



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

98-SID-396

AUG 28 1998

Mr. Ben Bennett
Port of Benton
3100 George Washington Way
Richland, Washington 99352

Dear Mr. Bennett:

TRANSFER OF THE HANFORD RAILROAD SOUTHERN CONNECTION AND THE 1100
AREA TO THE PORT OF BENTON

The purpose of this letter is to request the Port of Benton's (POB) approval of the attached transfer document. The Department of Energy has worked with your staff and legal counsel in the drafting of this transfer document.

If approved by the POB, this transfer will be the most significant real property conversion in recent times. There are 768 acres with 26 facilities and 16 miles of railroad valued at more than \$5.1 million that will be available to assist in the POB's economic development activities.

If you have any questions, please contact Bill Edwards, of my staff, on (509) 372-1291.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. A. Rutherford".

W. A. Rutherford, Director
Site Infrastructure Division

SID:WFE

Attachment

INDENTURE

STATE OF WASHINGTON §
 §
COUNTY OF BENTON §

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

WITNESSETH:

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

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

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

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

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

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

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

L DESCRIPTION OF PROPERTY AND CONVEYANCE

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

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

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

II. CONSIDERATION

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

III. TITLE EVIDENCE

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

IV. COSTS OF RECORDATION

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

V. EASEMENTS, RESTRICTIONS, AND LIMITATIONS

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

VI. LICENSES

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

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

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

VII. CONDITION OF REAL PROPERTY AND MAINTENANCE OF RAILROAD

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

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

VIII. WARRANTIES AND REPRESENTATIONS

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

IX. ASSIGNMENT OF LEASES AND CONTRACTS

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

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

X. OTHER AGREEMENTS

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

XI. NOTICES

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

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

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

XII. LIMITATION OF GRANTOR'S AND GRANTEE'S OBLIGATIONS

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

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

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

XIII. RIGHT OF ACTION

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

XIV. DISPUTES

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

XV. PLANNING AND DEVELOPMENT

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

the Real Property and Railroad.

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

XVI. SUCCESSORS AND ASSIGNS

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

XVII. REVERSIONARY INTEREST

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

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

XVIII. USE OF REAL PROPERTY AND RAILROAD

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

XIX. ACCESS

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

XX. SEVERABILITY

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

XXI. GRANTEE'S STATUS

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

XXII. ENVIRONMENTAL DISCLOSURES

A. Lead-Based Paint Conditions.

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

B. Presence of Asbestos.

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

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

D. Grantor's Disclaimer.

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

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

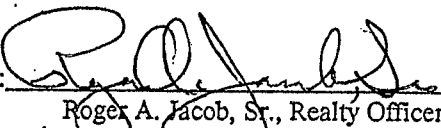
2. Grantor assumes no liability for damages for personal injury, illness, disability, or death to Grantee or to Grantee's successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction or to any other person, including members of the general public, arising from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

XXIII. CULTURAL ARTIFACTS AND HISTORIC STRUCTURES

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

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

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

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

Date: August 28, 1998

Witnessed by Notary Public: Wesley K. Knutson State of Washington, County of Ben

My Commission Expires: July 09, 2001

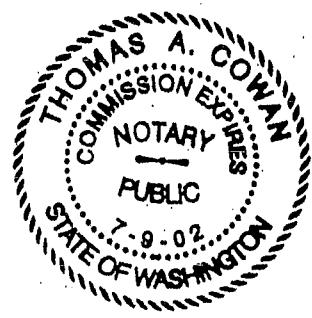
Port of Benton, Washington
GRANTEE:

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

Date: September 25, 1998

Witnessed by Notary Public: Thomas A. Cowan

My Commission Expires: July 9, 2002



ATTACHMENTS

- A. 1100 Area Legal Description
- B. Department of Energy Railroad, Southern Connection, Legal Description
- C. Personal Property, 1100 Area Transfer, October 1, 1998
- D. Quitclaim Deed
- E. Easements
- F. Future Easements and Use Permit
- G. Licenses
- H. Leases (2) and Railroad Agreement and Permit
- I. Due Diligence Assessment Report and Environmental Assessment
- J. Historical Artifacts Assessment