

Rivera, Eva

From: Yakima Taxpayer <yaktaxfiscalresp@yahoo.com>
Sent: Thursday, October 8, 2026 4:57 PM
To: Martin, Trevor; Ask Planning; Preston, Bill
Subject: SEPA # 202604074, PRJ 001-25 and PRJ 001-26

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for the opportunity to comment.

SEPA # 202604074
Document Type: DNS
Date Issued: 09/24/2026
Comments Due: 10/08/2026

NTC OF HEARING & DNS_PRJ#001-26 (6).pdf
October 14, 2026 deadline.

Within this SEPA notice and Notice of Hearing and DNS, comments due dates differ:

Proposal Description

The City of Yakima Planning Division is proposing minor amendments to the City of Yakima's Comprehensive Plan, specifically amending policy and goal language for the following: Implementing language regarding climate resiliency throughout the plan; updating goals and policies in the Housing Element; updating the transportation elements; and updating statistical background information in the Housing, Land Use, and Transportation in the Technical Analysis.

Concerns:

1. Project #s differ. The Notice of Hearing says PRJ#001-26. The DNS says PRJ#001-25. Please reissue the DNS, Notice of Hearing, and SEPA checklist with a new issue date and deadline for comments.
2. Date differ. The latest dates should be honored.
3. "Minor amendments" seems unclear. Other elements of the Comp Plan are proposed for amendments.
4. Includes the James Carmody letter, found on the City's website as an initial comment. It is too big to email.

[07/07/2026 08.A.. Distributed at the Meeting](#)

 [07/07/2026 08.A.. Distributed at the Meeting](#)

[Agendas - 69 pages](#)

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Regards,

Yakima Taxpayers for Fiscal Responsibility



Meyer,
Fluegge &
Tenney

Distributed at Meeting:
07-07-2026 Item# 8A

230 S. 2nd Street, Suite 101
Yakima, WA 98901
(509) 575-8500

www.mftlaw.com

YAKIMA CITY CLERK
126 JUL 7 PM2:36

July 7, 2026

Rosalinda Ibarra, City Clerk
City of Yakima
129 N. 2nd Street
Yakima, WA 98901

Re: City Council Public Hearing – Item 8A – July 7, 2026
Public Hearing to Consider: (A) Resolution adopting the Six-Year Transportation Improvement Program for the period of 2027 through 2032, and to amend the 2040 Transportation System Plan; and (B) Resolution amending the Yakima Comprehensive Plan Capital Facilities Element

Dear Ms. Ibarra:

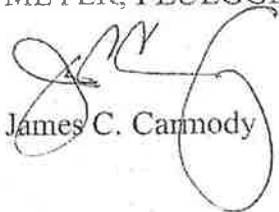
We represent Yakima Taxpayers for Fiscal Responsibility and submit this correspondence, comments, and attachments for consideration by Yakima City Council during Public Hearing regarding the above referenced matter on July 7, 2026. The attached comments specifically address Item 8A regarding (A) resolution adopting the Six-Year Transportation Improvement Program (TIP) for the period 2027 through 2032, and to amend the 2040 Transportation System Plan; and (B) Resolution amending the Yakima Comprehensive Plan Capital Facilities Element. Our client's specific request is set forth in the attached comments.

Please add and provide to the City Council this correspondence together with the attached comments and attachments.

Thank you for your consideration.

Very truly yours,

MEYER, FLUEGGE & TENNEY, P.S.



James C. Carmody

DOC. 11/1/2026

D-3

APR 9 1987

FILED
APR 3 1987

BETTY MCGILLEN
YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

CONGDON ORCHARDS, INC., a
Delaware corporation,
Plaintiff,

vs.

NO. 86-2-00503-9

YAKIMA VALLEY TRANSPORTATION
COMPANY, a Washington corpora-
tion, THE CITY OF YAKIMA, a
municipal corporation, and
YAKIMA INTERURBAN LINES
ASSOCIATION,
Defendants.

MEMORANDUM OPINION

The Yakima Valley Transportation Company, hereinafter referred to as YVTC, obtained the right to build and operate a railroad line upon property owned by plaintiff's predecessors in interest, said grant by document dated August 2, 1909. (Exhibit D to plaintiff's memorandum). In said document the terms "railroad" and "railway" are used interchangeably and the Court concludes that both terms as used in this document have the same generic meaning.

On page 11 of said grant are found certain express conditions including

"(1). That said Transportation Company shall complete the construction of said railroad on said right-of-way and have the same in regular and permanent operation in connection with the rest of its line to North Yakima, Washington, by April 1st, A.D., 1910, and that thereafter it shall regularly operate the same between the west end of the granted right-of-way and said North Yakima . . ."

1 main line." While that portion of the decision is based upon such
2 different facts as to be of little aid to this Court, its ruling on
3 interpreting such grants is very helpful. The Court, in this regard
4 stated:

5 "The purport and intent of the parties to a
6 written instrument must be gathered, where
7 possible, from the language of the instrument
8 itself, considered with reference to the subject
9 matter to which it relates and with reference
10 to the surrounding conditions and circumstances,
11 not by what either party thereto may aver to be
12 its purport and intent. If the language of the
instrument is plain and unambiguous, and the
subject matter does not indicate that the words
used therein are employed in a technical or
restricted sense, the instrument will be given
the interpretation its language ordinarily
implies."

