. Sure.

13 A. But that's what I had to determine.

14 Q. Okay. Sure. Okay. I don't think I have
15 any further questions.

16 MS. BEMIS: No.

17
18 EXAMINATION

19 BY MR. FERGUSON:

20 Q. I've got some questions. My name's Hunter
21 Ferguson. I wasn't here earlier when everyone met,
22 but I'm a colleague of John Glowney's, and I think
23 I've actually left messages at your residence. I have
24 a question about the past decade. Is it correct that
25 you have owned and operated Drywall Distributors for

1 the past nine years?

2 A. True.

3 Q. Okay. In that time, do you know whether any
4 railroad company has operated service on the tracks
5 running in front of Drywall Distributors?

6 A. Yeah. We've seen the product go -- in my
7 timeline we saw the Dinner Train, we've seen the
8 product go by to Building Specialties in Redmond,
9 Washington.

10 Q. Okay. So is it correct, then, that you saw
11 freight service running past Drywall Distributors --

12 A. Correct.

13 Q. -- in the past decade or during the time
14 that you've owned the business?

15 A. Yes, I believe so, yeah.

16 Q. And if I understand you correctly, that
17 beginning in 2006, in 2007 and 2008, you experienced a
18 supply shortage on your end?

19 A. Yes.

20 Q. At any point during either 2006, 2007 or
21 2008, did you make inquiries about receiving freight
22 rail service directly to your facility?

23 A. I don't have a siding.

24 Q. So you did not make any inquiries?

25 A. No, I don't -- I wouldn't. I don't have a

1 is a point of diminishing -- how much work you want to
2 do to make X amount of dollars. So labor was tight,
3 my trucks were all busy. I could have called and said
4 send me four truckloads, or semis to the team track in
5 Woodinville, if it's still there. And they would have
6 shipped it to me. They would have given me a loading
7 allowance. But frankly, the cost of running all my
8 equipment down there to unload it and running all my
9 equipment back and wearing out my people versus having
10 the rail siding at my location, you hit the balance of
11 cost. So I disagree with your statement.

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13 A. But that's what I had to determine.

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18 EXAMINATION

19 BY MR. FERGUSON:

20 Q. I've got some questions. My name's Hunter
21 Ferguson. I wasn't here earlier when everyone met,
22 but I'm a colleague of John Glowney's, and I think
23 I've actually left messages at your residence. I have
24 a question about the past decade. Is it correct that
25 you have owned and operated Drywall Distributors for

1 siding to unload it.

2 Q. But would you have been able to at least
3 partially solve your supply problem had you been able
4 to receive freight rail deliveries?

5 A. Sure.

6 Q. Thank you.

7 A. Okay.

8 MR. GLOWNEY: Any follow-up? Mr.
9 McDonald, thank you so much for your time. Let me
10 just tell you you can -- you have an opportunity to
11 review a copy of the transcript. That's to make sure
12 -- our court reporter is very good, but you should
13 review it and see if you think an answer is
14 incorrectly taken down. You can choose to waive that.
15 I usually advise my clients not to waive it. Just if
16 you want to look at the transcript and make sure it
17 says what it says.

18 THE WITNESS: Sure.

19 MR. GLOWNEY: It's up to you.

20 THE WITNESS: Do I get a copy of it?

21 MR. GLOWNEY: You would get a copy of
22 it. It would be sent to you. You have a time period
23 to look at it make any corrections and send it back
24 in.

25 THE WITNESS: I'll review it at that

C E R T I F I C A T E

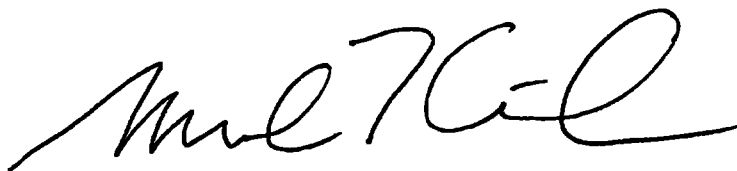
STATE OF WASHINGTON)

COUNTY OF KING)

I, the undersigned Certified Court Reporter and an officer of the Court under my commission as a Notary Public for the State of Washington, hereby certify that the foregoing deposition upon oral examination of SCOTT McDONALD was taken before me on October 26, 2010, and transcribed under my direction;

That the witness was duly sworn by me to pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of November, 2010.



Mark Hovila

Washington Certified Court Reporter No. 2599

License expires October 4, 2011

Exhibit J

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



THE CITY OF REDMOND
PLANNING DEPARTMENT

September 11, 1989

Mr. Robert Harthorne
Harthorne/Hagen Architects
1500 Westlake Ave. N.
Seattle, Washington 98109

SUBJECT: SPR-89-28, Unisea Processing Addition and
Office Building

Dear Mr. Harthorne:

The City of Redmond Technical Committee has approved your Site Plan Review application for the Unisea processing addition and office building, subject to the conditions noted in the enclosed Development Checklist.

The Part I of the Development Checklist requires a lot line revision and a right-of-way vacation. The lot line revision shall incorporate parcel A and parcel B into a single parcel. The right-of-way vacation is required to eliminate the boundary irregularity in the southeast corner of the site. Both the lot line revision and the right-of-way vacation must be completed before a building permit can be issued for the subject project.

This approval shall expire one year from the date of this letter unless significant construction activity has started and remains in progress.

This approval shall not waive compliance with future City of Redmond codes, policies or standards relative to this development. Administrative decisions of the Technical Committee may be appealed to the City Council pursuant to the Redmond Community Development Guide by filing written notice with the Planning Department within 14 days of the date of this letter.

Robert Harthorne
Unisea Processing Addition
September 11, 1989
Page 2

If you have any questions, please contact Sarah Stiteler,
Planner, at 882-6449.

Sincerely,

Gregory Moore

GREGORY MOORE, AICP
Acting Director of Planning
and Community Development

Carol Osborne

CAROL OSBORNE, Director
Department of Public Works

SS/kvt

Attachment

c:\SS\TC\@KUnisea

Project: Unisea, Inc.
Location: NE 90th St @ 154th Ave NE
Plan Date: September 6, 1989
Pre-Application: _____
Preliminary _____
Final X _____

CITY OF REDMOND
DEVELOPMENT CHECKLIST
PART II - STREETS, SIDEWALKS, UTILITIES, TRANSPORTATION

GENERAL

- X A. Engineering plans and street improvement plans for the site shall be prepared by a registered engineer and shall include:

Plan size - 22"x34" (no substitutions accepted)

Scale - Standard engineering scale(s)

All information necessary for inspection by the Engineering Dept.

Review for approval by the Director of Public Works

(Please note: The site plan shall be approved by the Engineering Dept. and be included as part of engineering construction plans. Plans approved by the Director of Public Works take precedence over all other plans).

- X B. A copy of all recorded easements pertaining to the property is required.

TRANSPORTATION

- X A. All existing driveways and intersections within 200' of the site property (both sides of the street) shall be shown on the site plan.

- X B. Other off-site improvements for traffic control devices (signs, markings, and traffic signals) are required as follows:

In 151st Avenue N.E. right-of-way fix railroad crossing (remove tracks and repair roadway to City standards as crossing is being abandoned for use of railroad.

Exhibit K

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



Legend

- Siding
- + Redmond Spur
- Building Specialties
- Parcel Lines

1 inch = 100 feet

N

Exhibit L

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the 22nd day of June, 2010 ("Effective Date") by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port") and the City of Redmond, a municipal corporation of the State of Washington ("Redmond").

RECITALS

A. The Port is the owner of real property located in King County, Washington, commonly known as the City Segment of the Woodinville Subdivision ("the Property"), and legally described on Exhibit A attached hereto and incorporated herein by this reference.

B. On November 5, 2009, the Port entered into a Memorandum of Understanding (the "MOU") with King County, Sound Transit, Cascade Water District, Puget Sound Energy and Redmond setting forth the mutual understanding of the parties for the completion of future transactions where the Regional Partners would purchase from the Port interests in the Woodinville Subdivision and thus share in the cost of acquiring it.

C. Consistent with the MOU, Redmond desires to acquire the Property from the Port for future trail, utility and transportation uses.

D. Consistent with the MOU, Sound Transit desires to acquire a property interest in the Property.

E. Subsequent to the closing of the transaction contemplated in this Agreement, Sound Transit, King County, Cascade Water District, and Puget Sound Energy intend to complete the purchase from the Port of other property interests in the Woodinville Subdivision (the "Regional Transaction").

F. Redmond and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington, (Intergovernmental Disposition of Property Act) which permits a political subdivision of the State of Washington to sell real property to the state or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

G. Redmond and the Port have agreed upon the terms and conditions under which the Port will sell the Property to Redmond, all as set forth herein.

H. This Agreement was approved by the Redmond City Council on June 15, 2010 and by the Port Commission of the Port of Seattle on June 22, 2010.

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

AGREEMENT

1. The Property. The Port agrees to sell to Redmond, and Redmond agrees to purchase from the Port, the Property. The Property includes the tracts or parcels of land situated in the City of Redmond, County of King, State of Washington, described in Exhibit A attached hereto ("the Land") that make up the segment of the Redmond Spur of the Woodinville Subdivision that lies approximately between mileposts 3.4 and 7.3, together with all of the Port's right, title and interest in and to the buildings (if any) located on the Land ("the Buildings"), all of the Port's right, title, and interest in any tangible personal property and fixtures of any kind owned by the Port and attached to or used exclusively in connection with the ownership, maintenance or operation of the Land or the Buildings, if any ("the Personality"); and all of the Port's right, title and interest in and to all third party leases, licenses and contracts associated with the Property as of the date of Closing.

2. Purchase Price. Redmond shall pay to the Port a total purchase price of Ten Million Dollars (\$10,000,000.00) for the Property ("Purchase Price").

3. Title. The Property shall be conveyed with no warranties of title and shall be subject to all matters affecting the Property, whether of record or not, including but not limited to (i) matters which would be disclosed by a current, accurate survey of the Property; and (ii) the rights granted to third parties pursuant to any third party lease, license, permit, occupancy agreement or other agreement demising space in or providing for the use or occupancy of the Property ("Third Party Leases, Licenses and Contracts"). Redmond acknowledges and affirms that the Port may not hold fee simple title to the Property, that the Port's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Redmond is willing to accept the Property on this basis. The Port does represent and warrant that the Property is railbanked pursuant to 16 U.S.C. 1247(d), and that this status permits the Port to convey the Property as contemplated in this Agreement.

4. Condition of the Property and Environmental Release/Indemnification.

4.1 Redmond acknowledges that the Property may contain Hazardous Substances, and that Hazardous Substances released onto the Property may have migrated onto neighboring properties at times prior to the Closing Date. Redmond waives, releases and discharges forever the Port from any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action (including without limitation, causes of action in tort), costs and expenses (including without limitation fines, penalties and judgments and attorneys fees) of any and every kind or character, known or unknown (collectively "Losses") that Redmond might have asserted against the Port arising from or in any way related to environmental conditions in, at, on, under or originating from the Property or the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without

limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person, and (c) Losses arising under any Environmental Law enacted after transfer. Redmond further agrees to indemnify and defend the Port against any and all Losses that the Port sustains as a result of claims by third parties, including but not limited to BNSF and federal, state and local regulatory agencies, for damages or remediation costs related to environmental conditions in, at, on, under or originating from the Property. Nothing in this Agreement shall be construed to waive or discharge any rights or claims Redmond may hold under the Environmental Laws, agreements or deeds to seek indemnity or contribution from BNSF or other parties other than the Port for Losses arising from or in any way related to environmental conditions on the Property. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

Survival. The provisions of this Paragraph 4.1 shall survive the Closing of the transaction contemplated herein and the delivery of the Deed.

4.2 Except as provided in Paragraphs 3 and 7, **REDMOND IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE PROPERTY** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; wetlands; the condition or existence of any of the above ground or underground structures or improvements, including transformers in, on or under the Property; the condition of title to the Property, and the Third Party Leases, Licenses, Contracts, permits, orders, or other agreements, affecting the Property.

4.3 Redmond represents and warrants to the Port that except for the Port's express representations, warranties and obligations under this Agreement, Redmond has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

4.4 Redmond and the Port acknowledge that the Port's willingness to convey the Property reflects that the Property is being conveyed subject to the provisions of this Paragraph 4.

5. Closing Conditions.

5.1 Redmond's obligation to purchase the Property shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

5.1.2 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

5.1.3 ~~The Port shall have performed all obligations to be performed by~~ the Port under this Agreement on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

If the conditions set forth in this Paragraph 5.1 are not satisfied as of Closing and Redmond does not waive the same, Redmond may terminate this Agreement by giving written notice to the Port and thereafter neither party shall have any further liability to the other under this Agreement.

