

**BNSF RAILWAY COMPANY
INDUSTRY TRACK AGREEMENT**

THIS INDUSTRY TRACK AGREEMENT ("Agreement") is entered into as of May 15, 2009 (the "Execution Date"), to be effective as of the Effective Date set forth in Section 3 below, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Railroad"), and THE CITY OF RICHMOND, a municipal corporation and charter city ("Industry").

RECITALS

A. Auto Warehousing Co. ("AWC") owns or controls certain rail, ties, ballast, and appurtenances thereto existing or to be constructed as indicated on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "Third Party Track") pursuant to that certain Lease Agreement between Railroad and AWC dated of even date herewith (the "Lease").

B. Industry owns or controls certain additional rail, ties, ballast, and appurtenances thereto existing or to be constructed as shown on Exhibit "A-1" attached hereto and incorporated herein by reference (collectively, the "Industry Track"). The Third Party Track and Industry Track may be hereinafter collectively called the "Track".

C. Industry desires that Railroad operate over the Industry Track and Railroad is willing to perform such operation, subject to the terms of this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **OWNERSHIP; ACCESS BY RAILROAD.**

(a) AWC owns or controls the Third Party Track, and Industry owns or controls the Industry Track.

(b) Industry hereby grants Railroad, its contractors and agents, the right to enter upon the Industry Track and other property owned or controlled by Industry so that Railroad, its contractors and agents, may operate over the Industry Track.

2. **MAINTENANCE AND OPERATION.**

(a) Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Industry Track. Industry shall strictly comply with all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction (collectively, "Legal Requirements"), such Legal Requirements to include, without limitation, Environmental Laws (defined below) and other Railroad requirements that would be generally applicable in similar circumstances at other locations relating to the use, maintenance and operation of the Industry Track, Facilities or Equipment; provided that Industry shall not be responsible for the cost of complying with any such Railroad requirements that require improvements to infrastructure. Prior to entering Railroad's property, Industry shall and shall cause its contractor(s) to comply with all of Railroad's applicable safety rules and regulations. Prior to commencing any work on Railroad's property, Industry shall complete and shall require its contractor to complete the safety training program at Railroad's Internet Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Industry's entry on Railroad's property.

(b) Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Industry Track and all Facilities and Equipment (defined below) (if any) in a safe and satisfactory condition and in compliance with all applicable Legal Requirements. Maintenance means, among other things, (i) providing proper drainage along the relevant portion of the Industry Track; (ii) keeping the Industry Track free and clear of snow, ice,

vegetation, structures, and other obstacles; and (iii) maintaining Industry Track grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals. Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Track or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad may elect to resume operation over the Industry Track or use of or entry into the Facilities or contact with the Equipment. Railroad's operation over the Industry Track or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of Railroad's right to recover for or be indemnified and defended against damages to property or injury to or death of persons that may result therefrom.

(c) Industry shall, at its sole expense, pay all costs for changes, repairs or alterations to the Industry Track that may be necessary to conform to any changes of grade or relocation of the Third Party Track at the point of connection with the Industry Track, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond Railroad's reasonable control.

(d) If Industry installs any gates or fencing across the Industry Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "Facilities") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with, or otherwise affecting the Track ("Equipment") and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any Equipment spotted onto the Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities and Equipment so as not to negatively affect the safe and efficient operation over the Track. Industry shall, among other things: keep any gates across the Industry Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Industry Track; keep unloading pits securely covered when not in actual use and at all times when Railroad is switching the Track; keep all doors firmly secured; and keep adjustable loading docks at warehouses and the facility operated by Industry (the "Plant") securely fastened in an upright position when not in actual use and at all times when Railroad is switching the Track.

(e) Railroad may require for safety purposes that Industry, at its sole cost and expense, provide flaggers, lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with use of the Industry Track for Industry. Industry shall reimburse Railroad within thirty (30) days of receipt of bill rendered therefor for all of Railroad's costs, including but not limited to the furnishing of Railroad's flaggers and any vehicle rental costs incurred. Flagging services will be performed by qualified Railroad flaggers. Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railroad property and operations, if deemed necessary by the Railroad's Representative. Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day. The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by Industry. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railroad and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the flaggers will be used to calculate the actual flagging costs pursuant to this paragraph.

