

## **TRACK LEASE AGREEMENT BETWEEN J. R. SIMPLOT COMPANY AND PORT OF WALLA WALLA**

THIS AGREEMENT, made as of the last date of execution as set forth below, by and between J R Simplot Company, and hereinafter referred to as "Lessor" whose address for the purposes of this agreement is Attn: JR Simplot Company, PO Box 27, Boise, ID 83707 and the Port of Walla Walla, hereinafter referred to as "Lessee", whose address for the purposes of this agreement is 310 A Street, Walla Walla, WA 99362

1. TERM: The term of this non-exclusive lease shall commence as of the last date of execution as set forth below, and unless sooner terminated as hereinafter provided, shall continue in full force and effect until Lessee shall give the Lessor sixty (60) days written notice, effective at any time, of an intention to terminate with or without cause and regardless of performance or non-performance of any covenants and agreements contained herein and without regard to any loss or damage incurred by either party as a result of such termination or cancellation; said lease to terminate upon the expiration of said sixty (60) days' notice. The Lessor shall not execute the Lease until it receives a signed original from Lessee, and in no event is entry under this Lease permitted until Lessor has executed it.

2. LOCATION: In consideration of the rental or other sums of money hereinafter agreed to be paid by Lessee to Lessor, and of the covenants, agreements and undertakings of Lessee, as hereinafter set forth, Lessor hereby leases to Lessee, subject to the rights and uses hereinafter excepted and reserved, the following described trackage, which includes the track structure, drainage structures, grading, sub-grade stabilization, and parallel service road, and the right of way thereunder and incident thereto, hereinafter collectively referred to as "Track", at or near Wallula, County of Walla Walla, State of Washington, to wit:

16,000 feet, more or less of Track with a BN Track number of 932 and a UP Track number of 702 and the land thereunder, located near Union Pacific Railroad Company, CP E216 near Wallula as shown on the print attached as Exhibit A and made a part hereof.

Lessee hereby undertakes and agrees:

3. RENTAL: Upon receiving a fully executed copy of the Lease, Lessee shall pay Lessor as rental for the use of the Track a one-time rental fee of Two Hundred Fifty Thousand Dollars (\$250,000) as payment for the entire term of the Lease.

4. USE, INSPECTION AND MAINTENANCE: The intent of this Lease is to allow Lessee to offer and give rail access to Lessee's industrial complex to future tenants, customers or facility operators of the industrial complex (such parties collectively referred to herein as "Tenants"). Therefore, to carry through that intent, Lessee, along with its agents, contractors, sublessees, licensees, invitees (including rail common carriers or third party switching entities), Tenants (as defined herein) and their agents are permitted and shall use the Track for the purpose of any and all rail related activities, including, but not limited to: unit train service, switching, single car switching, or any combination of rail service and transportation of any commodity or freight without restriction, subject to the following requirement: Prior to a particular shipper moving a particular commodity on the Track pursuant to this Agreement, Lessee must provide the name of

the shipper and commodity to the Lessor, and Lessor then has twenty (20) business days to approve or deny the movement of that particular commodity by that particular shipper. Failure by Lessor to respond within twenty (20) business days constitutes approval of that particular shipper along with that particular commodity to move on the Track pursuant to this Agreement. Once approval is in place, the particular shipper may move that particular commodity on the Track for as long as the Agreement remains in force, and that approval applies to that shipper's successors and assigns. Lessor's approval can only be withheld when the commodities proposed to be shipped are for the direct benefit of Lessor's competitors located in Grant, Adams, Yakima, Klickitat, Walla Walla, Benton and Franklin Counties in Washington State and Gilliam, Sherman, Morrow and Umatilla Counties in Oregon State. Lessee may not store rail cars on the Track except for operational convenience. Lessee has thoroughly inspected the Track, is familiar with its condition, and hereby accepts the Track in the present condition thereof. The Lessee's use of the Track shall be in conjunction with Lessor's use of the Track, and Lessor and Lessee shall cooperate on scheduling the use of the Track to minimize any disruption to their operations. In the event of a conflict, Lessor's use shall take precedence. Lessee, along with its agents, contractors, sublessees, licensees, invitees (including rail common carriers or third party switching entities), Tenants, and their agents shall have use of the Track at all times in a manner that does not interfere with Lessor's use. Lessor shall maintain the Track to a minimum FRA Class 2 standard and shall record maintenance costs. In addition, Lessee shall have the obligation to pay for its share of the actual operation, maintenance, repair and replacement of the existing track. Said share shall be determined per railcar by the number of Lessee rail cars that use the track. For ease of managing, Lessor shall invoice Lessee once each calendar year in advance of the Lessee's use for the current year. The amount invoiced shall be based on the use by Lessee for the previous year. At the conclusion of each year, Lessee's use will be confirmed and Lessor will invoice Lessee for any additional amounts that are attributable to track usage beyond the previous years' use by Lessee; or the Lessee will be credited for any paid, but unapplied amounts that are attributable to track usage that is less than Lessee's use during the previous year. The amount invoiced shall be due within 30 days of the invoice. In the event there are any non-contested balances after the due date, Lessee's use rights shall be suspended until any amounts due and paid to Lessor plus a late fee in the amount of 1% of any due and unpaid balance. If Lessor gives permission to any third party to use the Track for such third party's purposes, the third party's use of the Track shall be subordinate to Lessee's and its Tenants' use of the Track and the track usage of such third party shall not be considered use by Lessee for purposes of maintenance cost allocation unless to lower those costs.