13 The Court finds no ambiguity in the language of this grant.
14 It is obvious that the agreement contemplated a railroad that would
15 primarily serve for transporting fruit from orchards to the distribu-
16 tion center in the city of Yakima

17 As pointed out in Johnsen's History of the Yakima Valley
18 Transportation Company, supra, passenger service over those routes
19 was merely incidental.

20 The Trolley Operating and Indemnification Agreement, Exhibit L,
21 plaintiff's memorandum, referred to the operation of two trolley
22 cars and their use was restricted thereby "to the operation of the
23 trolley cars for the transporting of passengers only, as a tourist
24 attraction and promotional activity ..."

25 Its operation has been restricted to operation on weekends
26 during warmer weather and at other times for special charter trips.

27 The use of the railway exclusively for the operation of trolleys
28 as a tourist attraction and for promotional activity was not within
29 the contemplation of the parties to the grant and could not be
30 considered as authorized use under the grant. Under the terms of

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2 different facts as to be of little aid to this Court, its ruling on
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TO: YAKIMA CITY COUNCIL
FR: YAKIMA TAXPAYERS FOR FISCAL RESPONSIBILITY
DA: July 7, 2026
RE: Comments on Six-Year TIP, Transportation System Plan, and Capital Facilities Element

On July 7, 2026, the Yakima City Council will hold a Public Hearing regarding: A) Resolution adopting the Six-Year Transportation Improvement Program (TIP) for the period of 2027 through 2032, and to amend the 2040 Transportation System Plan; and B) Resolution amending the Yakima Comprehensive Plan Capital Facilities Element. Yakima Taxpayers for Fiscal Responsibility ("Yakima Taxpayers") submits these Public Hearing comments and respectfully requests City Council make two motions to revise pages 4 and 14 of the TIP as follows:

TIP page 4: Delete the three words "including trolley provisions" from the Project Description for "6th Avenue Roadway Improvements" and change the "Total Funds and Expenditures" from \$17,350,000 TO \$10,000,000.

TIP page 14: Delete the word "Trolley" and substitute the word "Transportation" in the Project Description for "Naches River Bridge Repair."

The trolley is Not Eligible for inclusion in the TIP because: (1) Yakima County Superior Court ruled the trolley is not a railroad but instead is a "tourist attraction"; (2) Under state and federal laws, the seasonal tourist trolley is not "public transportation" and is not a "transportation improvement"; (3) On 2/17/2026, City Council removed the trolley tracks from the 6th Avenue Roadway Project amid concerns the trolley was not an eligible "transportation improvement." SEPA Review must be completed before amending the Capital Facilities Element.

Attachments:

1. City Council Motion # 1 revising TIP page 4
2. City Council Motion # 2 revising TIP page 14
3. Yakima Ordinance No. 2026-005
4. Yakima City Council Meeting Minutes (2/17/2026)
5. Letter from Attorney James C. Carmody (1/20/2026)
6. WSDOT: Naches River Bridge not eligible for Transportation Alt. funds (1/20/2026)
7. Congdon Orchards v. City of Yakima Court Decision (Excerpt 4/8/1987)
8. Letter from Attorney James C. Carmody (12/18/2025)
9. Yakama Nation Request for Formal Consultation (12/3/2025)
10. Letter from Attorney James C. Carmody (12/3/2025)
11. Letter from Attorney James C. Carmody (9/15/2025)
12. Yakima County "High Risk" Geologic Hazard GMA Critical Areas Map
13. Utilities and Transportation Commission Public Safety Order
14. National Historic Preservation Act § 106 Consultation
15. Trolley Operation License Agreement (Page 2 excerpt 1/20/2026)
16. Memorandum: Sightseeing Tourist Trolley not Eligible (STIP ID WA-15913)

Motion # 1

I MOVE TO DELETE THE THREE WORDS “INCLUDING TROLLEY PROVISIONS” FROM THE PROJECT DESCRIPTION FOR “6TH AVENUE ROADWAY IMPROVEMENTS” ON PAGE 4 OF THE TIP AND CHANGE THE TOTAL FUNDS AND EXPENDITURES FROM \$17,350,000 TO \$10,000,000.

REASONS: THE TROLLEY IS NOT ELIGIBLE FOR INCLUSION IN THE TIP

City Council Resolution 2024-095 originally contemplated the use of Yakima’s Transportation Benefit District (TBD) funds to rebuild tracks and overhead electric wires on a 1.5-mile segment of the 4-mile Yakima to Selah rail line. However, that 2024 Resolution was superseded by a 2026 “No Tracks” City Ordinance and accompanying Motion to “*remove the trolley tracks from the TBD list.*” (Yakima Ordinance 2026-005 and City Council Meeting Minutes--Feb. 17, 2026). HLA Engineering 2024 estimate of \$7.4 Million to build 6th Avenue tracks and overhead electric power system should be deducted from the total costs of the 6th Avenue Roadway Project.

In a Legal Opinion on TBD transportation improvements sent to the City January 20, 2026, Yakima Attorney Jamie Carmody stated: “*The inclusion of funding for trolleys would violate state law.*” On February 17, 2026, the City Council voted to not use any TBD funds for the 6th Avenue tracks and overhead electric wires. City Council member Juliet Potrykus explained the City Council’s decision to not spend City funds on the trolley: “*I would just like to draw a very hard line about the responsibility of paying for anything having to do with the trolley going forward being in the hands of the trolley not the taxpayers*” (Yakima City Council meeting transcription, 2/17/2026 at 1:33:30 minutes).