5.2 The Port's obligation to sell the Property shall be subject to the following conditions that must be satisfied as of Closing:

5.2.1 All representations and warranties of Redmond contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

5.2.2 Redmond shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

If the conditions set forth in this Paragraph 5.2 are not satisfied as of Closing and the Port does not waive the same, the Port may terminate this Agreement by giving written notice to Redmond, and thereafter neither party shall have any further liability to the other under this Agreement.

6. Post - Closing Obligations.

6.1 No later than three (3) days before the closing date of the Regional Transaction described in Recital E above, or any other transaction in which Sound Transit shall pay consideration for the acquisition of real property interests in the Woodinville Subdivision, Redmond shall deliver to the escrow agent a fully executed non-exclusive permanent easement over the Property (the "Transportation Easement"), in favor of Sound Transit, of varying widths in, on, under, over, across and through portions of the Property as necessary or desirable for public transportation uses including the design, development, construction, operation, maintenance and repair of one or more high capacity transit facilities in and through the

Property, together with reasonable rights of access across the remainder of the Property as may be necessary for Sound Transit to exercise its rights under the public transportation easement. Sound Transit's easement rights shall be exercised consistent with preservation of the corridor for future railroad use as required by 16 U.S.C. 1247(d), and consistent with other authorized uses of the Property by Redmond, King County, Puget Sound Energy and other interest holders. The Port shall provide Redmond with sixty (60) days notice, unless otherwise agreed to by the Port and Redmond, of the date by which Redmond is to provide the executed Transportation Easement to the escrow agent for the Regional Transaction or other applicable transaction. Sound Transit is an intended third-party beneficiary of the requirements of this Paragraph 6.1 and may independently enforce the provisions of this paragraph to require the conveyance contemplated herein.

6.2 Exhibit B to this Agreement describes a June 7, 2010 letter received by the Port and Redmond, in which a Seattle attorney announces the possibility that he may bring legal proceedings on behalf of unnamed clients to seek rescission of the Port's acquisition of the Eastside Rail Corridor, including the Property. If, at any time subsequent to Closing, a final judicial decree nullifies Redmond's acquisition of the Property, (1) such action shall not be a breach of the Covenants, Representations and Warranties of either the Port or Redmond, and (2) upon fifteen (15) days' written notice from Redmond, which notice may be served on the Port only after BNSF reimburses the Port for the purchase price paid by the Port to BNSF under the Seventh Amendment to the Purchase and Sale Agreement (Woodinville Subdivision - North Rail Line), dated as of December 17, 2009) ("the North Agreement"), the Port shall deliver to Redmond the full amount of the Purchase Price. If, in addition to nullifying Redmond's acquisition of the Property, the final judicial decree nullifies the Port's acquisition of other portions of the Eastside Rail Corridor and BNSF reimburses the Port for less than the full purchase price that the Port paid to BNSF under the North Agreement, or the Port receives payment from BNSF in installments, the Port and Redmond shall promptly commence negotiations to determine what portion of BNSF's payments to the Port represent a fair apportionment of the Purchase Price to be reimbursed by the Port to Redmond.

6.3 The provisions of this Paragraph 6 shall survive Closing.

7. Covenants, Representations and Warranties of the Port. The Port hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Port to Redmond as of the Date of Closing:

7.1 From the date of this Agreement to the Date of Closing, the Port will notify Redmond of each event of which the Port becomes aware that affects the Property or any part thereof, promptly upon learning of the occurrence of such event.

7.2 The Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

7.3 The Port is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended ("Code") and shall deliver to Redmond on the Date of Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

7.4 Except as provided in Exhibit B, there is no litigation pending against the Port that pertains to the Property or the Port's ownership thereof.

7.5 The Port has not received any written notice of, and the Port has no knowledge of, any written notice from any governmental authority alleging any uncured existing violation of any applicable governmental laws, statutes, ordinances, rules, codes, regulations or orders, including Environmental Laws, affecting the Property.

~~7.6 From the date of this Agreement to the Date of Closing, the Port will not grant or create any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option to purchase or other right which would affect the Property after Closing without Redmond's written consent first having been obtained.~~

8. Covenants, Representations and Warranties of Redmond. Redmond covenants and agrees as follows:

8.1 From the date of this Agreement to the Date of Closing, Redmond will timely perform all of its monetary and non-monetary obligations required by the terms of this Agreement to be performed by Redmond.

8.2 Redmond is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

8.3 Except as provided in Exhibit B, there is no litigation pending against Redmond which could prevent or impair Redmond's obligations hereunder.

9. Closing.

9.1 Time and Place. The closing of this sale ("Closing") shall take place at the offices of Chicago Title, located at 705 5th Avenue, Suite 2300, Seattle, Washington, escrow agent for the closing of this transaction ("Escrow Agent"), on June 30, 2010 ("Date of Closing").

9.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to Redmond, the following documents, all of which shall be duly executed and witnessed and/or notarized as necessary:

9.2.1 Quit Claim Deed. A Quit Claim Deed in substantially the form attached hereto as Exhibit C ("Deed");

9.2.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed and notarized by the responsible and authorized officials of the Port;

9.2.3 Assignment of Third Party Leases. An assignment to Redmond, in the form attached hereto as Exhibit D, of all of the Port's right, title and interest in and to the Third Party Leases, Licenses or Contracts that pertain to the Property and that are listed in Schedule 1 hereto, and any other Third Party Leases, Licenses or Contracts that pertain to the Property;

9.2.4 Bill of Sale. A Bill of Sale in substantially the form attached hereto as Exhibit E and

~~9.2.5 Other Documents. Such other documents and funds as may be required to close this transaction, including a Foreign Investment in Real Property Tax Act ("FIRPTA") certificate.~~

9.3 Redmond's Obligations. At or before Closing, Redmond shall deliver to Escrow Agent, for delivery to the Port, the following, and all required documents shall be duly executed and witnessed and/or notarized as necessary:

9.3.1. Purchase Price. The Purchase Price;

9.3.2 Excise Tax Affidavit. An appropriate excise tax affidavit, signed and notarized by the responsible and authorized officials of Redmond; and

9.3.3 Other Documents. Such other documents and funds as may be required to close this transaction.

9.4 Proration. All taxes, interest and other expenses associated with the Property, shall be prorated as of Closing. There shall be no proration of assessments.

9.5 Closing Costs. The Port and Redmond shall share equally the escrow fees and other closing costs with respect to the sale of the Property. To the extent Redmond is able to obtain title insurance for the Property, Redmond shall be solely responsible for the cost of title insurance premiums, title endorsements, extended coverage or other title coverage requested by Redmond.

9.6 Third Party Lease Payments. The Port shall be entitled to all sums due from any Third Party Leases, Licenses or Contracts (collectively "Third Party Rents") owing for the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases, Licenses or Contracts relate. The Port shall not receive a credit for any such Third Party Rents that are due but unpaid as of the Closing Date but Redmond shall remit to the Port any such Third Party Rents received by it after such Closing. Redmond shall be entitled to any Third Party Rents owing for time periods after the month in which the Closing occurs (regardless of when the Third Party Rents are paid) for the portion of the Property to which such Third Party Leases, Licenses or Contracts relate and

the Port shall pay to Redmond any such Third Party Rents received by the Port, if any. Within 90 days after Closing the Port shall pay to Redmond the amount, if any, of all rents under the Leases and all security deposits held by the Port under the Leases.

10. Possession. Redmond shall be entitled to possession of the Property immediately following Closing.

11. Indemnification.

11.1 By Port. Subject to and without in any way limiting the provisions of Paragraph 4 of this Agreement, the Port shall pay, protect, pay the defense costs of, indemnify and hold Redmond and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of the Port set forth in this Agreement; (b) the failure of the Port to perform any obligation required by this Agreement to be performed by the Port; (c) liabilities arising out of the ownership, maintenance and/or operation of the Property by the Port prior to Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Port, its agents or employees, that occurred prior to Closing.

11.2 By Redmond. Subject to and without in any way limiting the provisions of Paragraph 4 of this Agreement, Redmond shall pay, protect, pay the defense costs of, indemnify and hold the Port and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Redmond set forth in this Agreement; (b) failure of Redmond to perform any obligation required by this Agreement to be performed by Redmond; (c) liabilities arising out of the ownership, maintenance and/or operation of the Property by Redmond after Closing; or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Redmond, its agents or employees, that occurred after Closing.

12. Default.

12.1 By Port. If there is an event of default under this Agreement by the Port, Redmond will be entitled (a) to seek specific performance of the Port's obligations under this Agreement or (b) to terminate this Agreement by written notice to the Port and Escrow Agent. If Redmond terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided in this Agreement, other than that the Port shall pay any costs of terminating the escrow.

12.2 By Redmond. If there is an event of default under this Agreement by Redmond, the Port will be entitled (a) to seek specific performance of Redmond's obligations under this Agreement or (b) to terminate this Agreement by written notice to Redmond and Escrow Agent. If Redmond terminates this Agreement, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or

obligations under this Agreement, other than that Redmond shall pay any costs of terminating the escrow.

13. Notices. All notices to be given by each party to the other pursuant to this Agreement shall be delivered in person, by facsimile or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt (provided notice by facsimile is on a business day and receipt is acknowledged); notices given by mail shall be deemed effective on the third business day after deposit. Notices may be given at the following addresses and facsimile numbers, until further notice by either party:

To the Port:

Port of Seattle

Attn: Managing Director

Real Estate Division

P. O. Box 1209

Seattle, WA 98111

(206) 787-3722

To Redmond:

Property Manager

City of Redmond

MS-4NPW

Public Works Department

P.O. Box 97010

Redmond, WA 97010

425 556-2715

14. Miscellaneous:

14.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

14.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the Property and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

14.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto.

14.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

14.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. Redmond or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

14.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

14.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

14.8 Exhibits and Schedules. This Agreement contains the following Exhibits and Schedules which are attached and made a part of this Agreement: Exhibits A, B, C, D and E, and Schedule 1.

14.9 Brokers. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale contemplated by this Agreement.

14.10 Time. Time is of the essence of this Agreement.

14.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

14.12 Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it.

14.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.14 Survival. The covenants and indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof. The representations and warranties made in this Agreement shall not merge into the Deed but shall survive the Closing unimpaired for a period one (1) year after the Closing.

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

CITY OF REDMOND:

By [Signature]
Its Mayor Paul Turner

PORT OF SEATTLE:

By [Signature]
Its CEO

Exhibit M

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

MEMORANDUM OF UNDERSTANDING
Regarding Acquisition of the
Woodinville Subdivision

This MEMORANDUM OF UNDERSTANDING is made by and among the Port of Seattle, a Washington municipal corporation ("Port"), Sound Transit, a regional transit authority ("Sound Transit"), King County, a political subdivision of Washington ("King County"), the City of Redmond, a Washington municipal corporation ("Redmond"), the Cascade Water Alliance, a Washington non-profit corporation ("Cascade"), and Puget Sound Energy, Inc., a Washington corporation ("PSE") (collectively, the "Parties") as of the 5th day of November, 2009.

WHEREAS:

(A) BNSF desires to sell in part and donate in part the Woodinville Subdivision, which is a railroad corridor extending from the City of Renton northerly to the City of Snohomish, and including a spur corridor extending from the City of Woodinville to the City of Redmond; and

(B) The Port, King County and BNSF previously executed a purchase and sale agreement and donation agreement for the acquisition and partial railbanking of the Woodinville Subdivision; and

(C) Additional regional partners have been identified to share in the cost of acquiring the Woodinville Subdivision for public ownership; and

(D) The alignments under consideration for Sound Transit's Eastlink light rail project require property rights within the Woodinville Subdivision; and

(E) Sound Transit, Redmond, Cascade and PSE have each expressed an interest in participating in the acquisition and preservation of the Woodinville Subdivision in public ownership for recreational trail use, as well as for use as a public transportation and utility corridor.

(F) It is the express purpose of Sound Transit, King County, and Redmond, that the Woodinville Subdivision be developed and operated to ensure that it is available for the dual purposes of recreational trail and public transportation use; and

(G) Consistent with federal railbanking requirements, King County and Redmond have interests in developing a recreational trail within the Woodinville Subdivision; and

(H) The financial contributions to be made by the Port, King County, Sound Transit and Redmond towards this collective acquisition may not be in proportion to the fair market value of the rights in the Woodinville Subdivision that are expected to be received by these entities and, in all instances, the fair market value of the rights to be received by each governmental entity in the Woodinville Subdivision may materially exceed the amount of such entity's respective financial contribution.

NOW, THEREFORE, the Parties have reached the following understanding:

SECTION 1. Purpose.