5. CLEARANCES: The parties shall not place, or permit to be placed or to remain, any material, structure, pole or other obstruction within or having a clearance of less than eight and one half (8 ½') feet, for the full height of the vertical clearance as defined below, laterally from the centerline of Track, and no obstruction within or having a clearance of less than twenty-seven (27') feet, for the full width of the horizontal clearance defined above, above the top of the rail of the Track; provided, that if by statute or order of competent public authority, greater clearances shall be required than those provided for in this Section 5, then the parties shall strictly comply with such statute or order.

(b) All doors, windows, or gates of any building or enclosure shall be of a sliding type or shall, when opened, be swung away from the Track when such building or enclosure is so located

that said doors, windows or gates, if opened toward the Track would, when opened, be a clearance in violation of the clearances as specified hereinbefore.

(c) Except as set forth in Section 7 herein, no structure, material, pole, cable, wire, conduit, opening, excavation or obstruction of any kind or character shall be erected, piled, made, stored or maintained by Lessee upon or over the premises of Lessor or beneath any track upon the premises of Lessor, without the written consent of Lessor first having been obtained.

(d) Lessee shall not construct or maintain any gate or other obstruction across the Track without the prior written consent of Lessor.

(e) Lessee shall at all times keep the area between the rails and within the lateral clearance area hereinbefore defined provided, free and clear of debris and/or other obstructions of any kind or nature, whether due to the operations of Lessee or Lessor or both, or to the loading or unloading of cars on said Track.

6. GOVERNMENT REGULATIONS: Lessee shall fully comply with all governmental laws, statutes, regulations, ordinances, and orders promulgated or issued by any governmental body or authority having jurisdiction.

7. TRACK MODIFICATION AND IMPROVEMENTS: Except where caused in whole or in part by Lessee's activities, in the event that a rearrangement, reconstruction or modification of the Track is required; or if a separation of the grade of the Track and any roadway or highway is required; or the installation of any signals are required, by any reason of or as a result of any law, ordinance, permit, regulation or other public enactment, including any paving, sidewalks, sewers, utilities or other public improvement work the parties hereto shall allocate the costs in the year the cost is incurred in the same proportion as maintenance costs are apportioned in that same year according to Section 4 herein. The Lessor shall pay the costs and seek reimbursement from Lessee for Lessee's portion. Lessee may, with the consent of Lessor which consent shall not be unreasonably withheld, elect at its own cost to expand rail capacity by adding track, crossovers, switches or any other improvements on or to the Track, provided they do not unreasonably interfere with Lessor's use of the Track. Such improvements shall be maintained by Lessee. Such improvements shall become the property of Lessor upon termination of the Lease, unless said improvements are on Lessee-owned property, in which event said improvements shall remain in the ownership of Lessee upon termination.

8. TERMINATION: Upon any expiration, or termination of this lease, Lessee agrees to release to Lessor the Track in at least the same condition as of the date hereof, ordinary wear and tear excepted.

9. LIABILITY. Lessee agrees to defend, indemnify and hold harmless Lessor from any loss, cost, damage, action, cause of action or claim or expense of any kind resulting from Lessee's negligence in its use or maintenance of the Track.

