

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO COLUMBIA & COWLITZ RAILWAY, LLC, ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY (20) YEARS, THE RIGHT AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE A RAILWAY WITHIN CERTAIN DESCRIBED LIMITS OF THE CITY OF KELSO.

WHEREAS, the City of Kelso adopted Ordinance No. 2614 in 1975 granting the Columbia & Cowlitz Railway, LLC the right and franchise to construct, maintain, and operate a railway within the City of Kelso, and

WHEREAS, the City adopted Ordinance No. 3120 in 1989 granting a modification to said franchise for a period of twenty (20) years that authorized the construction, operation and maintenance of utilities and energy transmission facilities, including a natural gas pipeline, and

WHEREAS, the term of said franchise as modified expired in 2009, and

WHEREAS, ownership of the railway, utilities and energy transmission facilities was subsequently transferred to different entities, and specifically, ownership of the energy transmission facilities has passed jointly to Weyerhaeuser NR Company, North Pacific Paper Corporation, and Solvay Chemicals, Inc., and ownership of the railway has passed to Columbia & Cowlitz Railway, LLC;

WHEREAS, Columbia & Cowlitz Railway, LLC has requested a new agreement for a period of twenty (20) years granting the right and franchise to construct, maintain, and operate a railway within the City of Kelso.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. That the terms and provisions of Ordinance No. 3120 related to the granting of the right and franchise to construct, maintain, and operate a railway is hereby superceded and replaced by the terms and provision set forth in this ordinance.

Section 2. That there be, and is hereby granted Columbia & Cowlitz Railway, LLC, a Delaware limited liability company, (hereafter "Grantee"), and to its successors and assigns and to any assignee of the railway rights as permitted in this ordinance, the right, privilege, franchise and authority, for and during the period of twenty (20) years from the effective date of this ordinance and subject to all the conditions and provisions hereof, to construct, maintain, and operate a railway in streets or public thoroughfares of the City of Kelso (hereafter "City"), whose boundaries, in whole or in part, may now or hereafter be included within the city limits, the location of such facilities described as follows:

BEGINNING at a point on the west boundary line of the City of Kelso, approximately one hundred twenty-five feet south of the south line of Clark Street in said City of Kelso and running thence in a northeasterly direction, crossing Clark Street and Fisher's Lane, to a point on the north boundary line of said City of Kelso approximately six hundred fifty feet east of the intersection of the north and west boundary lines of said City of Kelso.

Section 3. Grantee shall comply with all applicable City standards for road surface smoothness. That whenever said Grantee, in the exercise of the rights granted by this ordinance, or any of them, shall disturb or obstruct the surface and/or subsurface of any street or other public thoroughfare or any public or quasi-public utility lines, poles, mains or similar improvements, the Grantee shall, as soon as is reasonably practicable, restore the same to as good condition as existed before such disturbance. If such repairs or restoration is not completed within 90 days, the City shall provide to Grantee at least twenty (20) days advance written notice of the City's deadline for completion of said work. If Grantee does not meet the deadline or receive City approval of Grantee's written action plan setting forth justification for additional time, the City shall have the right to cause such repairs or restoration to be made and Grantee hereby agrees to pay to the City all reasonable and necessary costs for such repair or restoration upon receiving written documentation and notification from the City. The City may at any time order, do or have done any and all work necessary to restore to a safe condition any such street or other public thoroughfare or any such utility improvements where, in the sole judgment of the City Manager or Director of Public Works of the City, the Grantee has created a condition imminently dangerous to life or property and Grantee shall, upon demand of the City, pay to the City all reasonable and necessary costs for such repair or restoration upon receipt of written notification and documentation of such costs.

Section 4. The construction, maintenance and operation of any such railway under the franchise granted by this ordinance shall not preclude the City, its accredited agents or its contractors from blasting, tunneling, grading or doing other necessary work for the maintenance and/or installation of public utilities (including those installed by quasi-public bodies) and/or the construction, repair and maintenance of streets or other public thoroughfares contiguous to Grantee's railway, provided the City shall give Grantee not less than fourteen (14) days prior notice, or in the event of an emergency not less than twenty-four hours prior notice, in writing, of said blasting, excavating or other similar work so that Grantee may protect their railway and other property.