The Port intends to close its acquisition of the Woodinville Subdivision in 2009. The Parties have envisioned and are working to complete a future transaction for their mutual benefit and for the benefit of the public. The Parties wish to set forth their understandings in this Memorandum of Understanding ("MOU") with respect to their respective interests in the transaction. This MOU is a non-binding document that creates no rights and imposes no obligations on any Party. While the Parties are committed to working cooperatively, expeditiously and efficiently to document the components of the transaction through binding agreements ("Agreements") using this MOU as a guide, the allocation of interests described in this MOU are tentative and subject to review and modification as the Parties move forward with their discussions.

SECTION 2. Key Acquisition Elements.

The key elements of the proposed transaction are as follows:

2.1 This transaction concerns the portion of the Woodinville Subdivision main line corridor between Renton and Snohomish (approximately mile posts 5.0 and 38.4), and a spur corridor between Woodinville and Redmond (between approximately mile posts 0.0 and 7.3) ("Redmond Spur"). Collectively, the main line corridor and the Redmond Spur constitute the "Woodinville Subdivision." The portion of the Woodinville Subdivision north of mile post 23.8 in Woodinville to milepost 38.4 in Snohomish County is referred to as the "Freight Portion." The portion of the Redmond Spur between approximately mileposts 0.0 and 3.1 is referred to as the "County Portion of the Redmond Spur." The portion of the Redmond Spur between approximately mileposts 3.1 and 7.3 is referred to as the "City Portion of the Redmond Spur." Together, the Freight Portion and the Redmond Spur are referred to as the "Northern Portion." The portion of the Woodinville Subdivision south of Woodinville, excluding the Redmond Spur, is referred to as the "Southern Portion." The specific line segments and designated portions will be further defined in the Agreements.

2.2 The Parties have expressed a desire for the future allocation of interests in the Woodinville Subdivision as follows:

2.2.1 The Port will retain, subject to a freight rail easement granted by BNSF to a freight rail operator, all of the title, interest and obligations in the real and personal property of the Freight Portion.

2.2.2 Sound Transit is interested in acquiring a real property interest in the Southern Portion and the Redmond Spur.

2.2.3 King County is interested in acquiring a real property interest in the Southern Portion and the County Portion of the Redmond Spur.

2.2.4 Redmond is interested in acquiring a real property interest in the City Portion of the Redmond Spur.

2.2.5 Cascade is interested in acquiring a utility easement over the Southern Portion and will have the right to negotiate with the County and Redmond for utility easements over the Redmond Spur.

2.2.6 PSE is interested in acquiring utility easements throughout the entirety of the Woodinville Subdivision, except for the City Portion of the Redmond Spur, for PSE's existing and future facilities and infrastructure. For the City Portion of the Redmond Spur, PSE and Redmond anticipate a value for value exchange of perpetual easements for existing PSE facilities and infrastructure within the Redmond right-of-way and Redmond trail facilities on PSE properties, based on the appraised value of the properties in question. Provided, that PSE's new facilities and infrastructure shall be subject to otherwise applicable public approval, construction and permitting processes.

2.3 The identification of which entities will grant and which entities will receive these interests and the order in which these interests will be acquired will be further defined in the Agreements.

SECTION 3. Proposed Key Future Use Elements.

3.1 Freight rail service subject to the jurisdiction of the Surface Transportation Board ("STB") will continue on the Freight Portion.

3.2 Utility corridor uses by PSE and Cascade.

3.3 Interim trail use ("railbanking") will be established on the Southern Portion and the Redmond Spur under the National Trails Systems Act, 16 U.S.C. 1247(d) as of the closing of the Port's transaction with BNSF. The Parties recognize that for any portion subject to railbanking, future local, regional or national transportation needs may require reconstruction and reactivation of the right-of-way for freight rail service. King County will be the trail sponsor for the Southern Portion and the County Portion of the Redmond Spur. The Agreements will provide that in the event Redmond acquires an interest in the City Portion of the Redmond Spur, King County and Redmond will cooperate in seeking Surface Transportation Board authorization for Redmond to assume the role of trail sponsor for the City Portion of the Redmond Spur.

3.4 The Parties intend that the Agreements will provide that, consistent with railbanking, the Southern Portion and the Redmond Spur will, in addition to public trail use, be available for public transportation uses such as high capacity transit or bus transportation. The Freight Portion may be made available for public transportation purposes and recreational trail purposes to the extent consistent with ongoing freight rail operations. Should the Freight Portion ever be proposed for abandonment, the Parties with an interest in the Freight Portion shall cooperate to allow the Freight Portion to be railbanked.

3.5 Upon consummation of the Agreements, a process will be established for the entities with interests in the Southern Portion and the Redmond Spur to periodically meet in order to consult and coordinate activities related to the development, maintenance and use of those portions of the Woodinville Subdivision. Said entities agree to coordinate planning and development activities to the extent possible to ensure effective use of the Southern Portion and the Redmond Spur for the uses outlined in this MOU, based on the ownership interests acquired by

each, and consistent with the express goal of developing and operating a dual use corridor for recreational trail and transit purposes. The Agreements shall ensure that no party may frustrate dual use of the corridor for both public transportation and recreational trail purposes.

3.6 If the Port ever determines to offer or to agree to transfer any or all of the Freight Portion, then Sound Transit, King County and any other public agency in the State authorized to provide transit, rail services or public trails shall have a right of first refusal to acquire such property.

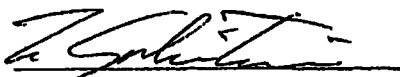
3.7 If BNSF ever determines to offer or to agree to transfer any or all of that portion of the Woodinville Subdivision between approximately mileposts 0-5.0, King County will have the right of first refusal to acquire that portion of such property. If King County acquires this property, it will make it available to the other Parties on terms similar to their interests in the acquired portions of the Woodinville Subdivision.

SECTION 4. Negotiation, Cooperation, and Timing.

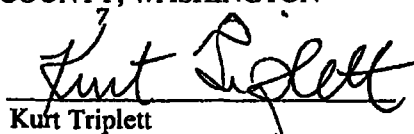
4.1. The Parties shall cooperate to (i) reach agreement on press releases and other public announcements related to the transactions described herein, and (ii) make any filings with the STB to the extent such filings are necessary to effectuate the transactions contemplated by this MOU.

4.2 By no later than December 14, 2009, the Parties shall seek any necessary authorizations from their respective boards or legislative bodies to negotiate the transactions contemplated in this MOU.

PORT OF SEATTLE

By: 
Tay Yoshitani
Chief Executive Officer

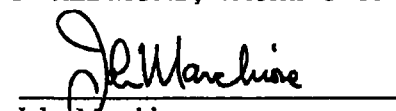
KING COUNTY, WASHINGTON

By: 
Kurt Triplett
County Executive

SOUND TRANSIT

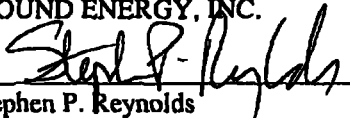
By: 
Joni Earl
Chief Executive Officer

CITY OF REDMOND, WASHINGTON

By: 
John Marchione
Mayor

PUGET SOUND ENERGY, INC.

By:


Stephen P. Reynolds
President and Chief Executive Officer

CASCADE WATER ALLIANCE

By:


Chuck Clarke
Chief Executive Officer

Exhibit N

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

REDMOND CITY COUNCIL
STUDY SESSION

Joint Meeting with the Parks and Trails Commission

Tuesday, March 30, 2010

Meeting held at Redmond City Council Chamber
Redmond, Washington

COPY

TRANSCRIBED BY: Kristin M. Vickery, CCR, 3125

A P P E A R A N C E S

Members of the Council: JOHN MARCHIONE, MAYOR
RICHARD COLE
PAT VACHE
KIM ALLEN
DAVID CARSON
HANK MARGESON
HANK MYERS

Also Present: TOM PAYNE, GNP
DOUG ENGLE, GNP
TOM JONES, CASCADIA

1 At the end of the process, there was a third-party
2 operator selection. It was publicly bid. We were the
3 successful bidder, and we purchased the Burlington Northern
4 Santa Fe's rights which is a permanent easement attached to
5 land. We purchased their rights to acquire and operate the
6 freight line on the corridor. So anything runs on top of us
7 from Woodinville north.

8 I know that there's a lot of controversy about how
9 come it seems that environmental rules don't apply to
10 railways. We're a different leopard. We're a black
11 leopard. The other leopards have spots. It's a different
12 legislated creature from transit. There's a completely
13 separate act that respects transit.

14 So we are under the National Environmental Policy
15 Act as administered by the Federal Railway Administration.
16 It's not administered by the environment department. So
17 when we get the authority to acquire, construct, and operate
18 a line. We can maintain it, improve it, and keep it in
19 operable condition.

20 While initial construction of the rail line
21 requires authority from the STB, improvement to existing
22 lines does not require an additional license or
23 environmental review which is necessary to remedy wear and
24 tear and meet the changing needs for the market of services.

25 So we applied for federal railway financing under

1 an extraordinary program which has \$35 billion in it. We
2 applied a year ago, February. We're now in the final stages
3 of that application -- Doug can speak to that much more
4 capably than I -- but one of the things they do is they take
5 the proposal that you have for works, stations, platforms,
6 construction, rehabilitation, shops, all of these things,
7 they do the environmental analysis inside the FRA, and they
8 have an ability to issue a Categorical Exclusion to railways
9 under the National Environmental Policy Act, which we've
10 received. So I brought a copy of our Categorical Exclusion
11 approval with a little letter for you, asked for by your
12 counsel, so we're pleased to provide it.

13 So what that means is that all of the
14 environmental issues that surround us in the course of
15 rehabilitating the track, building our stations, building
16 our shops, operating the railway, have gone through all of
17 the requisite or necessary environmental approval processes,
18 and they've issued our Categorical Exclusion, which is a
19 great document because we can start doing the work any time,
20 as soon as -- and we shall as soon as our loan's approved.

21 Engineering. The line from Redmond to
22 Woodinville, quite plainly, needs a lot of work. It needs
23 ties. Interestingly enough, the steel, the joints can be
24 welded quite simply, and so you could have an operable
25 service to Woodinville with ties and ballast and some joint

1 started with the Port, we said to them, Okay. We're going
2 to apply for this Categorical Exclusion for the whole
3 subdivision. They said, Fine.

4 Tay Yashitani attended a meeting with us at the
5 FRA in May of last year. And we were well advanced in the
6 process. Then he said, I haven't figured out how I'm going
7 to buy the line yet. So we put everything on hold. But now
8 that's gone forward. The line has been bought. We have
9 purchased the Burlington Northern Santa Fe's permanent
10 freight easement. We're the local railway, and we're having
11 a great relationship with our communities.

12 Woodinville's been trying to repair a crossing for
13 years. We got it done in five hours, in an afternoon. It's
14 really quite simple: Issue the clearance, and you protect
15 the workers, and they go repair the road. They were getting
16 phone calls about the bumps. And no one could find
17 Burlington Northern's phone number in Fort Worth, where it
18 had an answering box. So it worked very, very well. We're
19 happy to be here, and we have a very cordial and open
20 working relationship with the real estate division of the
21 Port of Seattle. We have joint meetings and conversations
22 weekly on operational and engineering matters. That's what
23 we do as a railway company.

24 MR. COLE: Okay. Mr. Engle.

25 MR. ENGLE: First of all, I would like to thank

1 you all very much for the opportunity to discuss the
2 opportunity in front of us which is excursion service which
3 we hope the City of Redmond will endorse in the summer time
4 period.

5 Our first request is that you don't tear up the
6 tracks. What we're looking for here is the opportunity to
7 work together and to create an economic opportunity too for
8 excursion service. In January I presented a quick three
9 minutes of what the opportunity is.

10 (1:49:49.)

11 MR. ENGLE: And since then, we have hired a
12 marketing firm, and they have gone out and talked to a few
13 dozen of our stakeholders, including in Redmond,
14 Woodinville, Snohomish, and Everett. And they have come
15 back, and I want to say virtually unanimously -- and I don't
16 know who they are because it's all arm's length -- they have
17 come back virtually unanimously that the excursion service
18 would be an overwhelming benefit to the Eastside. It would
19 be, No. 1, as an economic benefit because of the increased
20 traffic, tourism, business, et cetera, they can bring to the
21 area.

22 Now, we have a contractual obligation, as
23 Mr. Payne has presented, that says within six months, we
24 have to begin excursion service. We are not about to let
25 this opportunity get away. Something will run.

1 The other side is is that we've already identified
2 some very nice train sets, that this is a buyer's market at
3 this standpoint. We've identified some very upscale train
4 sets that we could bring out here to the Eastside that would
5 be a very positive experience for people coming over.

6 What -- and I'm going to let you know for the
7 first time here what the recommendation back to us was the
8 name of The Bounty of Washington, "The Tasting Train." The
9 Tasting Train, playing off of not only the wineries we have
10 here in area but also the natural foods, et cetera, the
11 fresh flavors we have out of the Puget Sound in the way of
12 our fish, et cetera, such that that's what we would want to
13 promote nationally in 2011.

