

AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board
Yakima County Commissioners' Office, Room 232**

Prepared by:
Don Anderson

Department: Corporate Counsel

Requested Agenda Date: 07/13/2021

Presenting: Don Anderson

Document Title:

Board of County Commissioners Record Assigned

177 - 2021

APPROVED FOR AGENDA:
 Consent Regular
Board of County Commissioners Determined

**IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD
TO SIGN A MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

Action Requested: *Check Applicable Box*

PASS RESOLUTION EXECUTE or AMEND **AGREEMENT** CONTRACT or GRANT
 ISSUE PROCLAMATION PASS ORDINANCE OTHER _____

Describe Fiscal Impact:

None

Background Information:

This Resolution authorizes the Chair of the Board to execute on behalf of Yakima County a Mutual Release and Settlement Agreement between Yakima County, CWRR and the City of Yakima in full and final settlement of all claims made by the parties against one another in Yakima County Superior Court Cause No. 20-2-01620-39.

Summary & Recommendation:

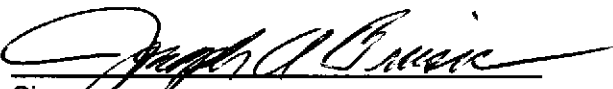
This Resolution authorizes the Chair of the Board to execute on behalf of Yakima County the Mutual Release and Settlement Agreement in Superior Court Cause No.20-2-01620-39.
Yakima Recommend approval.

Motion:

"Authorize the Chair to sign Mutual Release and Settlement Agreement on behalf of County."

Department Head/ Elected Official

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial


Signature

JAB

Late Agenda Requests Require BOCC Chairman Signature:

BOARD OF YAKIMA COUNTY COMMISSIONERS

**IN THE MATTER OF AUTHORIZING THE CHAIRMAN
OF THE BOARD TO CONSENT TO AND EXECUTE
A MUTUAL RELEASE AND SETTLEMENT AGREEMENT
BY AND BETWEEN YAKIMA COUNTY, CENTRAL
WASHINGTON RAILROAD COMPANY ("CWRR") AND
THE CITY OF YAKIMA ("CITY" or "CITY OF YAKIMA")
IN FULL AND FINAL SETTLEMENT OF YAKIMA COUNTY
SUPERIOR COURT CAUSE NO. 20-2-01620-39**

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WHEREAS, on February 20, 2020, CWRR filed a tort claim against the City, and shortly thereafter against Yakima County, alleging that under a 1977 agreement with Yakima County, the City and/or Yakima County was responsible for paying 75% of the damages sustained by CWRR in an arson fire ("Fire") on August 11, 2018 that destroyed a CWRR signal bungalow at the North 16th Avenue railroad crossing near West Madison Avenue in the City; and

WHEREAS, the 1977 agreement between Yakima County and CWRR's predecessor in interest, Burlington Northern Inc. provided for the installation of grade warning devices ("signals") at the aforesaid railroad crossing, and further specified that if the signals were damaged, and the cost of their repair or replacement could not be recovered by the person responsible for said damage, Yakima County would be responsible for 75% of the costs; and

WHEREAS, the terms of the 1977 agreement provide that it is binding on the parties' successors; and

WHEREAS, the person(s) responsible for the Fire have not been identified; and

WHEREAS, because in 1988, the City of Yakima annexed the location of the Fire, Yakima County filed a complaint for declaratory judgment in Yakima County Superior Court (Cause No. 20-2-01620-39) seeking a determination that the City was the Yakima County's successor under the 1977 agreement; and

WHEREAS, the City of Yakima filed a crossclaim for declaratory judgment against CWRR, and CWRR filed a counter claim for declaratory judgment against Yakima County and a counter-cross claim for declaratory judgment against the City, all of which sought a judicial determination as to which party was, at the time of the Fire, subject to the 1977 agreement; and

WHEREAS, all of the litigants desire to settle and execute on behalf of Yakima County the attached Mutual Release and Settlement Agreement; and

WHEREAS, the City of Yakima acknowledges that it is Yakima County's successor for all purposes under the aforesaid 1977 agreement, and the City has agreed to pay CWRR the sum of \$55,131.02 in full and final settlement of all claims set forth in Yakima County Superior Court Cause No. 20-2-01620-39; and