(f) In the event the public authority having jurisdiction thereover orders the separation of the grade of the Industry Track and any street, road, highway, other rail line or the like, Industry hereby consents to the removal and/or relocation of the Industry Track and shall reimburse Railroad for all expenses incurred in connection with or related to the removal and/or relocation of the Industry Track.

(g) Industry shall not place, permit to be placed, or allow to remain, any permanent or temporary material,

structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction within eight and one-half (8-1/2) feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved Track) or within twenty-four (24) feet vertically from the top of the rail of the Track ("**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this **Section 2(g)**, then Industry shall strictly comply with such Legal Requirement. Railroad's operation over the Track with knowledge of an unauthorized reduced clearance will not be a waiver of Industry's covenants contained in this **Section 2(g)** or of Railroad's right to recover and be indemnified and defended against such damages to property or the environment, or injury to or death of persons that may result therefrom.

(h) Industry shall not place or allow to be placed any freight cars, materials, machinery, or other equipment within 250 feet of either side of any at-grade crossings on the Industry Track.

(i) Pursuant to the terms and conditions of the Lease, AWC shall 1) be responsible for obtaining, at its sole cost and expense, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Third Party Track; and 2) maintain, or cause to be maintained, the Third Party Track.

3. **TERM.** The "**Effective Date**" of this Agreement shall be the date of delivery of the bonds in connection with financing the construction of the Track. This Agreement is being executed prior to the Effective Date in order to facilitate such construction financing. The City will provide BNSF written notice of the Effective Date within thirty (30) days after the Effective Date, and the parties' rights and obligations under this Agreement shall commence on the Effective Date; provided that Railroad shall have no obligations under this Agreement, and no liabilities or obligations of Railroad shall accrue, prior to Railroad's receipt of notice of the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect until the date that is fifteen (15) years after the MAG Commencement Date (defined below), and will automatically continue thereafter until terminated by either party pursuant to the terms herein or by giving to the other party thirty (30) days' written notice (the "**Term**"); provided that such Term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Agreement, and nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions by which Railroad may, from time to time, provide rail service to, from or on the Track, or a modification or amendment to any other arrangement or agreement regarding such service. The "**MAG Commencement Date**" shall be the date specified in written notice from Industry to Railroad. The City will provide BNSF written notice of the MAG Commencement Date within thirty (30) days after the MAG Commencement Date. BNSF may terminate this Agreement upon written notice to the City if the MAG Commencement Date has not occurred by the date that is two (2) years after the Effective Date. Notwithstanding the foregoing, BNSF may terminate this Agreement upon written notice to the Industry if (i) the Effective Date does not occur within ninety (90) days after the Execution Date; (ii) the Commencement Date under the Lease does not occur within one hundred twenty (120) days after the Execution Date; and/or (iii) the Lease terminates at any time prior to completion of the Third Party Track.

4. **INDEMNITY.**

(a) For purposes of this Agreement: (i) "**Indemnitees**" means Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents; (ii) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, reasonable attorneys' fees, and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (iii) "**Industry Parties**" means Industry or Industry's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

(b) **TO THE FULLEST EXTENT PROVIDED BY LAW, INDUSTRY AGREES:**

(i) **THAT INDUSTRY HEREBY WAIVES THE RIGHT TO ASSERT ANY CLAIMS UNDER CERCLA AND ANY OTHER ENVIRONMENTAL LAWS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE;**

(ii) THAT INDUSTRY WILL UNDERTAKE NO ACTION TO CLAIM THAT THE RAILROAD IS AN "OWNER," "OPERATOR," "ARRANGER," OR "TRANSPORTER" WITH RESPECT TO THE TRACK FOR THE PURPOSE OF CERCLA OR ANY OTHER ENVIRONMENTAL LAW, AND FURTHER AGREES THAT THE RAILROAD IS A "COMMON CARRIER" UNDER SUCH LAWS, AND IS ENTITLED TO ASSERT ANY SUCH DEFENSE ALLOWED SUCH COMMON CARRIERS;