Yakima County Superior Court ruled the tourist trolley used for scenic excursions is not a “railroad” but instead is a “*tourist attraction.*” The seasonal, non-ADA-accessible tourist trolley that operates on summer weekends and holidays does not provide continuous or functional mobility and therefore does not qualify as “*transportation*” or “*public transportation*” under various state and federal laws, e.g., RCW 81.104.015(4). Federal law says sightseeing tourist trolleys and charters are not “*public transportation.*” For many years, Yakima trolley operating agreements have restricted trolley use to “*tourist attraction.*” Yakima does not own any land with railroad tracks to Selah. Passenger rail service was legally abandoned in 1935 by Order of Washington State Transportation Division, and there is nothing in the record documenting established railway use rights or authority for operations in Selah. The 1935 abandonment of passenger rail operations caused an automatic reversion of the passenger rail easement to private landowners.

Motion # 2

I MOVE TO DELETE THE WORD "TROLLEY" AND SUBSTITUTE THE WORD "TRANSPORTATION" IN THE PROJECT DESCRIPTION FOR "NACHES RIVER BRIDGE REPAIR" ON PAGE 14 OF THE TIP.

REASONS: THE TROLLEY IS NOT ELIGIBLE FOR INCLUSION IN THE TIP

The trolley is **Not Eligible** for inclusion on the TIP because the Yakima trolley is not a "railroad" and does not qualify as "*transportation*" or "*public transportation*" under various state and federal laws. Under Supreme Court case law, the abandonment of passenger rail service to Selah in 1935 and abandonment of freight service in 1985 triggered an automatic reversion of the railroad easement back to the adjacent private landowners. In Washington, when an easement is granted to a railroad by private conveyance, the easement is not a "perpetual public easement." *Lawson v. State of Washington*, 107 Wn.2d 444 (1986). Sightseeing tourist trolley excursions are not railroad operations and therefore trigger reversion of land possession back to the underlying private property owners.

Another example of the trolley not being eligible for transportation funding was a January 20, 2026 email from the Washington State Department of Transportation informing the City that the Naches River Bridge was not eligible for transportation alternative funding as a non-motorized facility because the bridge does not allow pedestrians. Tourist attractions do not qualify for transportation funding.

The historically accurate name for the bridge over the Naches River is "Yakima Valley Transportation Company Bridge" not "Yakima Valley Trolley Bridge." Yakima Valley Transportation Company is listed in the National Register of Historic Places; Yakima Valley Trolleys is not on the National Historic Register. If the TIP is not changed from "trolley" to "transportation," the capital facilities amendment will enable ground disturbance and operations in "High Risk" geologic hazard Critical Areas where the Yakama Nation requested formal consultation. This would also be inconsistent with a UTC Public Safety Order.

ORDINANCE NO. 2026-005

AN ORDINANCE of the City of Yakima, Washington, relating to a Transportation Benefit District; updating project costs for the transportation improvements to be funded by the district.

WHEREAS, on January 10, 2017 the City Council created a Transportation Benefit District (TBD); and,

WHEREAS, the City Council approved Ordinance No. 2017-002 and identified projects within the City that constituted transportation improvement needs; and,

WHEREAS, the TBD project list has previously been updated on Ordinances 2017-011 and 2023-035; 2025-021, and,

WHEREAS, the City of Yakima wishes to modify and update the TBD project list; and,

WHEREAS, a public hearing must be held prior to modifying the project list; now, therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. The City Council finds it is in the public interest, following a public hearing and using the criteria listed in RCW 36.73.020(1) and City Ordinance 2017-002, to modify the project list and adopts the Amended Transportation Benefit District Project List (Attached as Exhibit A) as the transportation improvements to be funded through the TBD. The amended list replaces all prior project lists.

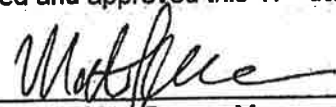
Section 2. This ordinance shall become effective and shall be in full force and effect 30 days after its passage and publication in accordance with law.

PASSED BY THE CITY COUNCIL, signed and approved this 17th day of February 2026.

ATTEST:


Rosalinda Ibarra, CMC, City Clerk




Matt Brown, Mayor

Publication Date: February 21, 2026

Effective Date: March 23, 2026

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0.1% Sales Tax (No tracks)

2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036

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D-3

86th Avenue Sidewalk: Tieton Drive to Summitview Ave		X			\$ -
Fair Avenue Sidewalk: Pacific Avenue to Nob Hill Blvd		X	X		\$ 331,900
Nob Hill & Fair Ave Intersection		X			\$ 345,000
Mead Avenue Pedestrian Signal at 10th Avenue		X			\$ 400,000
N. 16th Avenue Sidewalk: Fruitvale Blvd to River Road		X	X		\$ -
6th Ave. Roadway (No tracks)		X	X	X	\$ 8,300,000
Washington & Longfibre I/S			X		\$ 1,956,500
Browne Avenue Sidewalk: 7th Ave. to 15th Ave			X		\$ 936,000
4th Street: 'G' Street to MLK				X	\$ 1,783,200
2nd Street: 'G' Street to MLK				X	\$ 1,917,400
44th Avenue Sidewalk: Viola to Randall Park				X	\$ 1,899,400
3rd Street: 'G' Street to MLK				X	\$ 791,300
6th Street: 'G' Street to MLK				X	\$ 1,817,400
7th Street: 'G' Street to MLK					\$ 1,869,700
Powerhouse Rd & Englewood I/S				X	\$ 1,325,700
3rd Avenue Sidewalk: Nob Hill to Walnut			X		\$ 1,523,100
Nob Hill Boulevard Sidewalk: 12th Street to 14th Street				X	\$ 300,000
16th & Fruitvale I/S					\$ 2,285,100
1st Street & Washington I/S				X	\$ 2,897,500
Chestnut Avenue Sidewalk: 56th Ave. to 70th Ave.				X	\$ 3,452,900
3rd & Division I/S - Signal	X	X	X		\$ 325,000
					\$ 34,457,100