10. INSURANCE: Lessee shall purchase and maintain insurance as specified below covering the Track, all the work and services to be performed hereunder, and all obligations assumed hereunder, from effective date of lease until termination, unless duration is stated to be otherwise, with insurance companies assigned a current Financial Strength Rating of at least A

and Financial Size Category of X or better by A. M. Best Company:

- a. Commercial General Liability Insurance written on an occurrence basis subject to limit of \$5,000,000 each occurrence for bodily injury, property damage, personal injury and advertising injury with an annual aggregate limit of no less than \$5,000,000 and J. R. Simplot Company shall be an additional insured.
- b. Workers Compensations Insurance
  - i. Statutory            All States in which operations will be performed
  - ii. \$1,000,000        Employer's Liability – Each Accident
  - iii. \$1,000,000       Employer's Liability – Disease – Each Employee
  - iv. \$1,000,000       Employer's Liability – Disease – Policy Limit
  - v. Coverage must include if applicable:
    - 1. Longshoremen's and Harbor Workers Compensation Act Coverage Endorsement
    - 2. Maritime Coverage Endorsement
    - 3. Federal Employment Liability Act Endorsement

11. NO REFUND: If and when this lease shall be terminated by Lessee pursuant to Section 1, no refund shall be due Lessee.

12. DEFAULT: Upon breach or violation of any of Lessee's covenants, agreements, undertakings, provisions, terms, applicable laws or conditions herein contained, Lessor may serve a notice of default on Lessee in accordance with the notice provisions herein and give Lessee thirty (30) days to cure such breach, violation or default. If Lessee fails within such thirty (30) day period to cure or take substantial steps to cure such breach, violation or default, then Lessor may serve a notice of termination of the Lease terminating the Lease on Lessee and Lessee must remove all of Lessee's property from the Track within twenty (20) days following receipt of the termination notice. Failure of Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be construed to constitute a waiver of such default. In addition, Lessor reserves the right to avail itself of any and all rights and remedies available to it by operation of law or equity and any proceeding by the appropriate court action to enforce performance by Lessee at anytime of the applicable covenants of this lease or to secure damages for the breach thereof including reasonable attorneys' fees. Lessor may waive any default of Lessee at any time without affecting or impairing any rights arising from any subsequent default. Lessee agrees to reimburse Lessor for the costs of any claims, suits, judgments, costs, attorneys' fees, court costs and all other related expenses incurred by Lessor arising from or growing out of Lessee defaulting in any of the terms of this lease. No action or proceeding by Lessor under this paragraph shall in any manner release or discharge the covenants, agreements, and undertakings of Lessee of any of the obligations, risks, or duties herein assumed by Lessee which may have accrued as of the date of any default.

13. SEVERABILITY: This lease is executed by all parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statute, ordinance, or law. Further, each and every separate division (paragraph, clause, item, term, condition, covenant, or agreement) herein contained shall have independent and severable status from each other separate



division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or other combination thereof.

14. SUCCESSORS/ASSIGNS: (a) This lease and all of the provisions, covenants and agreements herein contained shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns, and Lessee agrees to supply in writing to Lessor notice of any name changes. Lessee shall not sublease the premises, or any part thereto, or assign this lease or interest therein without the prior written consent of Lessor expressed in writing, , and any and every attempted subletting or assignment without such prior written consent shall be void and of no effect. Notwithstanding the previous sentence, Lessee may assign the Lease to another Washington municipal corporation without the consent of Lessor

(b) In the event of any assignment or subletting consented to by Lessor, Lessee shall at all times remain fully responsible and liable for the compliance of all of its obligations under the terms, provisions and agreements of this lease.

(c) This lease is personal to the Lessee and shall not inure to the benefit of any receiver, trustee, or other officer, or of any assignee for the benefit of any creditors, as an asset of Lessee, but shall cease and terminate upon the appointment of any such receiver, trustee, or other officer, or making of any such assignment.

(d) Lessee acknowledges that Lessor may enter into additional leases for use of the track so long as any additional leases do not unreasonably interfere with Lessee's use of the track.

15. MISCELLANEOUS:

(a) The personal pronouns used herein as referring to Lessee shall be understood so to refer to Lessee whether Lessee be a natural person (one or more), a partnership, a corporation, or any combination thereof, and all the covenants and agreements contained herein shall be the joint and several covenants and agreements of all such parties.

(b) Any notices hereunder to be given shall be deemed to be properly given if served upon or delivered to, or if deposited in the United States mail, postage prepaid and addressed to at the addresses given in the opening paragraph of this agreement.

(c) No oral promises, oral agreements, or oral warranties shall be deemed a part of this lease, nor shall any alteration, amendment, supplement or waiver of any of the provisions of this lease be binding upon either party hereto, unless same be supplemented, altered, changed or amended by an instrument in writing, signed by Lessor and Lessee.