(iii) THAT INDUSTRY WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE RAILROAD FROM ANY AND ALL ENVIRONMENTAL CLAIMS, INCLUDING CLAIMS THAT THE RAILROAD IS OTHER THAN A "COMMON CARRIER" UNDER CERCLA AND OTHER ENVIRONMENTAL LAWS FOR ANY OF INDUSTRY'S ACTIONS UNDER THIS AGREEMENT.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF INDUSTRY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

(d) EXCEPT AS EXPRESSLY SET FORTH HEREIN, IN NO EVENT SHALL ANY INDEMNITY UNDER THIS SECTION 4 APPLY TO LIABILITIES TO THE EXTENT ATTRIBUTABLE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF INDEMNITEES OR INDEPENDENT CONTRACTORS WHO ARE DIRECTLY RESPONSIBLE TO INDEMNITEES. IF THE LIABILITIES ARE ATTRIBUTABLE TO ANY JOINT OR CONCURRENT NEGLIGENT ACT (EITHER ACTIVE OR PASSIVE) OR AN OMISSION BY INDEMNITEES, THE INDUSTRY PARTIES SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND INDEMNITEES FROM SUCH LIABILITIES ONLY TO THE EXTENT SUCH LIABILITIES ARISE OUT OF OR RESULT FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF INDUSTRY PARTIES.

(e) Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Industry has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Industry shall pay all costs incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

5. INSURANCE. Industry shall, at its sole cost and expense, procure and maintain at all times after the Effective Date of this Agreement the following insurance coverage:

(a) Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, Bodily Injury and Property Damage, Products and completed operations. Industry obtains general liability coverage from a municipal pooling agency, and Railroad accepts such coverage as compliant with this section.

(b) Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Industry's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- Industry is self-insured for such coverage and is permissibly self-insured by the State of California. Railroad agrees to accept such coverage.

(c) In addition, Industry shall comply with the following additional requirements with respect to such insurance:

Any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided. If Industry subcontracts any portion of the operation, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

Prior to commencing operations governed by this Agreement, Industry shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any material modification, cancellation or non-renewal with such provision indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Industry will immediately make available any required policy covering such claim or lawsuit.

Failure to provide evidence as required by this Section 5 shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Section 5 shall not operate as a waiver of Industry's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

6. **DEFINITION OF COST AND EXPENSE.** For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

7. **RIGHT OF RAILROAD TO USE TRACK AND CONSTRUCT FUTURE FACILITIES.** Railroad retains the right, without liability to Industry or any other party, to construct or allow to be constructed upon Railroad's property other facilities, and to use Railroad's property and the Third Party Track in any manner, provided Railroad uses commercially reasonable efforts to avoid material interference with the use of the Industry Track for service to the Plant.

8. **PUBLIC ASSESSMENTS.** Industry shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating the Industry Track, and shall not cause or permit any liens to be filed against any Railroad property. In the event any such liens are filed, Industry shall cause such liens to be released within fifteen (15) days. Railroad shall not cause or permit any liens to be filed against the Industry Track or any Industry property. In the event any such liens are filed, Railroad shall cause such liens to be released within fifteen (15) days.

9. **NOTIFICATION REQUIREMENTS**

(a) Industry shall give immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any known release of hazardous substances on, from, or affecting the Industry Track, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the use of the Industry Track for Industry. Industry shall use its best efforts to promptly respond to any release on or from the Industry Track. Industry also shall give Railroad immediate notice of all measures undertaken by or on

behalf of Industry to investigate, remediate, respond to or otherwise cure each such release or violation.