Section 5. The Grantee accepts this franchise and all rights conferred hereunder for the use and occupation of any portion of the City's streets or other thoroughfares, to construct, maintain and operate a railway.

Section 6. The obligations of Grantee under this Franchise shall be deemed to include every employee, nominee or independent contractor of the Grantees performing work within said streets or other thoroughfares under contract, direction, request or authority of the Grantees, and the Grantees, their agents, employees or independent contractors, severally, shall be responsible to the City for any injury or damage to Grantee's property or the expense incurred or suffered by the City in correcting defects in work, replacing or repairing City streets, other thoroughfares or other City-owned improvements damaged by the acts or negligence of such employees, agents or independent contractors of Grantees.

Section 7. If (a) the Grantee shall willfully violate or fail to comply with any of the provisions of the franchise hereby granted or through willful or unreasonable neglect fail to heed or comply with any notice given the Grantee under the provisions hereof, and (b) the Grantee fails to cure such violation or come into compliance with such provision within twenty (20) days of receipt of written notice from the City, then (c) the Grantee shall forfeit all rights conferred hereunder and such franchise may be revoked or annulled by the City Council of said City upon sixty (60) days prior written notice to the Grantee.

Section 8. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns and independent contractors of the Grantee, and all privileges of the Grantee shall inure to its successors, assigns and such contractors equally as if they were specifically

mentioned wherever the Grantee is mentioned.

Section 9. All provisions or conditions herein enumerated shall be deemed to be automatically amended to comply with and conform to any future amendment or other change in any state law of Washington affecting such enumerated provision or condition.

Section 10. Unless the said Grantee shall within thirty (30) days after the passage of this ordinance file with the Clerk of the City their written acceptance of this franchise herein granted, subject to the conditions herein set forth, this ordinance shall become void.

Section 11. By such acceptance, Grantee and City shall be deemed to covenant to indemnify and save harmless the other party from all claims, actions or damages of every kind and description which may accrue to or be suffered by any person or persons, corporation or property by reasons of any negligent acts or omissions, or faulty construction, defective material or equipment operation resulting from the improper construction, maintenance, repair or operation of Grantee's railway or City's right of way. In any suit or action that is brought against the City or Grantee for damages arising out of or by reason of any of the above mentioned causes, the indemnifying party will, upon notice of the commencement of such action, defend the same at their sole cost and expense and in case judgment shall be rendered against the other party in such suit or action, the indemnifying party will fully satisfy said judgment. In the event of concurrent negligence, each party shall be responsible for their proportional share of liability.

Section 12. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 13. This Ordinance shall be in full force and effect from and after five (5) days from the date of its passage and publication.

Section 14. All notices, requests, demands, and other communications required by this Ordinance will be in writing and be delivered to the parties at the following addresses or such other address that a party may designate by written notice to the other parties from time to time:

City of Kelso
Attn: City Manager's Office
203 S. Pacific, Ste. 217
P.O. Box 819
Kelso, WA 98626

Columbia & Cowlitz Railway, LLC
Attn: Vice President and Chief Administrative Officer
10060 Skinner Lake Drive
Jacksonville, FL 32246

With a copy to:

General Counsel
Patriot Rail Company LLC
10060 Skinner Lake Drive
Jacksonville, FL 32246

Section 15. The Grantee shall provide, at its sole cost and expense, railroad crossing signalization as may be required by the Washington State Utilities and Transportation Commission and as requested, in writing, by the City. Said railroad crossing signalization shall be completed within a reasonable time after notification by the City. The City agrees to cooperate fully and to provide all information necessary for the Grantee to apply for any federal or state funds which may be available to pay a portion of the expense of such railroad crossing signalization.

All notices will be deemed complete upon personal service, delivery by a recognized overnight courier at the notice address, or another address as a party may identify in writing (email shall not be sufficient).

ADOPTED by the City Council and SIGNED by the Mayor this ____ day of _____, 2014.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____



ORDINANCE NO. 3120

AN ORDINANCE REPEALING ORDINANCE NO. 2614 AND SUBSTITUTING THEREFORE THE FOLLOWING TERMS AND PROVISIONS GRANTING TO THE COLUMBIA AND COWLITZ RAILWAY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE A RAILWAY AND UTILITIES WITHIN CERTAIN DESCRIBED LIMITS IN THE CITY OF KELSO.

