

MA-13915

PORT FACILITY PROPERTY INSTRUMENT OF DISPOSAL
 QUITCLAIM DEED, INDENTURE, or otherwise
 as necessary to meet local requirement

CITY OF WASHINGTON)
)
 DISTRICT OF COLUMBIA)

1. THIS INDENTURE, made this the 13TH day of September 1996, between the UNITED STATES OF AMERICA, acting by and through the Secretary of Transportation, as delegated to the Maritime Administrator, Maritime Administration (herein called the "Grantor"), under and pursuant to the power and authority provided by the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160) at Section 2927 dated November 30, 1993, the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471-544) (Act) at 40 U.S.C. 484g, the Federal Property Management Regulations Title 41, Code of Federal Regulations (CFR) Part 101-47.308-10, the Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility Regulation Title 46 CFR Part 387, and the Port of Benton, acting through the Board of Commissioners, Richland, WA (herein called the "Grantee").

2. WITNESSETH, that the said Grantor, for and in consideration of the assumption by the Grantee of all the obligations and its taking subject to certain terms, reservations, restrictions and conditions and its agreement to abide by, certain other terms, reservations, restrictions and conditions, all as set out hereinafter, has remised, released and forever quitclaimed and by these presents does remise, release and forever quitclaim to the Grantee, without warranty, express or implied, under and subject to the terms, reservations, restrictions, conditions and exceptions, all as hereinafter expressed and set out, all title and claim which the Grantor has in and to that certain property situate, lying and being in the County of Benton in the State of Washington, formerly known as the Hanford 3000 Area, and described in detail in Attachment A hereof, for the use stated therein.

3. ALSO, there is hereby conveyed by this quitclaim deed (Deed) items of personal property for port facility purposes situate at the property as described in Attachment A hereof and such personal property is likewise described in detail in Attachment B hereof, and conveyed for the use stated therein.

4. WHEREAS, all the property hereby conveyed has heretofore been declared surplus to the needs of the UNITED STATES OF AMERICA ("Government"), the property was excessed by the Department of Energy ("Holding Agency") and is presently available for disposal and its disposal has been heretofore authorized by the Administrator, General Services Administration

("Disposal Agency"), acting pursuant to the above referred to laws, regulations and orders.

5. WHEREAS, the surplus real property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Disposal Agency.

6. TO HAVE AND TO HOLD the same on an "as is where is" basis, together with all and singular the appurtenances thereunto belonging or in anyway appertaining, and all the title or claim whatsoever of the Grantor, either in law or in equity and subject to the terms, reservations, restrictions and conditions set forth in this instrument, to the only proper use, benefit and behalf of the Grantee.

7. NOW THEREFORE, by the acceptance of this Deed or any rights hereunder, the Grantee, agrees that the conveyance of all the property conveyed by this instrument, is accepted subject to the following terms, reservations, restrictions and conditions set forth in subparagraph (a) and (b) of this paragraph which shall run with the land in addition to further terms, reservations, restrictions and conditions as set forth elsewhere in the Deed:

(a) That, except as provided in subparagraph (A) of numbered paragraph 8, the property conveyed by this instrument shall be used for development or operation of a port facility in perpetuity. As used in this instrument, the term "Port Facility" shall mean any structure and improved property, including services connected therewith whether located on waterfront or inland, which is used, or intended for use, in developing, transferring or assisting maritime commerce and water dependent industries, including, but not limited to, terminal and warehouse buildings, piers, wharves, yards, docks, berths, dry and cold storage spaces, bulk and liquid storage terminals, tank farms, aprons, cranes and equipment used to load and discharge cargo and passengers from vessels, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed use waterfront complexes, connecting channels and port landside transportation access routes.

(b) That, except as provided in subparagraph (A) of the numbered paragraph 8, the entire Port Facility including all structures, improvements, facilities and equipment in which this instrument conveys any interest shall be maintained 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 by the Grantor or his successor in function.

8. FURTHER, by the acceptance of this Deed or any rights hereunder, the Grantee, also assumes the obligation of, agrees to abide by, and this conveyance is made subject to, the following terms, reservations, restrictions and conditions set forth in subparagraphs (A) to (BB), inclusive, of this paragraph:

A. That no property conveyed by this Deed shall be mortgaged or otherwise disposed of or rights or interest granted by the Grantee without the written consent of the Grantor. However, the Grantor will only review leases of five years or more to determine the interest granted therein.

B. Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination. In furtherance of this term (but without limiting its general applicability and effect) the Grantee specifically agrees (1) that it shall keep the Port Facility open to the maritime uses expressed in the application without discrimination between such types and kinds. Provided, that the Grantee may establish such fair, equal, and nondiscriminatory conditions to be met by all users of the Port Facilities as may be necessary for the safe and efficient operation of the Port Facility; and provided, further, that the Grantee may prohibit or limit any given type and kind of maritime use of the Port Facility if such action is necessary for the safe operation of the Port Facility, (2) that in its operation and the operation of port facilities at the port, 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 at the port, and (3) that in any agreement, contract, lease, or other arrangement under which a right or privilege at the port is granted to any person, firm or corporation to conduct or engage in any maritime activity for furnishing services to the public at the port, the Grantee shall insert and enforce provisions requiring the contractor: (a) to furnish said service on a fair, equal and nondiscriminatory basis to all users thereof, and (b) to 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.