(b) In the event that Railroad has notice from Industry or otherwise of a release or violation of Environmental Laws on, from or otherwise affecting the Track which occurred or may occur during the term of this Agreement and which was caused by Industry, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation on or affecting the Industry Track.

(c) Industry shall promptly report to Railroad in writing any conditions or activities upon the Plant or Industry Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement or by Legal Requirements. Industry shall promptly respond to Railroad's request for information regarding such conditions or activities.

(d) For purposes of this Agreement, "Environmental Laws" means all federal, state and local environmental laws and regulations, including, but not limited to, the Resource Conservation and Recovery Act, as amended ("RCRA"), the Clean Air Act, the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA").

10. **DEFAULT.** The following events shall constitute defaults under this Agreement: (a) creating or allowing to remain any condition, including without limitation, any environmental condition, on, about or affecting the Industry Track, which in Railroad's sole judgment interferes with or endangers Railroad's operations; (b) assignment or transfer by operation of law of Industry's rights or obligations under this Agreement without Railroad's consent under Section 12 below, provided that Industry may assign its rights under this Agreement to the trustee for the bonds issued by Industry to finance improvements to the Track or to any credit enhancer for such bonds upon written notice to Railroad but without obtaining Railroad's consent in the event that the trustee or any credit enhancer takes possession of the Industry Track due to a default on the bonds or any related financing document; (c) defaults on any of the covenants or agreements of Industry contained in this Agreement.

11. **TERMINATION.**

(a) In addition to the parties' termination rights pursuant to this Agreement and in addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry: (1) terminate this Agreement, and (2) discontinue the maintenance and operation of the Track, effective immediately by written notice to Industry, if any of the following events occur:

- (i) any default as described in **Section 10(a)**, and such violation is not cured within fifteen (15) days after written notice from Railroad to Industry; provided that Industry shall be in default notwithstanding such cure period if it does not promptly commence to cure upon receipt of Railroad's notice and thereafter diligently prosecute such cure to completion within such fifteen day period; and provided further that Railroad will not exercise its termination option under this Section 11(b)(i) without first meeting with City to seek in good faith to resolve such violation; and provided further that nothing herein shall limit Railroad's ability pursuant to Section 2(b) above to refuse to operate over the Track or use or enter the Facilities or contact the Equipment;
- (ii) any default as described in **Section 10(b)**;
- (iii) any default as described in **Section 10(c)** persists for thirty (30) days following written notice from Railroad;
- (iv) Industry fails to utilize rail service from Railroad to or from the Plant for a period of eight (8) months in any twelve (12) month period;
- (v) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof; or
- (vi) competent public authority authorizes Railroad to abandon its line to which the Track is connected.

(b) Upon the expiration or earlier termination of this Agreement as provided herein, Industry shall, at its sole cost and expense, remove any Facilities, Equipment or improvements upon, over, or under the portion of the Track on Railroad's property and restore such portion of the Track on Railroad's property to substantially the state in which it was on the Effective Date of this Agreement. In the event Industry fails within thirty (30) days after the date of such expiration or termination to make such removal and restoration, Railroad may, at its option, remove the Facilities, Equipment or improvements and otherwise restore such portion of the Track on Railroad's property, and in such event Industry shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for all costs incurred by Railroad in connection therewith.

(c) Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has or may have against Railroad because of the discontinuance of operation as provided in this Section 11.

12. **ASSIGNMENT.** This Agreement will inure to the benefit of and be binding upon the approved successors and assigns of the parties hereto; provided, however, that Industry may not assign this Agreement without the prior written consent of Railroad, which may be withheld in Railroad's sole discretion; provided further that Industry may assign its rights under this Agreement to the trustee for the bonds issued by Industry to finance improvements to the Industry Track or to any credit enhancer for such bonds upon written notice to Railroad but without obtaining Railroad's consent in the event that the trustee or any credit enhancer takes possession of the Industry Track due to a default on the bonds or any related financing document. Either party hereto may assign any receivables due them under this Agreement; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Agreement.