14 This year what we're looking at is: How do we
15 begin? What we have said all along from our inception is an
16 incremental approach and that is one of "Let's get started.
17 We don't have to wait until every light in town is green
18 before we start moving through the traffic lights." When
19 the one in front of us is green, we're going to move. And
20 we'll just keep right on moving.

21 And we've run across parties that say, Oh, no. It
22 can't be done. Fine. We just keep moving. And that's
23 really what GNP is all about. We're not trying to create
24 \$20 million stations. We're about creating \$2 million
25 stations so that we can get started with this.

1 Some of the feedback that we've got is that, A, it
2 needs to be first class, but we also need to be able to
3 accommodate families. So as we're looking at the over
4 400,000 people that come to the Puget Sound area for cruise
5 ships, we also need to be able to look at our local families
6 and their abilities to get on and enjoy this. And I know
7 from my family's side, that the pumpkin routine up in
8 Snohomish is a positive. And I also know going up there and
9 getting a Christmas tree is a positive. And to that end,
10 what we've thought about in the way of the excursion train
11 is having a baggage car and a baggage handler that can
12 actually accommodate the tree and the pumpkins and making it
13 easy for local folks to go up, get on the train, go up and
14 back, enjoy it.

15 One of the biggest failings of the Dinner Train as
16 it relates to Chateau Ste. Michelle stop was that it didn't
17 stay long enough, Chateau Ste. Michelle had to pay overtime
18 for their people to work there, and then people could only
19 walk out with two hands.

20 So to overcome that what we propose to do is to be
21 able to take cases of wine or cases of whatever or antique
22 furniture, whatever the case may be, but bring that to the
23 baggage car and help the passengers bring that down and get
24 that to their vehicle so that we're not just stuck to two
25 hands. That has been an overwhelming, favorable response

1 from everybody up and down the line.

2 As we've looked at the -- the type of equipment,
3 the train cars, et cetera, that we're looking at, we've been
4 looking at bilevel cars which would be good for weekday
5 passenger service, but we've also looked at the weekend-type
6 car. What is that going to be? Well, there's a number of
7 train sets out there right now that are available, and we're
8 in the final process, if you will, of selecting what kind of
9 cars, et cetera, that we want to have.

10 (1:55:19.)

11 MR. ENGLE: What we're trying to get back to,
12 again, is the Tasting Train. Right? So that it's the
13 tasting. There's different -- I've had a number of
14 marmalades, jams, wines, and brews that could very easily be
15 sold or at least distributed informationally on the -- on
16 the train.

17 We also anticipate being able to have an espresso
18 stand, et cetera, on the train, in the baggage car, so that
19 people -- we say "baggage car," but it will look very much
20 the same front to end -- so that people can come in, get an
21 espresso, cup of coffee, whatever; and enjoy the ride,
22 hopefully, from Redmond all the way up to Woodinville; be
23 able to get out spend a couple of hours there; and then come
24 back down.

25 One thing that we've learned in talking to the

1 various cruise ship lines is that people are looking to not
2 only spend that time, but they also want to be able to come
3 down and spend their time the weekend before or after..
4 Would you like them to spend the weekend before or after in
5 Redmond or Seattle? Because you have hotels here. You have
6 restaurants. You have shopping. There's every possibility
7 to get people to come and spend that time here. And we
8 believe, based on the interviews that we've done, that
9 that's a very viable possibility.

10 One of the things that we are also working
11 toward is the corporate sponsorship, the corporate -- the
12 ongoing corporate-type relationships. We all know that
13 companies in our area, some of them larger than others, like
14 to do corporate events and have their people come down and
15 do things. We think that that could be our number -- our
16 No. 1 and No. 2 market in the area.

17 (1:57:31.)

18 MR. ENGLE: So one of the things that it gets down
19 to in this whole matter is: How the hell do you pay for it?
20 Because this is a substantial undertaking.

21 We have organized ourselves from the very
22 beginning to qualify under the Federal Railroad
23 Administration's Railroad Rehabilitation and Improvement
24 Financing Program. There are \$35 billion in that program.
25 They have lent out less than a billion dollars. Lots of

1 money left. What we have done is make sure that we have met
2 the criteria necessary to be able to get that funding.

3 Our loan application is currently in front of the
4 FRA. They have expressed a willingness to collaborate with
5 us to come up with a solution that works because there's a
6 mix of collateral, if you will, to the amount of money you
7 want to borrow, et cetera. So we're very enthused about
8 that. That is long-term money that we can get anywhere from
9 20 years to 35 year that we could get from 4-plus percent
10 interest. And with a little help from a senator of ours in
11 DC, we might able to get that down to the intergovernmental
12 rate of a half a percent which means that any works inside
13 the corridor -- the entire corridor -- we can undertake at
14 the lowest possible cost to our public partners.

15 What I presented to the council in January was to,
16 No. 1, give us a chance this summer, starting in July, give
17 us a chance to embark/disembark passengers at the Redmond
18 Town Center. And that if that proved to be favorable, that
19 we would come back in 2011 and do the improvements necessary
20 to make this a win-win for both of us.

21 We realized that having a raised rail bed through
22 the middle of your town is not desirable. And what we would
23 like to do is to be able to lower that down and we would
24 make that a little bit more park-like.

25 I spend about 25 percent of my time in San

1 Francisco. And you'll find the trolley cars, the cable
2 cars, the muni cars all running at grade level. And we can
3 find a good way to do this for passengers and pedestrians to
4 work together. So what we've suggested is that in 2011 is
5 that we come up with a joint plan, and at GNP's expense that
6 we implement that plan.

7 So we think we agree that it can be park-like. We
8 agree that it can be rail and trail. And what we're hopeful
9 of is that we can work together.

10 So to let me close this -- my statement down is
11 that, No. 1, we do have confidentiality agreements in place
12 with some municipalities, local governances, and relative to
13 our RRIF application, so we can't disclose everything that
14 we would like to as we go forward.

15 But we do want you to recognize that we are a
16 federal railroad, we're not Big Brother railroad, that we're
17 here to work with you, and to help come up with a better
18 civic solution than what may be otherwise possible, and to
19 lend our borrowing capacity to the City to come up with, if
20 you will, the best conveyance of rail and trail inside of
21 Redmond.

22 So with that, I'd be happy to answer any questions
23 that you have.

24 MR. COLE: Ms. Allen.

25 MS. ALLEN: The big question I have is on your

1 financing strategy. You've identified RRIF funds that
2 you're going after and that's great. Have you done some
3 revenue projections too, and are there other components?

4 (2:02:31.)

5 MR. ENGLE: Yes, we have. There -- this has been
6 a very interesting process for the last several years
7 because it was going to close quite a few times. And I
8 don't know if any of you have contemplated the nature of,
9 you want to buy a house and you've got everything all
10 together, and then you don't; and then you go back, and then
11 you don't; and then you go back, and you don't. You do that
12 a half dozen times, you lose a lot of credibility in the
13 financing market.

14 Where we are at today is we have -- we are very
15 confident in our revenue projections because they are based
16 on Sound Transit projections and our own, so that we've got
17 third-party validations as well, so that we feel comfortable
18 that, for example, in this corridor we're talking about
19 2,000 riders a day where the entire corridor, as Mr. Jones
20 alluded to is 6,700 a day. So 2,000 a day, nice easy number
21 to get to -- I don't know about easy number to get to but
22 reasonable number to get to.

23 And we've also looked at what the debt service
24 would be in order to cover that, and we are totally
25 comfortable that we can operate within that. We are all

1 about incremental growth. We don't bite off the next amount
2 of growth until we are capable of doing it. As you may all
3 be aware, Sound Transit, the citizens of the Eastside, voted
4 in November 2008 for \$50 million of ST-2 for the Burlington
5 Northern corridor.

6 We intend to apply for that money which would
7 allow us to do weekday passenger service from Redmond to
8 Woodinville and Woodinville to Bellevue. So that's what we
9 believe the next step for us is, after excursion service, is
10 to take that on. And we have run the numbers. We are
11 totally comfortable that we can make that happen.

12 The problem -- the issue is, is that we -- if you
13 want \$20 million station instead of \$2 million station,
14 you're carrying costs, like your house payment, would go up
15 substantially. So the way we're proceeding is with the
16 \$2 million station that allows us, then, to get the
17 passenger count up before we move into bigger improvements
18 and the DMUs that Mr. Jones talked to. We're not in a
19 position to put a DMU on at \$3 million a vehicle.

20 Our RRIF application is about \$320,000 per vehicle
21 for FRA approved bilevel coaches. Now, if you want to go to
22 nicer ones, we can do that. But the line itself doesn't
23 justify us being able to do that and be able to service our
24 debt and make a little profit on the deal.

25 MS. ALLEN: But the \$2 million station, does it

1 The second issue concerns financial liability.
2 And assuming that we would agree that you would start as it
3 is on the trail as it is, and we wouldn't worry about the
4 other amenities for some time, is it my understanding that
5 there would be no liability for the City?

6 MR. PAYNE: There's several components of that and
7 I would like to talk about the speeds. Speeds are governed
8 by this little book and its class of track. The number of
9 ties, the weight of the rail, the depth of ballast. There's
10 a little chart that you put in your track condition, and it
11 spits out the class of speed.

12 Right now this track is Class 2 freight and
13 passenger. From Woodinville north it's 25 miles an hour for
14 freight and 30 miles an hour for passenger.

15 Because of the tie condition down here, it's
16 what's called excepted track and Burlington Northern
17 deliberately excepted it so they could shut off the
18 maintenance and not have to inspect it every week. And it's
19 been asleep for a quite awhile. It has about a 50 percent
20 defective tie count, but you could get your defective ties
21 down to 25 percent, you're back to a Class 2 railway. So
22 you would have 25 freight, 30 miles an hour miles passenger
23 speeds.

24 Now, commonly what you do in municipal areas where
25 you have a lot of crossings and you have a lot of -- a lot

1 MR. PAYNE: No. We're not asking you for money.
2 We're asking you for consents.

3 MR. MYERS: Thank you.

4 MR. COLE: Ms. Allen.

5 MS. ALLEN: Well, just following up on that, then
6 there would be indemnification and hold-harmless as part of
7 your arrangement with us?

8 MR. PAYNE: We'd have to see what you asked for
9 because there's some things that we get protected from in
10 the Acts anyway, and we can't contract out of the Act. So,
11 again, this is a matter to work out between or respective
12 counsel and our insurance people. We went through this
13 whole issue with the Port and we have an extensive insurance
14 protocol with them and --

15 MR. ENGLE: I see it being no different than what
16 we have in Woodinville.

17 MR. PAYNE: And Snohomish --

18 MS. ALLEN: We don't know what that is --

19 MR. ENGLE: It gets into such detailed level that
20 it's best served by counsel.

21 MR. JONES: You know, when I sat in the back a few
22 weeks ago and listened to the presentation to you folks and
23 the schedule that was in there shows all kind of stuff
24 happening in the corridor, wastewater lines being put in.
25 You've already taken out a piece of the track. I think that

1 the main plea is: Say we're not going to take out the
2 track.

3 And I can't imagine the economic benefit. I mean,
4 we could probably start jointly to figure that out to the
5 City in sales tax revenue and the revenue to your hotels. I
6 think you've probably got a hotel/motel tax that's available
7 to you. You've got -- you know, there -- I can't imagine
8 that isn't an economic benefit. And transportation if they
9 eventually start commuter rail service on the line.

10 You know, the thing we priced was concrete ties
11 and welded rail, exactly what's on the top class of transit
12 system. You could get, by replacing the ties and using the
13 rail that's out there, you could you get up Class 3 --

14 MR. PAYNE: You could get up to Class 3 --

15 MR. JONES: -- now, 60 miles an hour, why would
16 need anymore than that with wood ties.

17 Now, to build the trail requires the rebuilding of
18 that corridor. When they rebuild the whole corridor to the
19 upper-class level, you're taking out all the old ballast.
20 And they carry it away. Why carry it away? Grade it off to
21 the side and that's the base for trail. That's what they've
22 said to other places and to the trail people.

23 (2:22:15.)

24 MR. JONES: Now, it's not their responsibility to
25 pave it, fence it, sign it, put in rest rooms, that's

1 points that I think we need to look at. And it sounds to me
2 that the next decision point would be to enter into a
3 confidentiality agreement. And I would like a yes-or-no
4 answer to that.

5 MR. PAYNE: We'd be pleased.

6 MR. COLE: Mr. Vache.

7 MR. VACHE: That was going to be my question.
8 You're here. We spent a couple of hours on it. Is there a
9 question you have or a next step that you have that you're
10 requesting from the City of Redmond --

11 MR. ENGLE: What we would like to do with the City
12 of Redmond is enter into discussions, confidential or
13 otherwise, that could lead us in to operating the excursion
14 train, the weekend excursion train into Redmond into the
15 Redmond Town Center.