Estimated \$2,700,000/yr revenue



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 8.A.
For Meeting of: February 17, 2026

ITEM TITLE: Public Hearing and Ordinance relating to Material Changes for the Transportation Benefit District (TBD) project list

SUBMITTED BY: Bill Preston, Community Development Director

SUMMARY EXPLANATION:

Public Hearing on the TBD list of projects presented on February 3, 2026. Council can take the action of adopting the list of projects as provided on February 3 and provided in the attached presentation.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY 24-25: A Resilient Yakima

RECOMMENDATION: Hold a public hearing and pass an Ordinance accepting TBD list including the proposed scope, schedule and budget.

ATTACHMENTS:

Ordinance for 2026 TBD project list_draft
2026_TBD_Material_Change_options.pptx
Public Hearing Notice_amend TBD material changes

DOC. INDEX #

D-3



YAKIMA CITY COUNCIL MINUTES

February 17, 2026

City Hall - Council Chambers - 129 N 2nd Street, Yakima WA

5:30 PM City Council Regular Meeting - Conducted in person and virtually via Zoom

1) **Roll Call**

The meeting was called to order at 5:32 p.m.

Present: Mayor Matt Brown, presiding; Assistant Mayor Reedy Berg and Councilmembers Patricia Byers, Rick Glenn, Felisa Gonzalez, Juliet Potrykus and Leo Roy

Staff: City Manager Vicki Baker, City Attorney Sara Watkins and City Clerk Rosalinda Ibarra

2) **Pledge of Allegiance**

Mayor Brown led the Pledge of Allegiance.

3) **Interpreter Services**

Mayor Brown introduced Jorge Villaseñor who announced interpreter services are available in Spanish.

4) **Public Comment**

Joan Walsh, City resident; and Lulu Dufault, non-City resident; spoke in support of the Yakima Valley Trolleys.

Michelle Hotchko, City resident, spoke in favor of Lions Pool.

Joseph Kopsick (via Zoom), City resident, spoke about tax revenue collection.

5) **Open Discussion for the Good of the Order**

None.

6) **Council Reports**

None.

7) **Consent Agenda**

Mayor Brown referred to the items placed on the Consent Agenda, questioning whether there were any additions or deletions from Council members present. Item J was removed from the Consent Agenda. The City Clerk read the Consent Agenda items, including resolutions and ordinances, by title. (Items on the Consent Agenda are handled under one motion without further discussion-see motion directly below.)

MOTION: Berg moved and Byers seconded to approve the consent agenda (as amended). The motion carried by a 7-0 roll call vote.

- 7.A Approval of minutes from the February 3, 2026 Council regular meeting and February 10, 2026 Council study session
- 7.B Approve payment of disbursements for the period January 1-31, 2026
- 7.C January 2026 Investment Transaction Report
- 7.D Project Completion and Contract Acceptance with Washington Roofing Solutions LLC for Fire Station 94 Re-Roofing Project 2851
- 7.E Project Completion and Contract Acceptance with Central Washington Asphalt for 2024 Northside Alley Paving Project 2759
- 7.F Project Completion and Contract Acceptance with Iron Horse LLC for Project SC2819 2025 Wastewater Collection System Rehabilitation
- 7.G Project Completion and Contract Acceptance with Interwest Construction Inc for Project SC2783 Maclaren Vicinity Wastewater Improvements
- 7.H Resolution accepting and approving 4th Quarter 2025 Claim Report
RESOLUTION NO. R-2026-024, A RESOLUTION accepting and approving the 4th Quarter 2025 Claim Report for the City of Yakima.
- 7.I Resolution approving an agreement with the Yakima Herald-Republic for legal advertising services
RESOLUTION NO. R-2026-025, A RESOLUTION approving an annual agreement with the Yakima Herald-Republic for legal advertising services.
- 7.J *This item was removed from the Consent Agenda*
- 7.K Resolution authorizing an Interlocal Agreement between SunComm and Yakima County Technology Services for network equipment maintenance and repair
RESOLUTION NO. R-2026-027, A RESOLUTION authorizing an interlocal agreement with Yakima County Technology Services for network equipment maintenance and repair on the Spillman Computer Aided Dispatch workstations.
- 7.L Resolution authorizing an Equitable Sharing Agreement and Certification with the United States Department of Justice
RESOLUTION NO. R-2026-028, A RESOLUTION authorizing an Equitable Sharing Agreement and Certification with the United States Department of Justice.
- 7.M Ordinance amending the Yakima Municipal Code Section 1.06.010 Meetings of the City Council
ORDINANCE NO. 2026 004, AN ORDINANCE amending the City of Yakima Municipal Code Section 1.06.010 Meetings of the city council.