13. **NOTICES.** Any notice required or permitted to be given hereunder must be in writing and the same shall be given and will be deemed to have been given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice. The address for such notice shall be the address set forth below each party's signature, which may be changed by written notice to the other party.

14. **SURVIVAL.** Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the latter of: (i) the date of termination or expiration of this Agreement, or (ii) the date when Industry has completed its restoration obligations as set forth in Section 11(b) above.

15. **MISCELLANEOUS.**

(a) To the maximum extent possible, each provision of this Agreement must be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and this will not invalidate the remainder of such provision or any other provision of this Agreement. All questions concerning the interpretation or application of provisions of this Agreement must be decided according to the laws of the State of California. This Agreement is made in Contra Costa County, California, and any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, California.

(b) This Agreement is the full and complete agreement between Railroad and Industry with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties.

(c) In the event that Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

(d) The waiver by any party of the breach of any provision herein by the other shall in no way impair the

right of waiving party to enforce that provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.

(e) This Agreement is also made for the benefit of such other railroads that, either by agreement with Railroad or order of competent public authority, have the right to use the Track, all of which railroads shall be deemed "Railroad" under this Agreement. Except for such other railroads, this Agreement is not intended to benefit any person or entity who is not a party to this Agreement.

(f) Railroad and Industry acknowledge and agree that each has had an adequate opportunity to review this Agreement and to submit the Agreement to its legal counsel for review and comment. Based on the foregoing, Railroad and Industry agree that the rule of construction that a contract be construed against the drafter shall not be applied in the interpretation and construction of this Agreement.

(g) This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

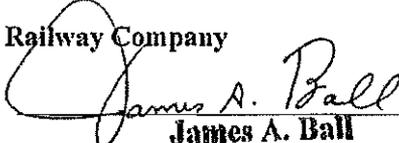
(h) This Agreement may not be modified, supplemented, or amended, or any of its provisions waived, except in writing by the party against whom such modification, supplementation, amendment, or waiver is sought. Any modification, supplementation, amendment, or waiver that would materially affect the rights of both parties must be signed by both parties.

(i) The parties acknowledge that the obligation of good faith and fair dealing generally applies to this Agreement requiring each party to act reasonably. Except as otherwise expressly set forth herein, such standard shall apply whenever either party has the right or obligation to exercise discretion, to make a determination or change, or to grant or withhold a consent or approval; except with respect to matters relating to the safety and operation of Railroad's personnel, property, and/or equipment, which Railroad may withhold in its sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date above.

RAILROAD:

BNSF Railway Company

By: 
Name: James A. Ball
Title: Senior Manager - Land Use & Route Management
Date: 5/15/09

Address for notices:

Jones Lang LaSalle Global Services
3017 Lou Menk Dr., Suite 100
Fort Worth, TX 76131-2800
Attn: Track Agreements

INDUSTRY:

CITY OF RICHMOND

By: 
Name: Gayle McLaughlin
Title: Mayor
Date: 5/14/09

Address for notices:

City of Richmond
P.O. Box 4046
Richmond, California 94804
Attn: Port Director

With a copy to:

City of Richmond
P.O. Box 4046
Richmond, California 94804
Attn: Port Attorney

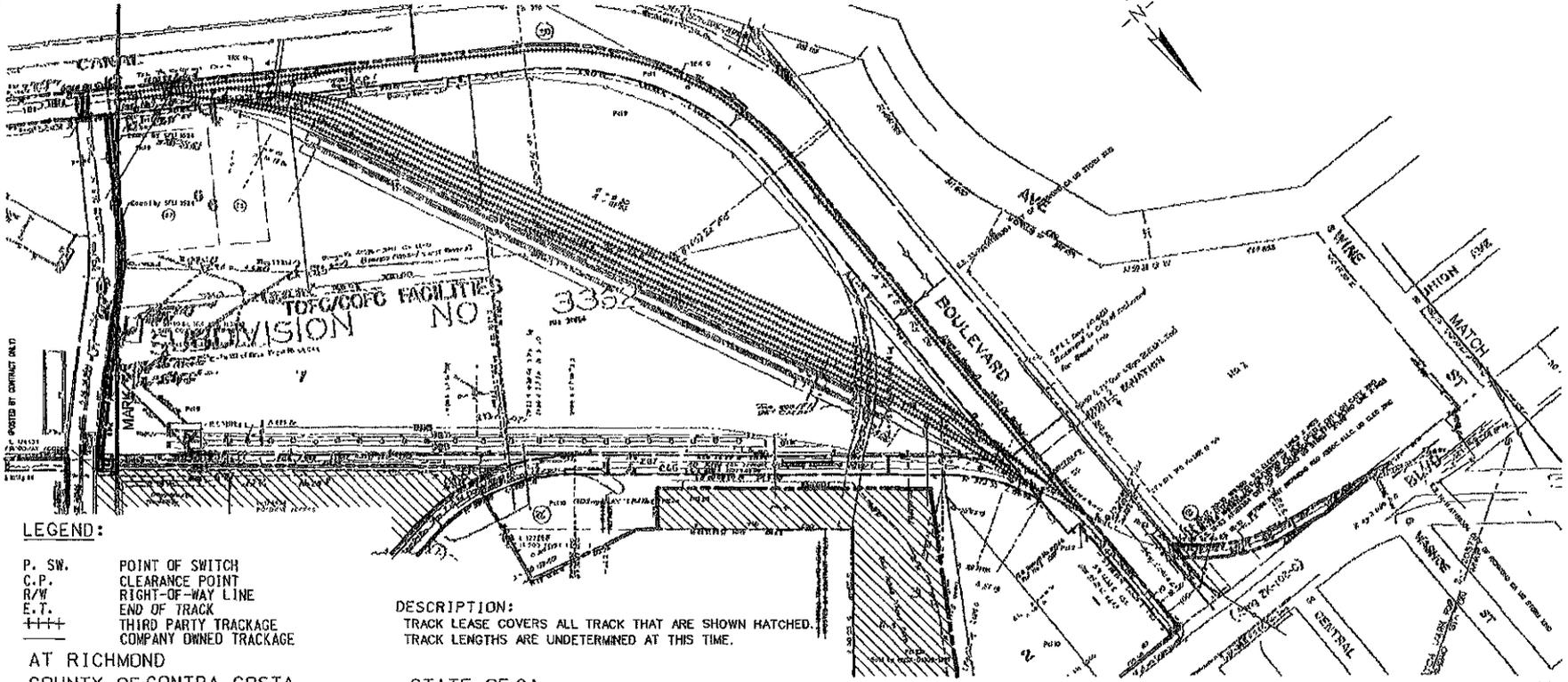
EXHIBIT A
 ATTACHED TO CONTRACT BETWEEN
 BNSF RAILWAY COMPANY
 AND
PORT OF RICHMOND

TRIM LINE

SCALE: 1 IN. = 200 FT.
 CALIFORNIA DIV.
 STOCKTON SUBDIV. L.S. 7200
 DATE 10/06/2008

SECTION: -
 TOWNSHIP: -
 RANGE: -
 MERIDIAN: -

TRACK LENGTHS UNDETERMINED



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- THIRD PARTY TRACKAGE
- COMPANY OWNED TRACKAGE

DESCRIPTION:

TRACK LEASE COVERS ALL TRACK THAT ARE SHOWN HATCHED.
 TRACK LENGTHS ARE UNDETERMINED AT THIS TIME.