C. The Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility. The Grantee shall, either by the acquisition and retention of easement or other interest 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 Port Facility.

D. The Grantee shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by Grantor, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and shall not permit any activity thereon which would interfere with its use as a Port Facility.

E. The Grantee does hereby release the Government, and shall take whatever action may be required by the Grantor to assure the complete release of the Government from any and all liability the Government may be under for restoration or other damage under a deed or other agreement covering the use by the Grantee or its lessees, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used.

F. The Port Facility is subject to the provisions of Title 46 CFR Part 340.

G. The Grantee shall: (1) furnish the Grantor with annual or special Port Facility financial and operational reports as requested, (2) furnish the Grantor with an annual utilization report that demonstrates that the Port Facility is being used in accordance with the terms and conditions of the Deed, and (3) upon reasonable request of the Grantor, make available for inspection by any duly authorized representative of the Grantor the Port Facility, at which the property described herein is located, and all Port Facility records and documents affecting the port, including deeds, leases, operation and use agreements, regulations, and other instruments and shall furnish to the Grantor a true copy of any such document.

H. Where construction or major renovation is not required or proposed, the Port Facility shall be placed into use within twelve (12) months from the date of this conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Grantor in the Port Facility Redevelopment Plan (PFRP) section of the Grantee's application.

I. The Grantee shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions and conditions set forth herein, if an arrangement is made for management or operation of the Port Facility by any agency or person other than the Grantee, it shall reserve sufficient rights and authority to ensure that such Port Facility shall be operated and maintained in accordance with these terms, reservations, restrictions and conditions.

J. The Grantee shall keep up to date at all times a Port Facility layout map of the property described herein showing:

(a) the boundaries of the Port Facility and all proposed additions thereto, and (b) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.

K. In the event that any of the aforesaid terms, reservations, restrictions and conditions are not met, observed, or complied with by the 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 this Deed to the Grantee, or any portion thereof, shall at the option of the Grantor revert to the Government in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or his successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions 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 hereby, except such, if any, as shall have previously reverted, shall remain vested in the Grantee.

L. If the construction of any of the foregoing terms, reservations, restrictions and conditions recited herein as provisions or the application of the same as provisions in any particular instance is held invalid, the particular term, reservation, restriction or condition in question shall be construed instead merely as conditions upon the breach of which the Grantor may exercise its option to cause the title, interest, right of possession, and all other rights conveyed to the Grantee, or any portion thereof, to revert to it, and the application of such term, reservation, restrictions or condition as provision in any other instance and the construction of the remainder of such terms, reservations, restrictions and conditions as provisions shall not be affected thereby.

M. The Grantee shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

N. The Grantee shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.

O. The Grantee shall not modify, amend or otherwise change its approved PFRP without the prior written consent of Grantor and shall implement the PFRP as approved by the Grantor.

P. The Holding Agency, the potential responsible party (PRP) under Section 120 (h)(3) of the Comprehensive, Environmental

Response, Compensation and Liability Act of 1980, as amended (CERCLA), warrants that: (1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken and (2) any additional remedial action found to be necessary after the date of the conveyance shall be conducted by the PRP, consistent with statutory obligations. This covenant and warrant does not include asbestos, PCB's, and lead based paints as noted below. See Attachment C.

Q. The PRP reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

R. The Grantee agrees that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Disposal Agency, or Grantee voluntarily returns title to the property in lieu of a reverter, then the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Disposal Agency. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in 41 CFR Part 101-47.4913 in effect as of the date of the conveyance.

S. Grantor expressly reserves from this conveyance all mineral rights including, but not limited to, oil, gas and coal. The listing of these minerals shall not cause a doctrine of ejusdem generis to apply.

T. The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the Deed. During such period, the Government, its agents, customers, transferees, and successors shall have the right of ingress to and egress from the Port Facility for the purposes of using, disposing of by sale or otherwise, and removing such property.

U. Preservation Covenant for Historic Property. [Not applicable]. See Attachment D.

V. Lead-Based Paint and PCB's Conditions.

(1) Prior to use of any property on the Port Facility by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards from the property in accordance with all Federal, State and local lead-based paint laws and regulations.

(2) The Grantee agrees to indemnify the Government to the extent allowable under applicable law from any liability arising by reason of the Grantee's failure to perform the Grantee's

obligations hereunder with respect to the elimination of immediate lead-based paint health hazards, the prohibition against the use of lead-paint, and the Grantee's responsibility for complying with applicable Federal, State and local lead-based paint laws and regulations. See Attachment C.