WHEREAS, by its adoption of Ordinance No. 2614 in 1975, the City of Kelso granted to the Columbia and Cowlitz Railway Company the right to construct, maintain, and operate a railway within the City of Kelso, and

WHEREAS, said Railway Company has requested modification of said franchise to include authorizing the construction, operation and maintenance of utilities and energy transmission facilities, including a natural gas pipeline, and

WHEREAS, the Kelso City Council has reviewed such request and finds that the best interests of the City would be served if such modifications were allowed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That Ordinance No. 2614 is hereby repealed.

SECTION 2. That the following terms and conditions embodying the grant of a franchise to the Columbia and Cowlitz Railway Company are hereby adopted, provided said terms and conditions are accepted by

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said Company within 30 days of the passage of this Ordinance.

A. That there be and is hereby granted to the Columbia and Cowlitz Railway Company, a Washington corporation, its successors and assigns, and to any assignee of the operations referred to in this ordinance, the right, privilege, and authority, for and during the period of Twenty (20) years from the date of passage of this ordinance and subject to all the conditions and provisions hereof, to construct, maintain, and operate a railway and to construct, operate, and maintain utilities and energy transmission facilities, including a natural gas pipeline, in any street or public thoroughfare of the City of Kelso or part thereof whose boundaries may now or hereafter be included in the strip of land situated in the City of Kelso, Cowlitz County, Washington, bounded and described as follows:

BEGINNING at a point on the west boundary line of the City of Kelso, approximately one hundred twenty-five feet south of the south line of Clark Street in said City of Kelso and running thence in a northeasterly direction, crossing Clark Street and Fisher's Lane, to a point on the north boundary line of said City of Kelso approximately six hundred fifty-feet east of the intersection of the north and west boundary lines of said City of Kelso.

B. That whenever said Grantee, in the exercise of the rights granted by this Ordinance, or any of them, shall disturb or obstruct the surface of any street or other public thoroughfare, the said Grantee shall, as soon as is reasonably practicable, restore said

surface to as good condition as existed before such disturbance. If such repair or restoration is not completed within 90 days, the City shall have the right to cause such repair or restoration to be made and Grantee hereby agrees to pay to the City all costs for such repair or restoration upon receiving written documentation and notification from the City.

C. Grantee shall within thirty (30) days after passage of this ordinance file with the City Clerk its written acceptance of the franchise granted herein, subject to the conditions set forth herein. By filing such acceptance the Grantee shall be deemed to covenant to indemnify the City of Kelso for any injury arising from any casualty or accident to person or property by reason of any neglect or omission on the part of said Grantee to keep its property, while in any street or public thoroughfare of Kelso, in a safe condition. Grantee, during the term of this franchise, shall obtain insurance coverage in an amount of not less than twenty-five million dollars, providing liability coverage to Grantee in the event of fire, explosion, spill or other occurrence included in standard comprehensive general liability policies. Grantee shall furnish evidence of such insurance to the City on an annual basis.

D. Columbia and Cowlitz Railway Company shall provide, at its cost and expense, railroad crossing signalization as may be required

by the Washington State Transportation and Utilities Commission and as requested in writing by the City. Said railroad crossing signalization installation shall be completed within a reasonable time after notification by the City. The City agrees to apply for any funds which may be available to pay a portion of the expense of such railroad crossing signalization.

SECTION 3. This Ordinance shall be in full force and effect five days after its passage and posting as provided by law. Grantee shall pay the sum of one thousand dollars to the City of Kelso to cover the City's costs in processing this franchise.

ADOPTED by the City Council and SIGNED by the Mayor this 19th day of September, 1989.

Richard J. Woods
MAYOR

ATTEST:

Wendy A. Adams
CITY CLERK - Deputy

APPROVED AS TO FORM:

Peter P. Kneib
CITY ATTORNEY

ACCEPTED by the Columbia and Cowlitz Railway Company this 16th day of October, 1989.

Wayne S. Keegan