AT RICHMOND
 COUNTY OF CONTRA COSTA

STATE OF CA

MAP REF. S508563

KLC

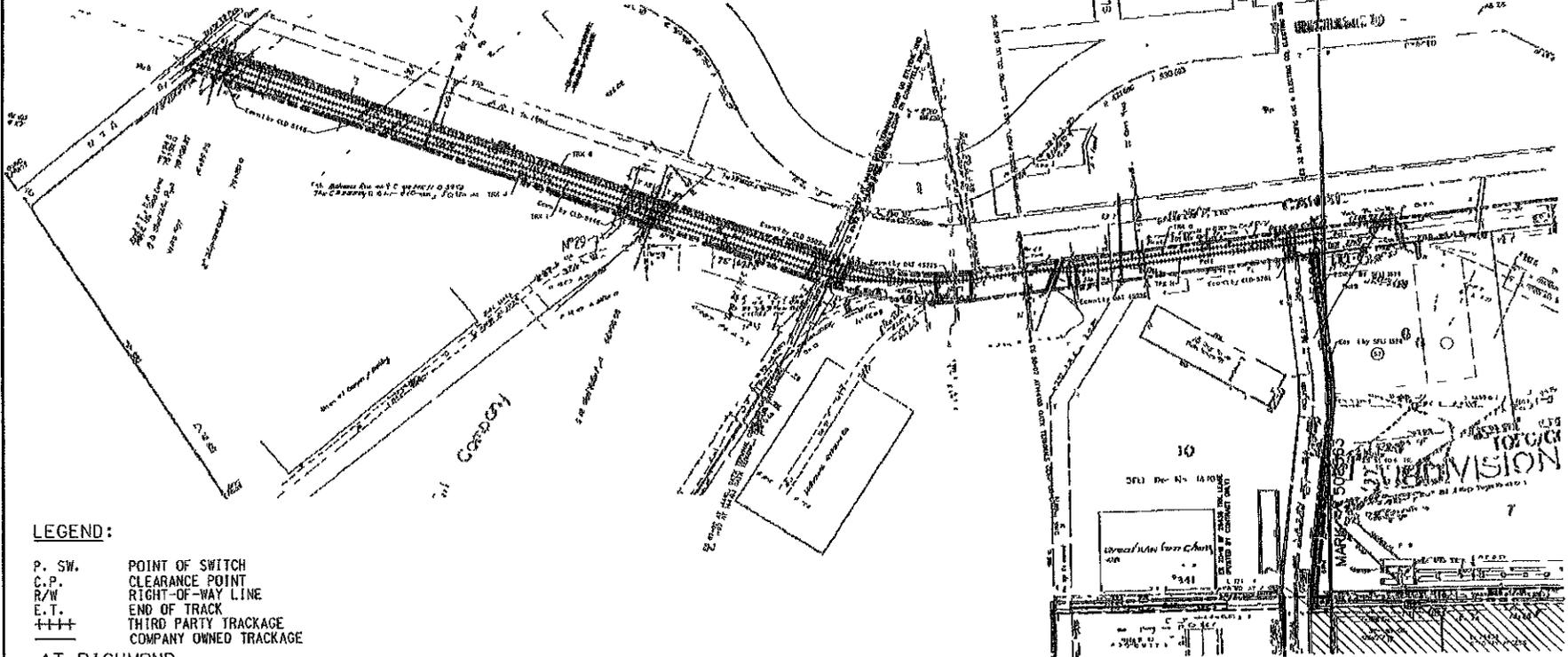
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EXHIBIT A
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 DATE 10/06/2008