Item Removed from the Consent Agenda

- 7.J Resolution authorizing an Interlocal Agreement with Washington Traffic Safety Commission to provide funding for a law enforcement liaison program
Lt. Ira Cavin briefed Council on the proposed resolution. The City Clerk read the resolution by title only.
MOTION: Byers moved and Berg seconded to approve the resolution for Item J. The motion carried by a 7-0 roll call vote.
RESOLUTION NO. R-2026-026, A RESOLUTION authorizing an Interlocal Agreement with the Washington Traffic Safety Commission for funding a Law Enforcement Liaison.

8) **Public Hearings**

8.A **Public Hearing and Ordinance relating to Material Changes for the Transportation Benefit District (TBD) project list**

Community Development Director Bill Preston briefed Council on the proposed ordinance related to material changes affecting the Transportation Benefit District project list. He described funding options and proposed schedule for consideration.

Mayor Brown opened the public hearing.

The following individuals provided comments and testimony: Josh Zeigler, Aileen Kane, Barry Bernfeld, Pattie Graffe (Selah Downtown Association), Nancy Davis, Greg Johnsen, Joan Walsh, Dave Cox (Northern Pacific Railway Museum), Maria Ramos, Stephen Rechtlen, David Foster, Badger Wentworth, and Brian Korst.

With no one else coming forward or calling in to speak, Mayor Brown closed the public hearing.

After extensive Council discussion,

MOTION: Potrykus moved and Glenn seconded that no Transportation Benefit District (TBD) funds shall be used for the repair, replacement, relocation, installation, or re-installation of trolley rail infrastructure as part of the 6th Avenue project. The motion carried by a 5-2 roll call vote; with Byers and Gonzalez voting no.

After further Council discussion, the City Clerk read the ordinance by title only and Council took the following action related to passage of the ordinance:

MOTION: Byers moved and Berg seconded to choose the option that removes the trolley tracks from the TBD list and move forward with the .01% sales tax. The motion carried by a 6-1 roll call vote; with Gonzalez voting no.

ORDINANCE NO. 2026-005, AN ORDINANCE of the City of Yakima, Washington, relating to a Transportation Benefit District; updating project costs for the transportation improvements to be funded by the district.

MOTION: Brown moved and Berg seconded to place on a April Council meeting agenda a discussion regarding a proposed charter amendment to permanently prohibit City Council members from imposing a car tab fee, in any form, and direct the City Attorney to prepare proposed Charter language for that meeting. The motion carried by unanimous vote.

9) **Department Items**

9.A **Ordinance establishing a 0.1% sales tax for the Transportation Benefit District**

Community Development Director Bill Preston briefed the Council on the proposed ordinance to establish a 0.1% sales tax for the Transportation Benefit District.

The City Clerk read the ordinance by title only.

MOTION: Byers moved and Berg seconded to approve the ordinance. The motion carried by a 7-0 roll call vote.

ORDINANCE NO. 2026-006, AN ORDINANCE of the City of Yakima, Washington, adding a new Section, 3.78.062 to the Yakima Municipal Code imposing an additional sales and use tax of one-tenth of one percent within the boundaries of the City of Yakima Transportation Benefit District for the purpose

of financing the costs associated with transportation improvements in the district as authorized by the Revised Code of Washington.

9.B Ordinance repealing the \$20 car tab fee

Community Development Director Bill Preston briefed the Council on the proposed ordinance to repeal the \$20 car tab fee.

The City Clerk read the ordinance by title only.

MOTION: Byers moved and Berg seconded to pass the ordinance. The motion carried by a 7-0 roll call vote.

ORDINANCE NO. 2026-007, AN ORDINANCE of the City of Yakima, Washington repealing Ordinance No. 2017-033 which established an annual vehicle license fee.

9.C Resolution authorizing an Interlocal Agreement with Yakima County Fire District #4, East Valley Fire Dept. for temporary access and use of City Knox Box Master Keys

Yakima Fire Chief Aaron Markham briefed Council on the proposed resolution that will allow Yakima County Fire District #4 to utilize the city's master key during emergencies to gain access to Knox boxes located within the City of Union Gap.

The City Clerk read the resolution by title only.

MOTION: Berg moved and Byers seconded to adopt the resolution. The motion carried by a 7-0 roll call vote.

RESOLUTION NO. R-2026-029, A RESOLUTION authorizing an Interlocal Agreement with Yakima County Fire District #4 for temporary use of City Knox Box master keys.

9.D Resolution authorizing application for grants from the Washington State Department of Transportation (WSDOT) and the Federal Aviation Administration (FAA)

Director of Yakima Air Terminal Christopher Hopkins briefed Council on the proposed resolution authorizing the City to apply for grant funding for improvements to the crosswind runway at the Yakima Air Terminal.

The City Clerk read the resolution by title only.

MOTION: Berg moved and Byers seconded to adopt the resolution. The motion carried by a 7-0 roll call vote.

RESOLUTION NO. R-2026-030, A RESOLUTION authorizing application for grants from the Washington State Department of Transportation (WSDOT) and the Federal Aviation Administration (FAA) for construction of the crosswind runway, a capital improvement project at the Yakima Air Terminal-McAllister Field.