16 And secondly, that until those discussions are
17 done that we don't tear up any tracks because it's a lot
18 easier to upgrade the tracks when they're still on the
19 ground than it is to replace them. So our request of you is
20 to proceed toward a mutual excursion that would terminate at
21 the Redmond Town Center area.

22 MR. COLE: Mayor.

23 MR. MARCHINOE: We do have a project, 161st, that
24 will connect the Bear Creek Parkway that will cross the
25 tracks. That construction begin in May so that project

C E R T I F I C A T E

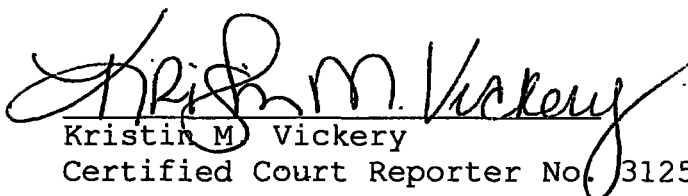
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned officer of the Court and Washington Certified Court Reporter, hereby certify that the foregoing transcript of proceedings was taken stenographically before me and transcribed under my direction;

That the transcript of the proceedings is a true and correct transcript of the testimony and discussion, including questions and answers and all objections, motions, and exceptions of any party made and taken at the time of the foregoing proceedings;

That I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3 day of November, 2010.


Kristin M. Vickery
Certified Court Reporter No. 3125

1 October 15, 2010

2
3 Hunter Ferguson
4 Stoel Rives
5 600 University Street, Suite 3600
6 Settle, Washington 98101
7

8 NOTICE RE ORIGINAL TRANSCRIPT OF PROCEEDINGS
9
10
11

12 Case Name: Redmond City Council

13 Taken: March 30, 2010
14

15 Enclosed is the original sealed transcript of
16 proceedings.
17
18
19

20 _____
Kristin M. Vickery, CCR, 3125
21

22 cc: File
23 Hunter Ferguson
24
25

Exhibit O

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



19 May 2010

Ms. Carolyn J. Hope
Senior Park Planner
City of Redmond
MS: 4NPK
15670 NE 85th St.
PO Box 97010
Redmond, WA 98073-9710

Dear Ms. Hope;

Thank you and all the City staff that participated in our discussions on May 11 concerning our desire to extend GNP's planned excursion train service into downtown Redmond. We appreciated the open, friendly and frank discussion that took place. We hope in this letter to answer the questions you felt needed follow-up and to clarify some of our intentions.

We regret that some of our discussions focused on the possibility of commuter rail on the corridor. We recognize that we may be at fault for using some depictions that showed possible commuter rail vehicles and tables that referred to commuter rail operations. Many others have been more vocal in promoting the concept of rail "transit" in the corridor. However we do intend to respond to Sound Transit's future RFP for commuter rail but recognize that their intent and requirements are not yet clear, and thus our planning and figures can only be rudimentary at best. Our federal loan request, our immediate (one year) planning horizon and our discussions with you only focus on the implementation of **excursion service** and continued growth of our freight business.

To that end we propose;

- To rehabilitate the track, bridges and sidings from corridor milepost 2.5 to downtown Redmond, milepost 7.2, to the extent necessary to achieve FRA class 2 or possibly operating class 3 track classifications. (Class 2 – 25mph for freight, 35mph for passengers Class 3 – 40mph for freight, 60mph for passengers)
- To build a "Redmond Station" east of Leary Way, (in the approximate location of the original Redmond Train station) and an accompanying platform to the east approximately 300 feet. Because it is our intention to bring the train down from Woodinville for each excursion trip and have it waiting when passengers arrive, we may or may not initially have a covered platform. (Passengers can board immediately upon arrival). The platform will be located between the existing mainline track and present siding which would permit boarding when the train is on either track.
- To "hold" the train between Leary Way and 166th Ave. NE so as not to block any street. The maximum proposed train length is estimated at 745 feet, this track length in this area is almost 1,100 feet.

- To "create" parking along NE 76th St. by either removing curbing and existing landscaping and creating direct pull-in spaces for every car, or if space permits on the ROW, creating a lot along the mainline track, where cars would pull in along the track and park facing the street. Between Leary and 166th 100+ spaces could easily be created in this manner. IF additional parking would be required, an additional 100 spaces could similarly be created east of 166th to Bear Creek Parkway. Maximum capacity of the excursion train is 317 passengers. It is highly unlikely that any passenger will arrive alone, with the anticipation that two to four passengers per car will arrive together, 150 spaces appears adequate, 200 spaces would appear more than adequate. Discussions with Town Center will continue about parking.
- To provide for all train servicing, cleaning, provisioning, crewing and staffing in Woodinville. We do not anticipate a need for other than passenger parking in Redmond.

Again, we stress that all this will be done with no expense to the City.

You inquired as to our proposed schedule to do this. Our federal RRIF loan application was received by the FRA on March 10, 2010. We have been supplying them with additional information on almost a weekly basis. They have informed us that their "Credit Committee" review could possibly occur next week. That review (and approval) starts a promised 90 day approval process, with funding availability anticipated by the first of September. We should also mention that at this time private funding is being discussed that could supplement or even replace a federal loan. Funding for the Redmond portion of the service is included in our RRIF application and these discussions. IF we were not coming to Redmond, we would not need those dollars and the decision would reduce the total amount needed at this time, making funding decisions easier. The loan/financing process needs a decision on the Redmond terminus immediately.

We first approached the City in January anticipating a start of service this summer. It has taken until now to initiate these substantive city/railroad discussions! We have received a commitment from the Port of Seattle to extend the start date of excursion service until July of 2011, BUT we need the City's help to move on this issue quickly!

Three simultaneous implementation tracks will occur.

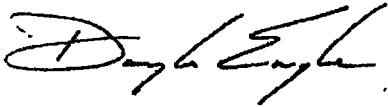
1. Track and structural rehabilitation and construction of a station and platform. Design, material acquisition, final acceptance and construction are anticipated to take six months under the best circumstances, with time additional for inclement winter weather. Crews are now working on the track north of Woodinville just to maintain standards for FRA class 2 status.
2. Purchase, delivery, remodeling, equipping and repainting of locomotives and railcars is easily expected to take eight months. Included in this task would be the hiring of staff, contracting with providers, designing and purchasing of branded merchandise, equipping the power and passenger cars, etc., and passing federal inspection.
3. Marketing and advertising, press, public relations, printing of materials, etc., MUST start the before the end of the year for anticipated service initiation May 2011.

GNP is not sure if these timelines provide you with the specificity you need to understand our processes, but we are willing to meet on a daily basis if necessary to explain and disaggregate the timeline if you require. Another monthly meeting in June would already be well into the federal independent financial analysis the FRA will be conducting!

Our marketing research strongly recommended that the southern terminus of the excursion train be in Redmond. Only Redmond City staff can calculate for City decision-makers the tax and activity benefit that having a minimum 1000 (growing to 2000 in three years) extra tourists per week patronizing Redmond's hotels, shops, restaurants and other establishments will have. Discussions with the City of Snohomish for a terminus at the north end of the tour corridor are continuing and close to completion.

We will meet with you and the other executive staff to discuss these issues at any time it is convenient. Thank you again.

Yours truly,

A handwritten signature in black ink, appearing to read "Douglas Engle". The signature is fluid and cursive, with the first name "Douglas" and last name "Engle" clearly distinguishable.

Douglas Engle
Chief Financial Officer

Exhibit P

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

Carolyn J. Hope

From: Douglas Engle [d.engage@gnprail.com]
Sent: Thursday, June 03, 2010 4:05 PM
To: Carolyn J. Hope
Subject: Re: GNP letter

Carolyn,

First, in response to your letter's interest in our business plan, we suggest the following:

1. We will provide staff access to our RRIF application for one week, but no copies may be made, nor may it be shared with non-city staff. We will leave it with you when we next meet and pick it up a week later. As we discussed before, Sound Transit will be issuing an RFP and GNP considers its RRIF application confidential and may not be protected under FOIA. Also, at our last meeting, I explicitly offered a detailed walk-through of our financial projections. As such, we will only leave summary financial data with our RRIF application at this time. However, I will bring the full financial print-outs with us.
2. We will provide a "draft" PowerPoint investor's presentation and "draft" summary business plan subject to non-disclosure as preliminary "working copies."

These documents will provide necessary disclosure to address the issues raised in your letter.

Finally, it is clear that staff is not fully aware of GNP's position as a railroad, and we want to bring some of the pertinent points and federal rulings to your attention. It is in the City's best interest to meet with us and discuss this matter more fully next week. We suggest next Thursday morning.

Please advise at your earliest convenience.

Sincerely,

Doug

Douglas Engle
CFO
GNP Rly, Inc.
425-891-4223
<http://GNPRail.com>



Please consider the environment before printing this email.

The contents of this Fax/Memo/E-mail may contain privileged or confidential information. It is intended for use only by the individuals to which it is specifically addressed. The disclosure or other use by other than the intended recipient may result in the breach of certain laws or the infringement of rights of third parties. It should not be read by, or delivered to any other person. If you receive this in error, please

notify us immediately and destroy the original.

From: "Carolyn J. Hope" <CJHOPE@redmond.gov>
Date: Wed, 2 Jun 2010 13:09:21 -0700
To: Douglas Engle <D.Engle@GNPRail.com>
Subject: RE: GNP letter

Hello Doug,

Sorry for the delay, attached is a response letter.

Take care,

Carolyn Hope
Senior Park Planner
City of Redmond – MS 4NPK
PO Box 97010
Redmond, Washington 98073-9710
425-556.2313 - direct
425-556.2700 - fax

From: Douglas Engle [<mailto:d.engle@gnprail.com>]
Sent: Wednesday, June 02, 2010 10:29 AM
To: Carolyn J. Hope
Cc: Tom Payne; Tom Jones
Subject: Re: GNP letter

Carolyn,

Just checking in. What is the next step from the City perspective?
We look forward to a response at your earliest convenience.

Sincerely,

Doug

Douglas Engle
CFO
GNP Rly Inc.
425-891-4223
<http://GNPRail.com>

"P.S. Come by rail." - Warren Buffett



Please consider the environment before printing this email.

From: Douglas Engle <D.Engle@GNPRail.com>
Date: Wed, 19 May 2010 09:20:22 -0700
To: "Carolyn J. Hope" <CJHOPE@redmond.gov>
Cc: Tom Payne <T.Payne@GNPRail.com>, Tom Jones <tmjgroupllc@aol.com>
Conversation: GNP letter
Subject: GNP letter

Carolyn,

Please see attached.

We look forward to scheduling a follow-up meeting as soon as possible.

Best regards,

Doug

Douglas Engle
CFO
GNP Rly Inc.
425-891-4223
<http://GNPRail.com>

"P.S. Come by rail." - Warren Buffett



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Exhibit Q

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35407
GNP RLY INC.
-ACQUISITION AND
EXEMPTION-
REDMOND SPUR AND WOODINVILLE SUBDIVISION

STP DOCKET NO. AB-6 (SUB. NO. 463X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA '

STP DOCKET NO. AB-6 (SUB NO. 465X)
BNSF RAILWAY COMPANY
-ABANDONMENT EXEMPTION-
IN KING COUNTY, WA

DEPOSITION OF RANDY MANN

Taken October 26, 2010
600 University Street, Suite 3600
Seattle, Washington

Reported by:
MARK HOVILA

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A P P E A R A N C E S

For GNP RLY INC.:

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(253) 627-1181

For the City of Redmond:

JOHN E. GLOWNEY and
HUNTER FERGUSON
Attorneys at Law
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Seattle, WA 98101
(206) 624-0900

For King County:

ANDREW MARCUSE
Senior Deputy Prosecuting Attorney
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104
(206) 296-9015

Also in attendance:

CAROLYN J. HOPE
City of Redmond

1 wouldn't be in favor of it, correct?

2 A. I would say that's correct, at this present
3 time.

4 Q. And have you calculated what the price
5 differential would have to be to make it make economic
6 sense for you?

7 A. Kind of like boils down to the price
8 difference per thousand square feet. Let's just say
9 it was 10 dollars a thousand and then typically the
10 rail people give you an unloading allowance. Okay?
11 And that's the real -- if 10 dollars a thousand,
12 that's good, but if they don't give you an unloading
13 factor, then that 10 dollars a thousand isn't good,
14 because it probably costs 3 to 6 dollars a thousand to
15 unload a railcar, just because of -- it's not really
16 the word I want to use, but make it simple and easy,
17 the mess it creates. The packaging. Whereas the
18 truck has, you know, it's got a tarp and they take
19 that tarp with them, so there isn't any real mess.
20 And they do offer unloading allowance, and sometimes
21 it makes sense.