(d) All obligations of Lessee hereunder to protect, indemnify and hold harmless the Lessor shall also extend to officers, agents, employees and/or contractors of Lessor, and to companies and other legal entities that control, are controlled by, are subsidiaries of or affiliated with the Lessor, their officers, agents, employees and/or contractors.

(e) Lessee shall not at any time own or claim any right, title or interest in or to the Track, nor shall the exercise of this lease for any length of time give rise to any right, title or interest in or to the Track, other than the leasehold created herein.

(f) This lease is made subject to the rights granted by or through Lessor for any surface, sub-surface or aerial uses antedating this lease, including but not limited to the construction, maintenance, operation, renewal and/or relocation of fences, pipelines, communication lines, power lines, railroad tracks and signals, and any and all appurtenances applicable thereto. Lessor excepts and reserves the right to grant additional uses of the same or similar nature subsequent to the execution of this lease, without payment of any sum for damages, so long as such use does not unreasonably interfere with the use of Premises by Lessee for the purpose hereinbefore stated.

(g) This License shall be governed under the laws of the State of Washington, and venue shall be proper in the federal or state courts of the State of Washington for any action arising under the terms of this License or performance thereof.

(h) Lessee or the Tenant contemplates using the rail services of and may, without the consent of Lessor, enter into agreements with Union Pacific Railroad Company ("UP"), BNSF Railway Company ("BNSF"), and Lessor's track operator (currently Frontier Rail) pursuant to Lessee's and the Tenants' rights under Section 4 of the Lease to allow Lessee and the Tenants to exercise and receive rail services on the Track pursuant to rights under the Lease. Should Lessee seek to use an entity other than UP, BNSF, or Lessor's track operator to perform rail services, Lessee shall get Lessor's consent prior to such third party performing rail services on the Track, which consent shall not unreasonably be withheld. Lessor, Lessee or Tenants shall not undertake any action to restrict the fair, equal and competitive access of UP, BNSF, or other party, and their respective agents, that Lessee is using to exercise its rights under the Lease. A violation by any party of this obligation shall give the other parties to this agreement the immediate right to seek injunctive relief to compel Lessor to honor this obligation in any state or federal court of Lessee's choosing.

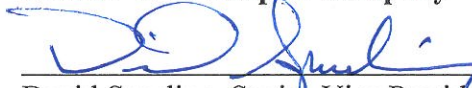
(i) If Lessor sells all or any portion of the Track Lessee's rights under this agreement will remain in full force and effect upon the new Lessor.

(j) Neither party shall deposit or dispose of waste on the Track, and any waste deposited or disposed of by a party's activities on the Track that is not cured after written notice within 60 days or in accordance with applicable laws and regulations shall be a breach hereof entitling the other party to terminate this Lease. Any waste deposited or disposed of by a party's activities on the Track shall be managed, stored, and disposed of in full compliance with all local, state, and federal laws. No party shall store, dispose of, or otherwise release any Hazardous Substances, as those terms are defined by 42 USC § 9601 (Comprehensive Environmental Response, Compensation, and Liability Act) or as defined by state or local law in, on, or under Track. Each party agrees to promptly comply with all laws, statutes, regulations, and ordinances and with all orders, decrees, or judgments of governmental authorities or courts having jurisdiction relating to the use, collection, treatment, disposal, storage, control, removal, or cleanup of Hazardous Substances in, on or under the Track. Each party represents that it has no knowledge that its contemplated operations on or use of the Track fails or will fail to comply with any such laws or orders. Each party shall immediately notify the other if they become aware of the release of any Hazardous Substances on the Track or becomes aware of any other

environmental problem on the Track. Each party shall be responsible for, and hereby assumes all liability for, all costs and expenses of any kind which result from the release of any Hazardous Substances in, on, or under the Track during the term of this Lease which are caused by a party or its respective agents.

IN WITNESS WHEREOF, the parties hereto have executed this lease in triplicate as of the last date of execution as set forth below.

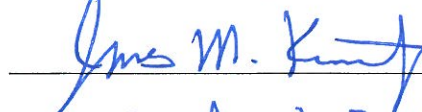
**Lessor: J. R. Simplot Company**



David Spurling, Senior Vice President, Secretary and General Counsel

Date: 4 August 2014

**Lessee: Port of Walla Walla**



Date: 26 August 2014

Title: Executive Director



Exhibit A