9.E Discussion regarding the Request For Interest (RFI) letters for the operation of Washington Fruit Community Center and Harman Senior Center

Parks & Recreation Manager Ken Wilkinson briefed Council on the proposed draft Letters of Interest to solicit interest from organizations to manage and operate the Washington Fruit Community Center and Harman Senior Center. The Washington Fruit Community Center is budgeted until June 30, 2026, and

the Harman Senior Center is budgeted until December 31, 2026. The letters of interest would be used to initiate the Request for Proposal (RFP) bid process. No action from the Council was required to move forward at this time.

10) City Manager Update

10.A Preview of upcoming topics

City Manager Vicki Baker provided updates to Council regarding fundraising efforts for Lions Pool and noted that currently no sales tax funds are available to fund park maintenance and Lions Pool. State Representative Chris Corry submitted a budget proviso for Lions Pool. The city has been in ongoing discussions with the YMCA to help fill the community needs. Further updates will be provided in March when the pool has closed and maintenance costs are better determined.

Mrs. Baker mentioned that the three-business meeting format change approved by Council will be implemented in April and will include an open discussion section.

She also provided a brief preview of upcoming topics related to Council's Principles of Conduct and Code of Ethics, engineering and licensing fees, capital improvements projects, and infrastructure updates.

11) Other Business

MOTION: Byers moved and Berg seconded to bring to some future Council meetings, over the next two or three months, a discussion about the Charter and suggested changes for Council. The motion carried by unanimous vote.

MOTION: Berg moved and Brown seconded to add to a business meeting in March or April a discussion regarding enforcement of YMC Chapter 6.91 (Unlawful Camping Ordinance) on all public property. The motion carried by unanimous vote.

12) Adjournment

MOTION: Byers moved and Berg seconded to adjourn to the next City Council regular meeting on March 3, 2026, at 5:30 p.m. in the City Hall Council Chambers. The motion carried by unanimous vote.

The meeting adjourned at 7:46 p.m.

CERTIFICATION

READ AND CERTIFIED ACCURATE BY

/s/ Signature on File

COUNCIL MEMBER

DATE

/s/ Signature on File

COUNCIL MEMBER

DATE

ATTEST:

/s/ Signature on File

CITY CLERK

/s/ Signature on File

MAYOR

MEYER, FLUEGGE & TENNEY, P.S.

ROBERT C. TENNEY
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*Also admitted in Oregon

**Also admitted in Oregon & Virginia

January 20, 2026

Mayor Matt Brown
City of Yakima – City Hall
129 North Second Street
Yakima, WA 98901
matt.brown@yakimawa.gov

Deputy Mayor Reedy Berg
City of Yakima – City Hall
129 North Second Street
Yakima, WA 98901
reedy.berg@yakimawa.gov

RE: Transportation Benefit District Project List – Agenda Item 9B – Jan. 20, 2026 Meeting

Dear Mayor Brown and Deputy Mayor Berg:

We represent Yakima Taxpayers for Fiscal Responsibility (YTFR) and have previously corresponded with respect to use of Transportation Benefit District (TBD) funds for trolley tourist attractions. In the City Council packet for January 20, 2026 - Agenda Item 9B, City Staff present options to raise taxes on Yakima residents to pay for transportation system improvements through increased vehicle license fees or added sales tax. We are concerned about both a tax increase as well as the use of TBD funds. One option includes an expenditure of \$7 million on trolleys.

The City may establish a transportation benefit district for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional or local transportation plan and necessitated by existing or reasonable foreseeable congestion levels. RCW 36.73.020(1). In selecting transportation improvements, the district should consider to the extent practicable the criteria set forth in RCW 36.73.020(1). Under state law, city ordinances, and case law, it is *not* legal to use Transportation Benefit District (TBD) funds to pay for trolley tourist attractions. The inclusion of funding for trolleys would violate state law. As we have previously requested, City Council should obtain a formal written legal opinion from the City Attorney on the legal restrictions for use of TBD funds.

In a lawsuit against the City of Yakima and the trolley association, the court ruled in 1987 that Yakima's trolleys are "*not a railroad*" but instead are a "*tourist attraction*," and a streetcar line is not a railroad.¹

¹ Memorandum Opinion, *Congdon Orchards, Inc. v. City of Yakima, Yakima Valley Transportation Co., and Yakima Interurban Lines Association* (86-2-00503-9, April 8, 1987)

State law also says streetcars like the trolleys are not a "railroad," and are not "Public Transportation."²

Under state law, the trolley is *not* eligible for TBD funds: (1) the trolley is not a railroad, (2) the trolley is a seasonal tourist attraction, (3) the trolley is not "Public Transportation," (4) the trolley is not a "Transportation Improvement," (5) building trolley tracks is not "necessitated by existing or reasonably foreseeable congestion levels," (6) the seasonal trolley will not "alleviate congestion," and (7) the trolley does not satisfy the criteria in RCW 36.73.020(1).³

Moreover, there is no evidence that new trolley tracks on 6th Avenue between Walnut and River Road will be "Regionally Significant" as required under state law. There is no evidence that 6th Avenue trolley tracks are part of a regional plan nor is there evidence of regional coordination with Selah, Yakima County, and the State of Washington.

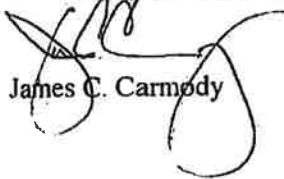
In 2024, HLA Engineering estimated the cost to build trolley tracks & electric wires is about \$5 million per mile; and the cost to build the 4-mile Selah Line could be \$15 Million to \$20 Million. The current proposal to build only 1.5 mile of the proposed 4-mile Selah tracks will result in unusable "tracks to nowhere." City Council should request an updated Engineer's Estimate in 2026 Dollars to build the full 4-mile line.