22 Q. Who is "they"?

23 A. The manufacturers.

24 Q. And do you know whether American Gypsum
25 offers a --

1 A. I know American Gypsum does.

2 Q. Do you know what it is currently?

3 A. I know that some people it's 6 and I know
4 other people have negotiated 10. So --

5 Q. Have you actually talked to American Gypsum
6 to find out what their actual numbers are?

7 A. No. Because we don't have rail, so what's
8 the point.

9 Q. Then you indicated that you thought you
10 could ship some from the Rainier plant by rail?

11 A. They have offered that before, a few years
12 back.

13 Q. Who is "they"?

14 A. U.S. Gypsum out of Rainier. So I know it's
15 possible, but again, we don't have rail, so I don't
16 need to spend a lot of time on what ifs. I mean --

17 Q. What did U.S. Gypsum offer you -- when you
18 say a few years back, how long ago was a few years
19 back?

20 A. Three, four years.

21 Q. And did they provide you with cost
22 estimates?

23 A. Yes. And I didn't think it was worth it
24 that time. So again, you know, we don't have rail,
25 so I don't spend a lot of time.

1 Q. And I take it you haven't gone back to them
2 since writing this letter to find out what their --

3 A. No.

4 Q. -- current cost estimates might be?

5 A. No.

6 Q. But when they did give them to you three or
7 four years ago you looked at them and decided they
8 weren't --

9 A. Well, it was a push. Maybe a little
10 savings. Just not a great enough savings to deal with
11 railcars at that time.

12 Q. Because there's a certain kind of mess or
13 hassle factor that comes with dealing with railcars?

14 A. Well, I mean there are some positives with
15 railcars. Railcars just sit there. When you want to
16 unload them, you unload them. And then at that time,
17 I mean if you look at this picture --

18 Q. You're referring to Exhibit 3?

19 A. Yes. If you look at the top kind of like
20 middle where the white line runs through and you can
21 see like a bunch of stuff laying right beside where
22 the spur comes down.

23 Q. Uh-huh.

24 A. That's all prepackaged steel studs for jobs.
25 And we were extremely busy at that time and so would

1 have had to deal with that, putting it somewhere else.
2 So it just, you know, it was an easy way out not to do
3 it.

4 Q. And then the other supplier, I guess, that
5 made up your estimate of 40 a year would be from other
6 gypsum plants, U.S. Gypsum plants?

7 A. Yes.

8 Q. And that would be the Empire, Nevada,
9 Sperry?

10 A. Yeah, or Plaster City. I mean, they have --
11 we've got quite a few different plants. And all the
12 materials are not made in one specific plant. So a
13 lot of it again goes by rail, goes into Rainier and
14 goes to us. And depending on building activity, we
15 can go through a full railcar of specialty products in
16 a month.

17 Q. And currently those are coming up by truck
18 from Rainier?

19 A. Correct.

20 Q. Before I come to that, let me go back. Why
21 would you, if you're receiving your drywall and gypsum
22 materials from the Rainier plant, why would you want
23 to receive some from Sperry?

24 A. Again, the Rainier plant does not make every
25 material that we use. It's made at other plants. So

1 if we could get rail, we could order a full railcar,
2 and I'm sure there would be savings because, then it
3 wouldn't be going 'into Rainier being unloaded,
4 reloaded and shipped to us.

5 Q. Have you done an actual investigation to
6 determine what those actual costs are?

7 A. No.

8 Q. So would it be correct to say that you have
9 not contacted U.S. Gypsum as a supplier from Empire,
10 Nevada, and asked them what they charge you to ship
11 rail into --

12 A. I have not.

13 Q. -- Building Specialties?

14 A. I have not.

15 Q. In your last sentence in that full paragraph
16 on the second page of Exhibit 2 you say, "We have
17 will" -- I think you mean "We will be asking our
18 suppliers to quote us rates on this traffic and await
19 their response." Did I read that correctly?

20 A. Yes.

21 Q. And have you asked your suppliers to quote
22 you rates on --

23 A. I have talked to our salesmen from USG about
24 the possibility of getting railcars out of Rainier.

25 Q. Okay. When you say you talked, you mean

1 your salesmen?

2 A. Salesmen, the USG salesmen.

3 Q. And who did you talk to?

4 A. I talked to Eric Eshbaugh.

5 Q. Would you spell that last name?

6 A. No, I cannot.

7 Q. Eshlaugh?

8 A. Eshbaugh.

9 Q. Eshbaugh? Okay. Where is he located?

10 A. Auburn.

11 Q. And when did you talk to Eric?

12 A. Probably a month, two months ago.

13 Q. And what did he tell you?

14 A. He would look into it.

15 Q. Has he contacted you again?

16 A. No, we haven't talked about it.

17 Q. Other than talking to Mr. Eshbaugh, did you
18 speak with any other suppliers to get --

19 A. No.

20 Q. -- quotes on rates for traffic?

21 A. No.

22 Q. So is it fair to say sitting here today you
23 don't know what it would cost to ship drywall out of
24 Empire, Nevada? Correct?

25 A. That is correct.

1 Q. You don't know what it would cost to ship it
2 out of Sperry, Iowa, correct?

3 A. Correct.

4 Q. And you don't know what it would cost to
5 ship it out of Gypsum, Colorado, correct?

6 A. I have a good idea. Because again, our
7 Tacoma yard purchases from them. So I know what those
8 numbers are.

9 Q. What are those numbers?

10 A. Less than USG's.

11 Q. Significantly less?

12 A. I guess that's all relative.

13 Q. I mean, can you tell me what the numbers
14 are?

15 A. They're probably 15 dollars a thousand less.

16 Q. How does that compare to receiving the goods
17 from Rainier by truck?

18 A. You mean how would that pencil out as a
19 savings?

20 Q. Uh-huh.

21 A. Probably somewhere around 10 dollars a
22 thousand. So a couple 300 a truckload.

23 Q. Have you actually done that calculation on
24 paper anyplace?

25 A. No, but I mean, I can pretty much easily do

C E R T I F I C A T E

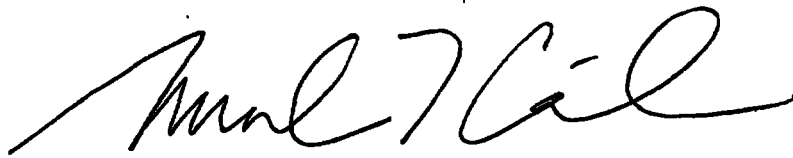
STATE OF WASHINGTON)

COUNTY OF KING)

I, the undersigned Certified Court Reporter
and an officer of the Court under my commission as a
Notary Public for the State of Washington, hereby
certify that the foregoing deposition upon oral
examination of RANDY MANN was taken before me on
October 26, 2010, and transcribed under my direction;

That the witness was duly sworn by me to
pursuant to RCW 5.28.010 to testify truthfully; that
the transcript of the deposition is a full, true, and
correct transcript to the best of my ability; that I
am neither attorney for, nor a relative or employee
of, any of the parties to the action or any attorney
or counsel employed by the parties hereto, nor
financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 3rd day of November, 2010.