WHEREAS, for the consideration recited above, each of the litigants finally and irrevocably settles and releases the other litigants together with their affiliates, subsidiaries, , assigns, officers, directors, agents, servants, employees, or attorneys, from any and all manner of actions, causes of action, suits, claims, proofs of claim, controversies, agreements, costs, damages, benefits, judgments and demands whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, in law or equity, which the litigants may have had, have now, or may have in the future, in law, contract, tort or equity arising out of or related to the Fire; and

WHEREAS, the Board of Yakima County Commissioners deems it to be in the best interest of the County to authorize the Chairman of the Board to consent to and execute a settlement by and between Yakima County, CWRR and the City of Yakima; now, therefore

BE IT RESOLVED that the Board of Yakima County Commissioners hereby authorizes the Chairman of the Board to consent to and execute on behalf of Yakima County the attached Mutual Release and Settlement Agreement.

DONE this 13 day of July, 2021.

Ron Anderson, Chairman

Attest:

Amanda McKinney, Commissioner

Julie Lawrence
Clerk of the Board

LaDon Linde, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereafter referred to as the "Agreement") is entered into between Central Washington Railroad Company, a Washington profit corporation (hereafter referred to as "CWRR"); Yakima County, a county in the State of Washington; and the City of Yakima, a Washington municipal corporation (hereafter referred to as the "City" or the "City of Yakima"). Each and all of the parties listed above are referred to herein as a "Signatory" and/or the "Signatories," respectively.

WHEREAS, on February 10, 2020, CWRR filed a Standard Tort Claim Form with the City of Yakima and shortly thereafter also filed such a claim with Yakima County, each of which alleged that CWRR sustained damages as a result of an arson fire that occurred on or about August 11, 2018, and which destroyed a signal bungalow identified by USDOT as 103890Y located at the N. 16th Ave railroad crossing near W. Madison Ave in Yakima, Washington (hereafter called the "Fire");

WHEREAS, in 1977 Yakima County entered into a railway agreement with CWRR's predecessor in interest, Burlington Northern Inc. for the installation of grade crossing warning devices ("signals"), and the agreement specified a cost sharing ratio of 75% to be borne by the County and 25% to be borne by the railroad in the event that the signals were damaged and the cost of repair or replacement cannot be recovered from the person responsible for such damage. The terms of the railway agreement specify that it is binding on the parties' successors;

WHEREAS, the individual or individuals responsible for the Fire have not been identified;

WHEREAS, CWRR and Yakima County each allege that under the railway agreement the City of Yakima is the successor to Yakima County as the result of the City having annexed the location of the Fire in 1988 by Ordinance 3133;

WHEREAS, on August 13, 2020, Yakima County filed a Complaint for Declaratory Judgment in Yakima County Superior Court cause number 20-2-01620-39, seeking a determination that the City was its successor under the 1977 railway agreement;

WHEREAS, in cause number 20-2-01620-39, the City filed a crossclaim for declaratory judgment against CWRR, and CWRR filed a counter claim for declaratory judgment against Yakima County as well as a counter-crossclaim for declaratory judgment against the City, with each claim seeking a judicial determination regarding which Signatory is, and was at the time of the Fire, subject to the 1977 railway agreement;

WHEREAS, the Signatories desire to settle and compromise all claims arising from or otherwise relating to the Fire, including all claims asserted by all Signatories in cause number 20-2-01620-39;

NOW, THEREFORE, in consideration of the matters set forth in the foregoing recitals, the City, Yakima County, and CWRR agree as follows:

1. **Final Settlement Payment to CWRR.** In consideration for the execution and delivery of the Agreement and dismissal of its crossclaim against the City in cause number 20-2-01620-39, CWRR agrees to accept a final settlement amount of **\$55,131.02**, to be paid by a check made payable to “Central Washington Railroad,” subject to Yakima City Council approval of the settlement at a City Council business meeting. This settlement check shall be delivered to CWRR by no later than 10 business days after the Effective Date defined below.
2. **Acknowledgment of the 1977 Railway Agreement by the City.** In consideration for the execution and delivery of the Agreement and dismissal of the other Signatories’ claims against it in cause number 20-2-01620-39, the City hereby agrees that the City of Yakima shall be considered Yakima County’s successor for purposes of the 1977 railway agreement, and is therefore subject to all of Yakima County’s obligations under the railway agreement.
3. **Mutual Release and Dismissal of Claims.** For the consideration recited above, each Signatory forever and irrevocably releases the other Signatories from all past, present and future claims, liabilities, actions, suits, crossclaims, counterclaims, penalties, expenses, interest, court costs, or attorney fees of any kind and nature whatsoever stemming from CWRR’s alleged damages, costs, expenses, and losses resulting from, arising out of, or related to the Fire. As such, each Signatory agrees to, by no later than 14 days after the Effective Date defined below, jointly move for dismissal with prejudice of all claims in cause number 20-2-01620-39, with each Signatory to bear its own costs and attorney fees.