The City of Yakima has invested taxpayer dollars in the Trolley for many years. The City should not invest additional funds in Tourist Trolleys that do not qualify for transportation funding. The City should not assume responsibility for environmental, cultural resource, and other financial risks and liabilities rightly held by the trolleys. The Trolleys should be self-funded and self-insured and should fully address all legal concerns and financial responsibilities and contributions to their enterprise.

In times of financial stress, the use of available funds should be focused on maintenance and repair of existing streets and roads. The Council should also be cognizant of ever-increasing tax burdens and costs on taxpayers.

Thank you for consideration of our concerns.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.


James C. Carmody

² See, e.g., RCW 36.75.010(12) and RCW 81.104.015(4).

³ RCW 81.104.015(4); RCW Chapter 36.73; City of Yakima Ordinance 2017-002

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December 18, 2025

Bill Preston, P.E.
Director of Community Development
SEPA Responsible Official
City of Yakima
129 N. 2nd Street
Yakima, WA 98901

Re: SEPA Determination of Nonsignificance
SEPA #104-25

Dear Mr. Preston:

We represent Yakima Taxpayers for Fiscal Responsibility (YTFR) and are writing with respect to your issuance a *Determination of Nonsignificance* related to Operation License Agreement between City of Yakima and Yakima Valley Trolleys – SEPA #104-25. The *Determination of Nonsignificance (DNS)* concluded that the City of Yakima, as lead agency [and also applicant], has determined that the proposal "...does not have a probable significant adverse impact on the environment."¹ It honestly looks like little consideration was given to comments.

In your decision, you state that parties "...may appeal this determination" to you no later than December 18, 2025. The DNS does not provide or identify the ordinance or statutory basis for administrative appeal. In fact, it does not appear that there is an administrative appeal process for the DNS under the Yakima Municipal Code.

Appellate procedures for review of SEPA determinations are set forth in YMC 6.88.170. The rules recognize as a beginning proposition that "...any appeal brought under this chapter shall be linked to a specific governmental action." YMC 6.88.170(A). The governmental action involved in this matter is the granting of an Operating License to Yakima Valley Trolleys. The specific governmental action was taken by the City Council prior to the expiration of the appeal period. That made it impossible to combine the matters in a single hearing process.

While the SEPA ordinance provides limited administrative appeals under SEPA, there is no appeal for the DNS issued in this case. PMC 6.88.170(D) specifically provides:

¹ The DNS indicates that the "...decision was made after review of a completed environmental checklist and other information on file with the lead agency." It is not credible that a DNS would be issued based upon the very significant environmental issues raised by parties providing comment on the proposal. In particular, Yakama Nation articulated significant concerns with respect to cultural resource impacts and need for appropriate and timely environmental review. It is not necessary for purposes of this letter to go through all of the serious issues that should have been considered in the process.

Except as provided in subsection E of this section, an appeal under this section shall consolidate any available SEPA appeal with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before one hearing officer or body. The hearing or appeal shall be one at which the hearing officer or body will consider either the agency's decision or recommendation on the proposed underlying governmental action. *If no hearing or appeal on the underlying governmental action is otherwise provided, then no SEPA appeal is allowed under this section, except as allowed under subsection E of this section.*

An appeal of an environmental threshold determination "...shall consolidate available SEPA appeal with a hearing or appeal on the underlying governmental action in a simultaneous hearing before one hearing officer or body." YMC 6.88.170(D). The appropriate process would have been to consolidate an environmental appeal with the underlying governmental action which was the review and determination on the Operating License for Yakima Valley Trolleys. The City did not allow appropriate time or opportunity for appeal as required under the ordinance.

Second, and more importantly, if there is no hearing or appeal on the underlying governmental action which is provided, "...then no SEPA appeal is allowed under this section, except as allowed under subsection E of this section." There is no administrative appeal allowed with respect to the process implemented by the City with respect to the DNS. That creates a problem – what is the proper appeal process?

In its DNS, the City failed to provide accurate and clear appeal instructions. Where there has been a failure to give appropriate notice of appeal rights, the filing of an appeal is tolled until proper notice is provided to the parties. See e.g. *Gardner v. Pierce County*, 27 Wn.App. 241, 243, 617 P.2d 743 (1980) (holding that "...[t]o require a petitioner to file an appeal ten days before the hearing under these circumstances would be unreasonable and violative of due process."; *Prekeges v. King County*, 98 Wn.App. 275, 281, 990 P.2d 405 (1999). The City should withdraw the DNS and reissue the determination with proper and accurate appeal instructions.