SECTION: ---
 TOWNSHIP: ---
 RANGE: ---
 MERIDIAN: ---



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- +++ THIRD PARTY TRACKAGE
- COMPANY OWNED TRACKAGE

AT RICHMOND
 COUNTY OF CONTRA COSTA

STATE OF CA

MAP REF. S508553

KLC

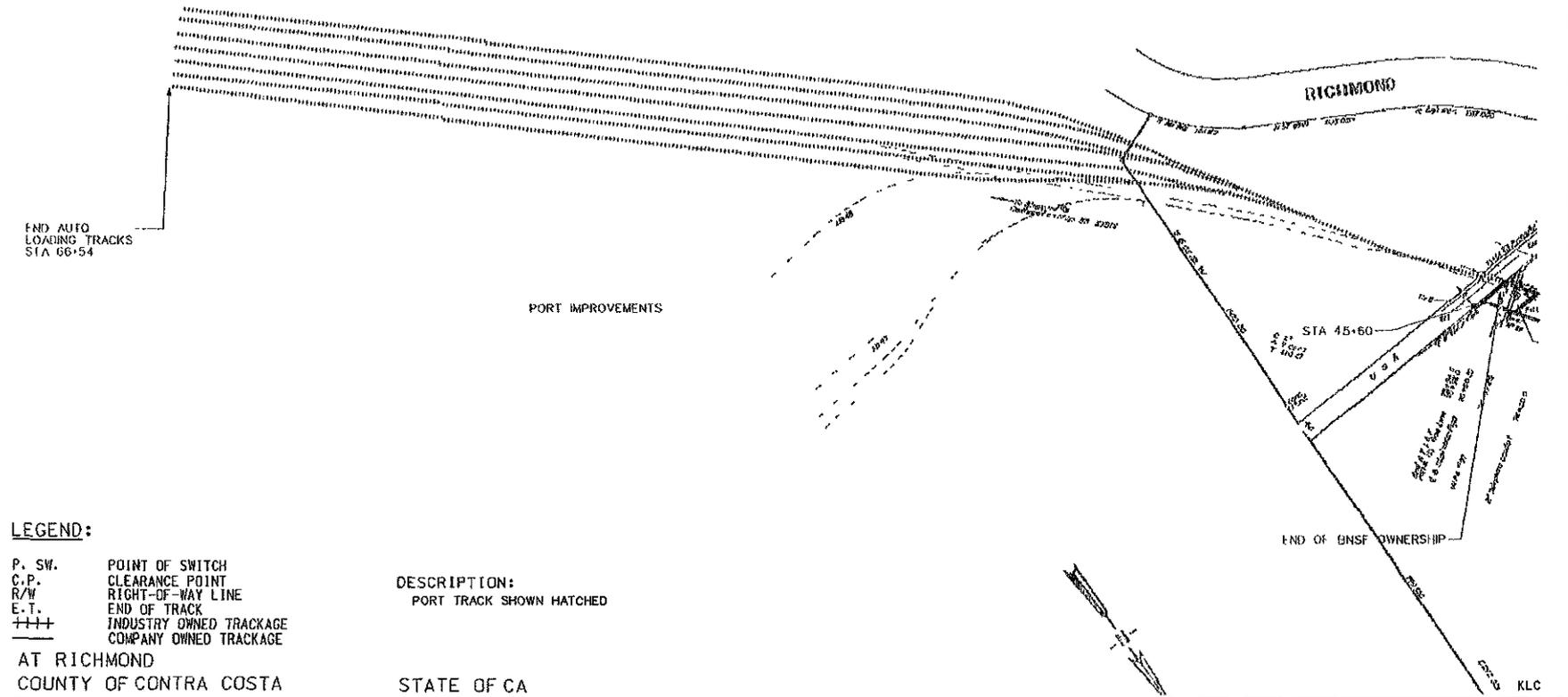
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EXHIBIT "A-1"
 ATTACHED TO CONTRACT BETWEEN
 BNSF RAILWAY COMPANY
 AND
PORT OF RICHMOND

TRIM LINE

SCALE: 1 IN. = 200 FT.
 CALIFORNIA DIV.
 STOCKTON SUBDIV. L.S. 7200
 DATE 05/11/2009

SECTION: -
 TOWNSHIP: -
 RANGE: -
 MERIDIAN: -



END AUTO
 LOADING TRACKS
 STA 66+54

PORT IMPROVEMENTS

LEGEND:

P. SW. POINT OF SWITCH
 C.P. CLEARANCE POINT
 R/W RIGHT-OF-WAY LINE
 E.T. END OF TRACK
 +---+ INDUSTRY OWNED TRACKAGE
 - - - - COMPANY OWNED TRACKAGE

DESCRIPTION:
 PORT TRACK SHOWN HATCHED

AT RICHMOND
 COUNTY OF CONTRA COSTA

STATE OF CA

MAP REF. S508563

DRAWING NO. 3-46505