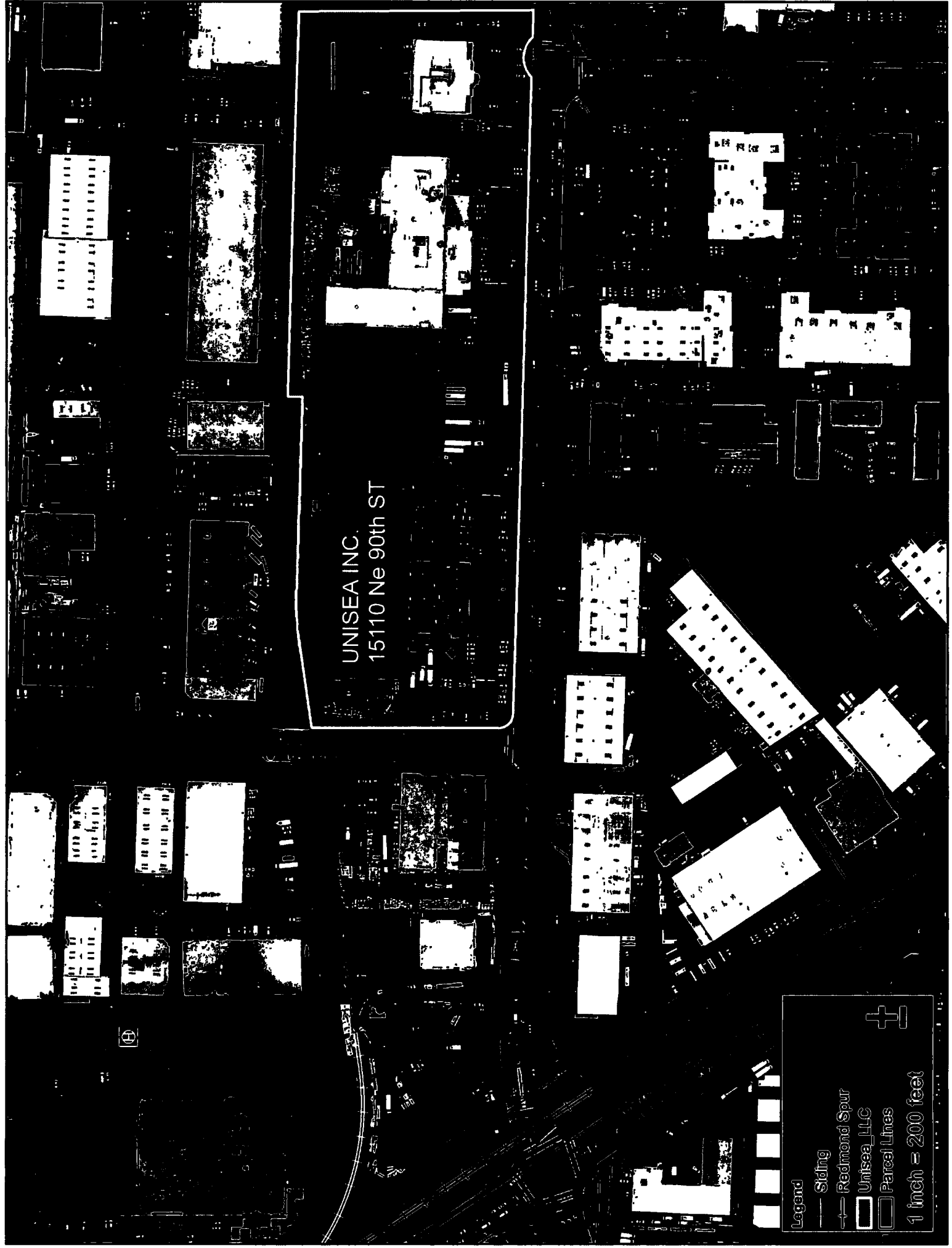
Mark Hovila

Washington Certified Court Reporter No. 2599

License expires October 4, 2011

Exhibit R

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



UNISEA INC.
15110 Ne 90th ST

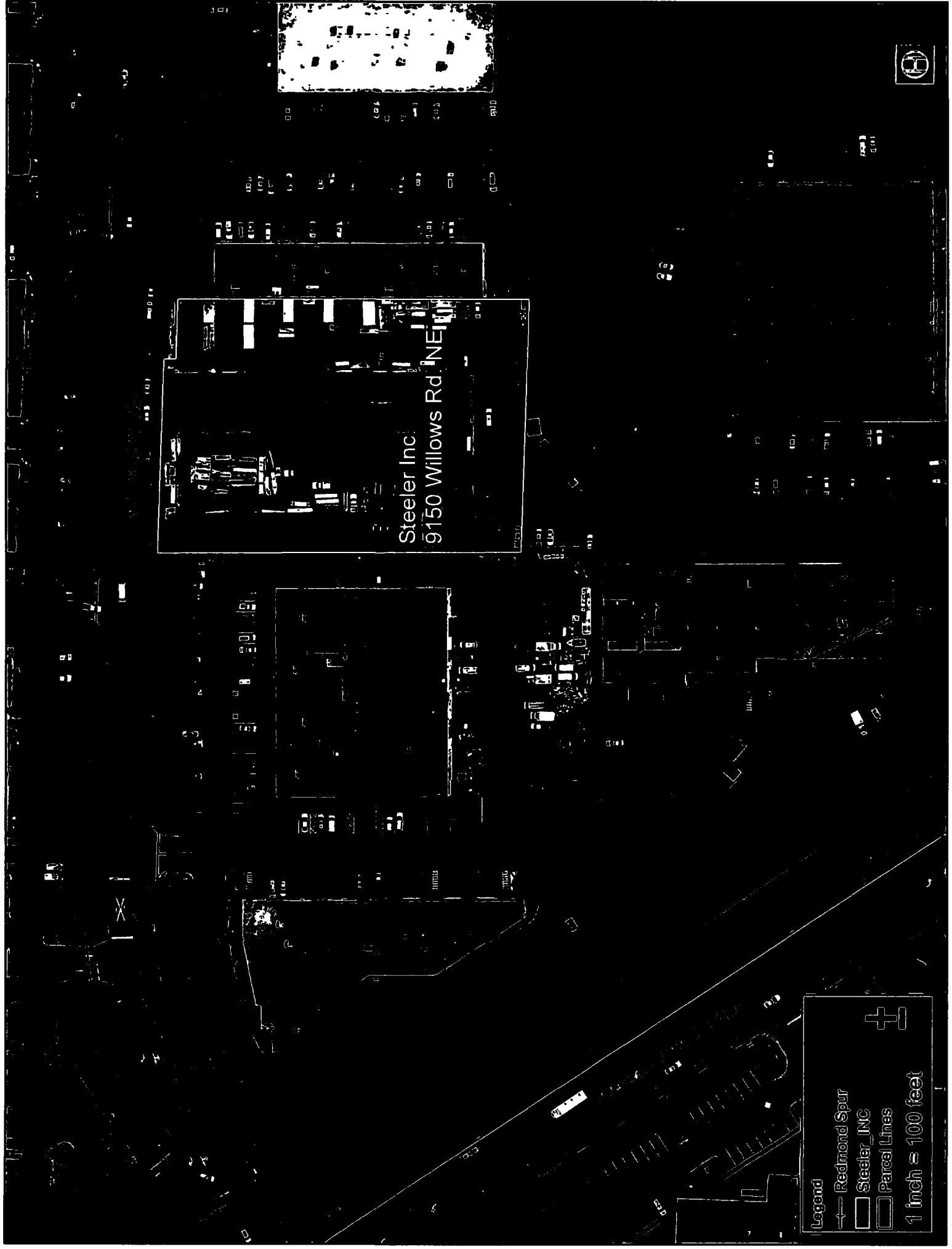
Legend

- Sliding
- + Redmond Spur
- Unisea LLC
- Parcel Lines

1 inch = 200 feet

Exhibit S

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION



Legend

- Redmond Spur
- Steelers INC
- Parcel Lines

1 inch = 100 feet

Exhibit T

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

Number	Owner	Address
1	L&R Investments LLC	14671 NE 95th Street
2	Eastlake Investors	14715 NE 95th Street
3	Surowiecki SR., Matt (Cedar King Lumber Co.)	9150 Willows Rd. NE
4	Best Family Partnership LP	14907 NE 95th Street
5	Rome Properties LLC	14935 NE 95th Street
6	Rome Properties LLC	14963 NE 95th Street
7	Hirai Tom T + Sally	9449 151st Ave NE
8	Hirai Tom T + Sally	9345 151st Ave NE
9	L&R Investments LLC	14783 NE 9th Street
10	RBB Building LLC	9040 Willows Road NE
11	New K & S Building LLC	9289 151st Ave NE
12	South Cove LLC	9255 151st Ave NE
13	Industrial Revolution Inc	9215 151st Ave NE
14	UCO INC	9225 151st Ave NE
15	RBB Building LLC	NE 91st Street
16	Markham, Andrea	9165 151st Ave NE
17	Blake Draper LLC	9145 151st Ave NE
18	Seneca Tech Center LLC	9117 151st Ave NE
19	Wallace/Knutson LLC	14980 NE 90th Street
20	Wallace/Knutson LLC	14980 NE 90th Street
21	Northwest Art & Glass INC	9003 151st Ave NE
22	Unisea INC	15110 NE 90th Street

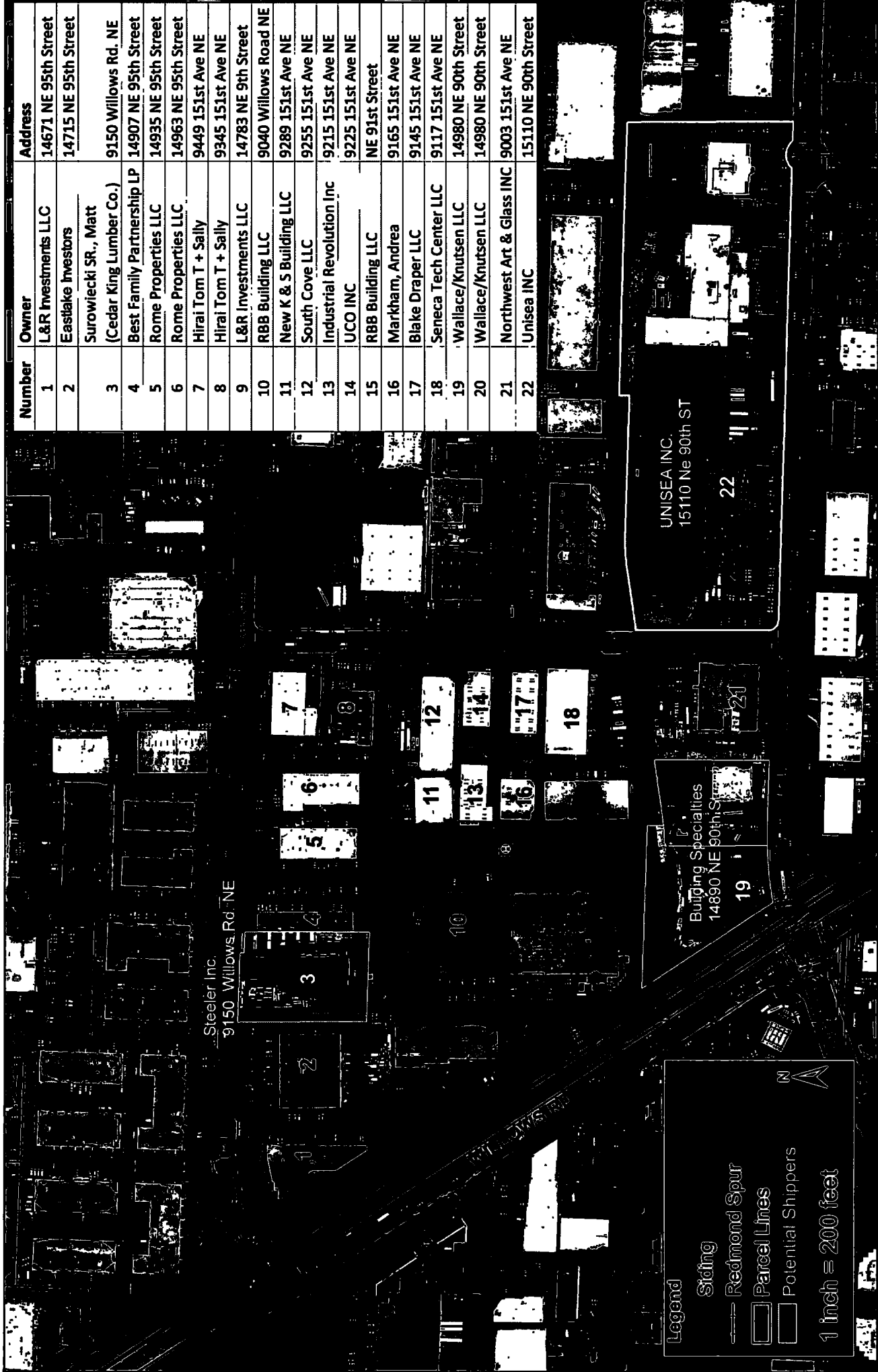


Exhibit U

THE CITY OF REDMOND'S COMMENTS IN OPPOSITION

GNP Railway

A practical beginning to
Excursion Train Service

GNP Rly Inc.

11 May 2010

GNP Business Plan is an Incremental Growth Plan

- **Freight**
 - Woodinville “wye” to Snohomish
- **Excursion**
 - Woodinville to Snohomish
 - Add Redmond Town Center
- **ST2...?**

PSRC/ST Feasibility Study

Other Findings

- **Long-Term**
 - “Permanent (e.g., 50 year) level of public infrastructure investment quality.”
- **Potential Tourist Attractions**
 - “... rail service along the Eastside corridor could potentially result in an increase in tourism near the stations. For the purpose of this analysis, tourism includes shopping, restaurants, entertainment, arts, cultural events, and lodging opportunities.”
- **Trail**
 - “...it is assumed that the proposed trail would be located parallel to the track(s) in the right-of-way (generally 100’ wide)...”

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**VERIFIED STATEMENT OF CAROLYN HOPE
REGARDING PETITIONS OF GNP RAILWAY, INC.**

I, Carolyn J. Hope, being competent to make this statement and having personal knowledge of the matters set forth herein, do swear and affirm the following:

1. I am a Senior Park Planner in the Parks Planning Division of the Parks and Recreation Department for the City of Redmond, Washington. Redmond is a municipal corporation located within King County, Washington. I have served in this capacity since January 20, 2009. I am responsible for park and trail acquisition, easements, planning and development as well as policy making and strategic planning. As part of my employment, I am

ORIGINAL

also familiar with Redmond's municipal code and records relating to the enforcement of the municipal code, as well as the character and use of properties within Redmond's municipal boundaries and adjacent areas of King County. In addition, I am familiar with the character of the property along the entire 7.3 mile length of the Redmond Spur. Furthermore, I have received professional and academic training to analyze property records, including surveys, maps, and boundary descriptions, and to use Geographic Information System (GIS) software to generate customized maps of locations according to property records. I also work with and direct the work of other members of the Park Planning staff and frequently collaborate with other departments on projects. My work address is City of Redmond, 15670 NE 85th Street, P.O. Box 97010, Redmond, Washington 98073-9710.

2. The Redmond Spur is a 7.3 mile-long rail line corridor that runs north to south from milepost 0.0 in the City of Woodinville, Washington to milepost 7.3 in downtown Redmond. It is connected to a network of rail lines known as the Woodinville Subdivision. Beyond the terminus of the line at milepost 7.3, the right-of-way runs another 12 miles south as a railbanked trail, which terminates in Issaquah, Washington.

3. In 2010, Redmond acquired title to the property located between milepost 3.4 and milepost 7.3 on the Redmond Spur. I am familiar with Redmond's acquisition of a segment of the Redmond Spur, the character and use of properties along the Redmond Spur, and the contents of the petitions that GNP Railway, Inc. filed in this proceeding.

4. I arranged for the production of two maps by the GIS Division of Redmond's Finance and Information Services Department depicting the property acquired by Redmond. These maps were prepared using GIS software, which allows users to customize maps using aerial photography, King County tax assessor data, legal property descriptions, and topographic

survey data. One map depicts the location of the Redmond Spur in relation to other rail lines comprising the rail network known as the Woodinville Subdivision. A copy of this map is attached to Redmond's Comments as **Exhibit A**. The other map depicts the Redmond Spur in greater detail, including the location of Redmond's municipal boundaries and the locations of businesses that GNP has identified as potential freight rail customers: Drywall Distributors, Inc. and Building Specialties. A copy of this map is attached to Redmond's Comments as **Exhibit B**.

5. Redmond's acquisition of a segment of the Redmond Spur originated from a Memorandum of Understanding (MOU) that Redmond entered into with the Port of Seattle, Sound Transit, King County, the Cascade Water Alliance, and Puget Sound Energy. The MOU concerns future real estate transactions through which these various entities would acquire interests in the property constituting the Redmond Spur and portions of the Woodinville Subdivision. A true and correct copy of the MOU is attached to Redmond's Comments as **Exhibit M**.

6. In June 2010, Redmond commenced a master planning process for the segment it planned to acquire, subject to the requirement to preserve the right of way for future restoration of rail service.

7. On June 30, 2010, Redmond completed the purchase of the southerly 3.9 miles of the Redmond Spur from the Port of Seattle for \$10 million, paid in cash at closing. A true and correct copy of the Real Estate Purchase and Sale Agreement between the Port and Redmond is attached to Redmond's Comments as **Exhibit L**.

8. After GNP initiated this proceeding, I directed Park Planning GIS staff to prepare aerial maps specific to potential customers of freight rail service identified by GNP. I supervised this work of the Park Planning staff and then reviewed these aerial maps and verified their

accuracy. The production of these maps is described below in paragraphs 9 through 11, 14, and 15.