For the purposes of this paragraph, the term “Signatory” shall include past, present and future elected and/or appointed officials, directors, officers, employees, agents, assigns, successors, attorneys, insurers, and related entities.


As referred to in this Agreement, “past, present and future claims” mean those claims, rights and causes of action, whether known or unknown, suspected or unsuspected, vested or contingent which in any way arise out of or are related to the Fire, including but not limited to all of CWRR’s damages, costs, expenses, and losses resulting from, arising out of, or related to the Fire. This includes all claims,

rights and causes of action under federal, state, or local law, including but not limited to those based on contract, statute, regulation, code, ordinance, tort, equity or otherwise.

4. **Indemnification for Subrogation and Lien Claims, and Hold Harmless.** Each Signatory acknowledges and represents that no other person or entity has or has had any interest in the claims referred to in this Agreement. Each Signatory further represents that there are no lien claims or subrogation claims or interests related to the claims asserted in cause number 20-2-01620-39 and/or CWRR's claims arising out of the Fire. Should any lien claims, subrogation claims, or interests arise from a Signatory's claims in the future, that Signatory is obligated under this Agreement to resolve such claims.
5. **Timely Consideration by the City Council.** The City agrees that this Agreement shall be put before the Yakima City Council as a resolution, with consideration and voting on such resolution to take place no later than **August 1, 2021**.
6. **Governing Law and Venue.** This Agreement shall be construed and interpreted according to the laws of the State of Washington. The venue of any action necessary under this Agreement shall be solely in Yakima County Superior Court, Yakima, Washington.
7. **No Admission of Liability.** This Agreement expresses the full and complete settlement of all claims referred to in this Agreement. It is expressly agreed that no Signatory admits liability for any such claim, and no Signatory admits any fault relating to the matters described herein. It is agreed and understood that this settlement is a compromise of disputed claims, and payment made by the City is accepted by CWRR in full accord and satisfaction of, and in compromise of, disputed claims and for the purpose of terminating disputed claims and litigation between the Signatories.
8. **Warranty of Capacity to Execute Settlement and Agreement.** The undersigned on behalf of each Signatory certifies and warrants that they are fully authorized to enter into this Agreement and bind themselves and the respective Signatories thereto.
9. **Consultation with Counsel.** Each Signatory warrants that it has had adequate time and opportunity to have its own attorneys review this Agreement and explain the legal effect and importance of every provision herein; each Signatory further warrants that it has in fact engaged in such consultation with its own counsel.
10. **Entire Agreement.** This Agreement represents and contains the entire understanding of the undersigned relating to the matters covered by this Agreement.

There are no representations, covenants, or understandings other than those expressly set forth in this Agreement.

11. **Severability.** If any provision of the Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, such provision shall not affect the validity of the remaining provisions of this Agreement.
12. **Effective Date.** This Agreement shall be effective upon the signature of the City Manager of the City of Yakima as authorized by resolution of the Yakima City Council. Should the Yakima City Council withhold such authorization, then this agreement shall be null and void.

<p><u>CITY OF YAKIMA</u></p> <p>By: _____ Robert Harrison, City Manager</p> <p>Date: _____</p>	<p><u>CENTRAL WASHINGTON RAILROAD CO.</u></p> <p>By:  _____ Todd Leinbach, CFO</p> <p>Date: <u>July 7, 2021</u></p>
<p>ATTEST:</p> <p>By: _____ City Clerk</p> <p>City Resolution No. R-2021- _____</p>	<p><u>YAKIMA COUNTY</u></p> <p>By: _____ Ron Anderson, Chairman Yakima County Board of Commissioners</p> <p>Date: <u>JUL 13 2021</u></p>