(3) The facilities may contain PCB light ballasts. The Grantee agrees to indemnify the Government to the extent allowable under applicable law from any liability arising by reason of the Grantee's failure to perform the Grantee's obligations hereunder with respect to the elimination of any PCB health hazards, and the Grantee's responsibility for complying with applicable Federal, State and local PCB laws and regulations. See Attachment C.

W. PRESENCE OF ASBESTOS.

The Port Facility may be improved with buildings and facilities and equipment that may contain asbestos-containing materials. The Due Diligence Report prepared by Westinghouse Hanford Company, dated May 1, 1996 discloses the condition and location of any known asbestos-containing materials. See Attachment C. **WARNING!**

(1) The Grantee is warned that the Port Facility contains asbestos-containing materials. Unprotected or unregulated exposure to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (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) The Grantee is invited, urged, and cautioned to inspect the Port Facility prior to entering into this Deed. More particularly, the Grantee is invited, urged, and cautioned to inspect the Port Facility as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Government shall assist the Grantee in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). The Grantee shall be deemed to have relied solely on its own judgement in assessing the overall condition of all or any portion of the Port Facility, including without limitation, any asbestos hazards or concerns.

(3) No warranties, either express or implied, are given with regard to the condition of the Port Facility including, without limitation, whether the Port Facility does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect or to be fully informed as to the condition of all or any portion of the Port Facility shall

not constitute grounds for any claim or demand for adjustment or withdrawal by the Grantee from the agreement formed by the execution of any Deed(s).

(4) The description of the Port Facility set forth in the Application and any other information provided therein with respect to the Port Facility is based on the best information available to the Holding Agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the Holding Agency or any other Federal agency, shall not constitute grounds or reason for non-performance of the agreement formed by the execution of the Deed(s) or any claim by the Grantee against the Government including, without limitation, any claim for allowance, refund, deduction, or payment of any kind.

(5) The Government assumes no liability for damages for personal injury, illness, disability, or death to the Grantee or to the Grantee's successors, assigns, employees, invitees, or any other person subject to the 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 Port Facility, whether the Grantee, has or have properly warned or failed to properly warn the individuals(s) injured.

(6) The Grantee further agrees that in its use and occupancy of the Port Facility it shall comply with all Federal, state, and local laws relating to asbestos.

X. Protection of Wetlands. [Not applicable]. See Attachment E.

Y. The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14 CFR Part 77 or under the authority of the Federal Aviation Act of 1958, as amended. The property lies within the 150-foot horizontal surface of the Richland Airport. See Attachment F.

Z. The Grantee agrees to maintain, indemnify and hold harmless the Grantor and the Government from any and all claims, demands, costs or judgements for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees, lessees.

AA. The Grantor on written request from the Grantee may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

BB. The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

CC. The Government, its successors and assigns reserves the right of access to those portions of the property (Set forth in Attachment G) for the purpose of construction, installing, maintaining, repairing, operating and/or removing utility, telecommunication or well monitoring equipment over, under, across and upon the property.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this to be executed on the 13th day of September 1996.

UNITED STATES OF AMERICA
SECRETARY OF TRANSPORTATION

By: MARITIME ADMINISTRATOR

(Seal)

By: Joel C. Richard
Secretary
Maritime Administration

Attest:

By: Sandra C. Johnson
Title: Staff Assistant

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) SS:

I, the undersigned, a Notary Public in and for the District of Columbia, do hereby certify that Joel C. Richard, officially known to me as Secretary, Maritime Administration, U.S. Department of Transportation, United States of America, personally appeared before me in said District, and executed as Grantor the foregoing Quitclaim Deed, and acknowledged the same to be his/her free act and deed in such official capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 13th day of September 1996.

{SEAL}

Janette J. Hood
NOTARY PUBLIC

My Commission expires: 1/31/99

Janette G. Hood
Notary Public for the District of Columbia
My Commission Expires January 31, 1999

ACCEPTANCE

The Port of Benton does hereby accept this and by such acceptance agrees to all of the terms and condition thereof. Executed this 11th day of September, 1996.

PORT OF BENTON, as Grantee

(Seal)

By:

Robert D. Larson
Robert D. Larson

Attest:

Title: President, Port of Benton Commission

By: A. Ben Bennett, A. Ben Bennett

Title: Executive Director

I, Tom Cowan, acting as attorney for the Port of Benton herein referred to as the "Grantee," do hereby certify: That I have examined the foregoing and the proceedings taken by the Grantee relating thereto, and find that the acceptance thereof by the Grantee has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Washington, and further that, in my opinion, the Quitclaim Deed constitutes a legal and binding compliance obligation of the Grantee in accordance with the terms thereof.

Dated at Richland, WA this 11th day of September, 1996.

By:

Thomas A. Larson
Title: Port of Benton Counsel