9. Building Specialties is a business identified by GNP as a potential customer of freight rail service on the Redmond Spur. Based on the information concerning Building Specialties provided by GNP and property records available from King County, Park Planning staff determined the location of Building Specialties' facility in relation to the Redmond Spur. Building Specialties is located at approximately milepost 5.4 of the Redmond Spur. Building Specialties' facility consists of multiple buildings that stand on two adjacent west-east parcels owned by Wallace/Knutsen, L.L.C. The King County Assessor lists the address for both parcels as 14980 NE 90th Street. An industrial rail spur track runs across these two parcels from the Redmond Spur toward Building Specialties' facility. Property records show that a railroad easement runs from the Redmond Spur in the west, across the parcels where Building Specialties is located, continues to the east across another parcel, and then ends at 151st Avenue N.E., which is a public street owned and maintained by Redmond. To extend the industrial spur track across 151st Avenue N.E. would require a right of use permit from Redmond.

10. After identifying the location of Building Specialties' facility, Park Planning staff overlaid property boundaries from the King County parcel database onto the City of Redmond's aerial basemap. A basemap contains data such as parcel boundaries, streets, and geographic coordinates. Additional layers of data can then be added to the basemap to make it more descriptive. Park Planning staff added additional layers of data to the basemap of Building Specialties' facility to accurately show neighboring properties, the location of the industrial spur track as visible in the photograph, and the location of the railroad easement. This map is attached to Redmond's Comments as **Exhibit K**.

11. GNP has also identified UniSea, Inc. as a potential customer of freight rail service on the Redmond Spur. Based on information concerning UniSea provided by GNP and property records available through the King County Assessor's Office, Park Planning staff determined the location of UniSea's facility in relation to the Redmond Spur. Then, Park Planning staff created a site location map for the Unisea property using the King County parcel boundaries and the City of Redmond's aerial basemap. This map accurately depicts Unisea's property boundaries according to property records maintained by King County. As this map shows, Unisea's property is not located adjacent to the Redmond Spur. It is situated approximately 1,000 feet east of the Redmond Spur. Running from east to west, UniSea's property is separated from the Redmond Spur, first by 151st Avenue N.E., then by another private property, and finally the two parcels where Building Specialties is located. A copy of this map is attached to Redmond's Comments as **Exhibit R**.

12. I also investigated Redmond's records pertaining to past freight rail service to UniSea's property. In 1989, Redmond approved of Unisea's plan to construct a new building adjacent to one of its existing buildings. Unisea apparently proposed to use part of a railroad easement on its property to accommodate a City code-required fire lane on the north side of the new proposed building. One of the conditions of the approval required Unisea to remove the rail tracks that once crossed 151st Avenue N.E. and that were part of the industrial spur running across the property where Building Specialties is now located. The approval required Unisea to "fix [the] railroad crossing" and to "remove tracks and repair roadway to City standards as crossing is being abandoned for use of railroad." A true and correct copy of this approval letter and the attendant conditions, both of which are maintained in Redmond's records, is attached to Redmond's Comments as **Exhibit J**.

13. I am familiar with the condition of the block of 151st Avenue that runs in front of UniSea's property. There are no rail tracks crossing the street to Unisea's property.

14. GNP has also identified Steeler, Inc. as another potential customer of freight rail service on the Redmond Spur. Based on information concerning Steeler, Inc. provided by GNP and property records available through the King County Assessor's Office, Park Planning staff determined the location of Steeler, Inc.'s facility in relation to the Redmond Spur. Then, Park Planning staff created a site location map for the Steeler property using the King County parcel boundaries and the City of Redmond's aerial basemap. This map accurately depicts the property boundaries of Steeler, Inc.'s facility according to King County tax assessor records, as well as neighboring property boundaries, and the Redmond Spur according to aerial photography. A copy of this map is attached to Redmond's Comments as **Exhibit S**. As this map shows, the parcel where Steeler, Inc. is located is not adjacent to the Redmond Spur. Steeler, Inc. is separated from the Redmond Spur by multiple other private properties. To the south, it is separated from the line by an indoor soccer arena and a salmon-bearing stream. To the west it is separated from the line by two other pieces of private property other than the industrial spur track running to Building Specialties' facility, which is separated from Steeler, Inc. by multiple pieces of private property, there is not a rail siding off of the Redmond Spur within a mile of Steeler, Inc.'s location.

15. At my direction, Park Planning staff also developed an aerial map that depicts the relative location of the Redmond Spur, Building Specialties, Unisea, Steeler Stud, and neighboring properties. A copy of this map is attached to Redmond's Comment as **Exhibit T**.

16. Waste Management, Inc. has also submitted a letter supporting GNP's petition to reactivate rail service on the Redmond Spur, claiming that it desires the option of shipping solid

waste to a facility that it proposes to build in Maltby, Washington. I have reviewed the information contained in Waste Management's submission. The facility it references does not appear to be anywhere near the Redmond Spur or capable of receiving rail service from the Redmond Spur. The City of Maltby is located northeast of the City of Woodinville. The only Waste Management facility listed in the Woodinville area is on 6211 234th Street Southeast, Woodinville, Washington. That location is between 0.3 and 0.5 miles away from the Woodinville Subdivision tracks, which are on the opposite side of State Route 9 from the Waste Management facility.

17. Redmond has plans for several construction projects affecting the segment of the Redmond Spur corridor that it owns. The Redmond Spur bisects downtown Redmond, a densely developed commercial and residential zone. Redmond plans to construct new street crossings of the railroad right of way at 161st Avenue NE and 164th Avenue NE in downtown Redmond between the years 2011 and 2012, as well as two more street crossings of 159th Ave NE and Avondale Way NE in the future. Redmond also plans to construct a 48-inch stormwater trunk line within the right of way at a depth of 10 to 20 feet below the ground surface. This project will extend from approximately NE 170th Street to NE Redmond Way. In addition, Redmond plans to construct a 1.1 mile regional trail running through downtown Redmond from the junction of the Bear Creek Trail to the Sammamish River Trail. This trail will connect with other regional trails that King County maintains and plans to construct. In the future, Redmond plans to fulfill the trail easement agreement with King County by building a regional trail all the way to NE 124th Street.

18. Other regional public entities also have plans to use the railroad right of way. Puget Sound Energy seeks easements for existing and proposed utilities within the right of way.

King County seeks to improve an existing wastewater line and potentially add a new wastewater line within the corridor. Sound Transit plans to build and operate a light rail network known as East Link with a terminus in Redmond.

19. On several occasions during the first half of 2010, GNP principals appeared before the Redmond City Council and met with Redmond officials and staff to describe its vision for using the Redmond Spur and developing property along the railbanked corridor. During these meetings, GNP principals described their plan to operate an excursion train between downtown Redmond and the City of Snohomish to the north and possibly a low-budget commuter rail service along the rail corridor. In these meetings and related correspondence, GNP principals touted the putative economic benefit to Redmond of tourists arriving in Redmond to ride the proposed excursion train. They urged Redmond to authorize GNP to operate an excursion train between Snohomish and Redmond with a terminus and station located in the middle of downtown Redmond near the Redmond Town Center, an outdoor, mixed-use mall.

20. On March 30, I attended a public meeting of the Redmond City Council at which Mr. Payne and GNP's Chief Financial Officer, Doug Engle, presented GNP's plan to operate excursion rail service on the Redmond Spur. Mr. Payne and Mr. Engle were joined by Tom Jones, a representative of the Cascadia Discovery Institute, a local transportation research and advocacy organization. During this meeting, Mr. Payne and Mr. Engle repeatedly stated that they planned to operate excursion rail service and possibly commuter rail service on the Redmond Spur. They neither described nor disclosed a plan to provide freight rail service. They also emphasized that GNP, as a "federal railroad," would not be subject to any state or local environmental regulation and would therefore be able to develop excursion rail service free from

state or local regulation. At Redmond's request, a certified court reporter prepared a verbatim transcript of this meeting from a recording that is publicly available on Redmond's web site. A copy of this transcript is attached to Redmond's Comment as **Exhibit N**.

21. On May 11, Redmond staff met with GNP principals to learn more about GNP's proposal to operate an excursion train on the Redmond Spur. GNP principals showed no regard for Redmond's long range public and private development plans or codes. They asserted that GNP is a "federal railroad" and therefore it would not have to abide by Redmond's land use or environmental requirements. GNP's principals also asserted that GNP has a National Environmental Policy Act Categorical Exclusion for its operations. In addition, GNP principals gave a presentation describing GNP's plan to operate an excursion train and possibly commuter rail service on the Redmond Spur. True and correct copies of three slides from this presentation are attached to Redmond's Comments as **Exhibit U**.

22. After the May 11 meeting, I received a letter dated May 19, 2010 from Mr. Engle, urging Redmond to authorize GNP to operate an excursion train. In the final paragraph of this letter, Mr. Engle indicated that GNP would prefer to construct the southern terminus of the excursion train in Redmond. A true and correct copy of this letter is attached to Redmond's Comments as **Exhibit O**.

23. Redmond officials did not immediately embrace GNP's proposal to establish excursion service.

24. On June 3, Mr. Engle wrote an email to me in which he stated: "[I]t is clear that staff is not aware of GNP's position as a railroad, and we want to bring some of the pertinent points and federal rulings to your attention. It is in the City's best interest to meet with us and

discuss this matter more fully next week.” A true and correct copy of that email is attached to Redmond’s Comments as **Exhibit P**.

25. On June 14, other Redmond directors and I met with GNP principals to review their business plan, in accordance with Redmond’s request in the May 11 meeting. At that meeting, GNP representatives provided Redmond officials with a copy of GNP’s application for a Railroad Rehabilitation & Improvement Financing (RRIF) loan. GNP permitted Redmond to retain its RRIF application for two weeks so that Redmond officials could review it, without making copies. GNP officials also passed out copies of judicial opinions and Surface Transportation Board decisions holding that railroads are immune from state and local environmental regulation.

26. After reviewing the RRIF application, Redmond officials and staff had no further questions for GNP and again encouraged GNP to participate in Redmond’s master planning process.

I declare under penalty of perjury that the foregoing is true and correct.



CAROLYN J. HOPE
Dated: 11/8/2010
Place: Redmond, WA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
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STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**VERIFIED STATEMENT OF HUNTER FERGUSON
REGARDING PETITIONS OF GNP RAILWAY, INC.**

I, Hunter Olds Ferguson, being competent to make this statement and having personal knowledge of the matters set forth herein, do swear and affirm the following:

1. I am one of the attorneys representing the City of Redmond, Washington in the above-captioned matters.
2. On October 26, 2010, Mr. Randy Mann of Building Specialties, one of the firms identified by GNP Railway, Inc. as a potential customer of freight rail service on the Redmond Spur, gave testimony upon oral examination in a deposition in this matter. Mr. Mann's

testimony was transcribed in a verbatim transcript by a certified court reporter. That court reporter subsequently provided Redmond with certified copies of this transcript. True and correct excerpts of the certified Deposition Transcript of Randy Mann are attached to Redmond's Comments as **Exhibit Q**.

3. On October 26, 2010, Mr. Scott McDonald of Drywall Distributors, Inc., another one of the firms identified by GNP Railway, Inc. as a potential customer of freight rail service on the Redmond Spur, also gave testimony upon oral examination in a deposition in this matter. Mr. McDonald's testimony was also transcribed in a verbatim transcript by a certified court reporter. The court reporter subsequently provided Redmond with certified copies of this transcript. True and correct excerpts of the certified Deposition Transcript of Scott McDonald are attached to Redmond's Comments as **Exhibit I**.

4. On October 13, 2010, Redmond served GNP Railway, Inc. with interrogatories and requests for production of documents.

5. On October 28, 2010, GNP served Redmond with discovery responses. GNP raised several general objections to Redmond's requests. With respect to Redmond's request that GNP produce all documents constituting communications between GNP and any potential freight rail customers on the Redmond Spur, GNP responded that such information was privileged. GNP withheld all such communications, except for copies of the verified statements and letters of business representatives that had already been filed in this matter. Furthermore, Redmond has not had the opportunity to depose GNP's principals.

6. Redmond did receive, however, the documents listed below. True and correct copies of these documents or excerpts thereof are attached to Redmond's Comments under the respective exhibit designation for each document:

- Letter of July 7, 2008 from Thomas Payne to John Creighton, **Exhibit C**;
- GNP Railway, Inc. and Ballard Terminal Railroad Company LLC, Proposal for Third Party Operator for the Woodinville Subdivision, **Exhibit D**;
- Railroad Right of Way License Agreement between the Port of Seattle and GNP Railway, Inc., **Exhibit E**;
- Letter of November 25, 2009 from Thomas Payne to Dan Thomas and Joe McWilliams, **Exhibit F**;
- Letter of December 9, 2009 from Thomas Payne to Craig Watson and Joe McWilliams, **Exhibit G**; and
- Letter of December 10, 2009 from Joe McWilliams to Thomas Payne, **Exhibit H**.

I declare under penalty of perjury that the foregoing is true and correct.

Hunter Ferguson

Hunter Ferguson

Dated: November 8, 2010

Place: Seattle, Washington