As a final point, the City should withdraw the SEPA DNS for Trolley Operating Agreement based on the significant information and identification of probable significant adverse environmental impacts set forth in the record. WAC 197-11-340(3)(a). Among the considerations are the following:

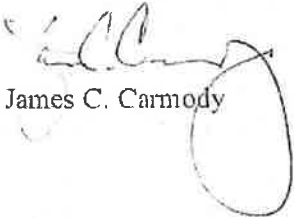
- Yakama Nation Letter (12/3/2025): SEPA Checklist was "*fundamentally deficient*" and requires a "*proximity analysis to archaeological sites or culturally sensitive areas*" affected by trolley operations
- Trolley attorney said County-designated "High Risk" rockslide hazard area in Selah Gap is "*dangerous*" for trolley operations
- Legal authority from Yakima County and State to operate passenger rail service to Selah ended 90 years ago (see State Order April 11, 1935)
- No evidence of land use approvals to operate in Selah or Yakima County

- 1985 Quit Claim Deed did not include land in Selah Gap owned by BNSF
- 1985 Bill of Donation excluded railroad structures and fixtures
- Congdon Orchards Decision: Trolley is "*not a railroad*" but instead is a "*Tourist Attraction*," and 1985 ICC abandonment triggered reversion of private railroad easements to underlying private landowners
- No evidence of underlying private landowner consent to trolley operations
- Yakima lacks statutory authority to operate tourist trolley outside of Yakima
- City-owned trolley cars are not on the National Historic Register

We request that the SEPA DNS be withdrawn and reissued with proper appeal instructions. More importantly, we request that the City reevaluate the DNS and impose mitigation requiring survey and preparation of cultural resource assessments, critical area evaluations and reports, and compliance with multi-jurisdictional permit processes.

I would be happy to discuss these issues with you or legal counsel at your convenience.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.



James C. Carmody

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D3



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 3, 2025

Sent via electronic mail

Trevor Martin AICP
City of Yakima Community Development Department
Planning Division
129 N. 2nd Street
Yakima, WA 98901

Re: SEPA Application #014-25 - Yakima Valley Trolleys Operation Agreement

Dear Mr. Martin:

The Yakama Nation Cultural Resources Program has reviewed the referenced State Environmental Policy Act (SEPA) checklist for Application #014-25. We find this application fundamentally deficient and unable to support informed environmental and cultural resources review. The application's widespread use of "N/A" responses without explanation, contradictory project descriptions, and absence of basic geographic, environmental, and cultural information render it incomplete under SEPA requirements and inconsistent with the associated responsibilities.

Contradictory Project Description

The application contains conflicting statements about the project scope that prevent meaningful review:

- Question 11 (Brief Description) states this application is *"only analyzing the Yakama Valley Trolleys responsibility for operating and maintaining the existing Trolley System"* and that *"there is no specific project action associated with this SEPA proposal."*
- Question 6 (Timing/Schedule) indicates a 5-year operational period from January 1, 2026 through December 31, 2030.
- Question 8 references a *"Safety Plan (per WAC 468-550-040(4))"* and *"Inventory of assets (Exhibit C)"* that are not included with the application.
- Question 7 acknowledges *"routine operations and maintenance"* of trolley facilities but provides no detail about what these activities entail.

These statements indicate ongoing operational activities with environmental implications, not a purely administrative agreement transfer without a project action. Even non-project

Yakama Nation, Post Office Box 151, Toppenish, WA 98948 (509) 865-5121

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SEPA reviews under WAC 197-11-442 require analysis of a program's cumulative environmental effects. The application cannot simultaneously claim *"no specific project action"* while describing multi-year operational activities requiring safety plans, asset inventories, and routine maintenance.

Systematic Misuse of 'N/A' Without Justification

The applicant has marked numerous environmental checklist questions as "N/A" without providing any explanation for why they do not apply to trolley operations and maintenance. SEPA instructions explicitly state that "N/A" should only be used *"when you can explain why it does not apply and not when the answer is unknown."*

The following sections demonstrate either lack of due diligence or deliberate avoidance of required environmental analysis:

Surface Water (Questions 1-5, Pages 4-5)

All surface water questions are marked N/A despite the trolley route crossing multiple waterways and drainage features in the Yakima Valley. Maintenance activities, vegetation management along the right-of-way, and stormwater runoff from rail infrastructure all have potential surface water impacts. Question 2 specifically asks about work *"within 200 feet"* of waters, yet receives an N/A response with the note *"operations and maintenance only, project specific actions will require additional SEPA review."* This circular logic suggests the applicant acknowledges potential impacts but declines to analyze them in this review.

Ground Water (Questions 1-2, Page 6)

Groundwater questions are marked N/A without explaining why infrastructure maintenance, potential chemical use (herbicides for vegetation management), or waste material disposal would not affect groundwater. Historic rail corridors commonly have legacy contamination issues that should be addressed.

Plants and Animals (Questions 3-5, Pages 6-7)

Question 3 (threatened/endangered species) is marked N/A without documentation of Endangered Species Act consultation or biological survey. Question 4 (landscaping/vegetation preservation) is marked N/A despite obvious vegetation management needs along a linear transportation corridor. Question 5 (noxious weeds) is marked N/A without any invasive species assessment or vegetation management plan.

Environmental Health (Questions 2-5, Page 8)

Questions 2 through 5, addressing site contamination, hazardous chemicals, toxic materials, and emergency services, are all marked N/A without acknowledging that historic rail corridors commonly contain contaminated soils from legacy pollutants. No Phase I Environmental Site Assessment or contamination screening appears to have been conducted.

Land and Shoreline Use (Questions 2, 13-14, Pages 8-10)

Question 2 asks about conversion of agricultural or forest lands and receives an N/A response without analyzing whether the trolley route traverses these land use

categories. Questions 13-14 regarding compatibility with existing land uses and nearby agricultural/forest operations are marked N/A without assessment of potential conflicts.

Complete Avoidance of Supplemental Nonproject Section

Section D (Supplemental Section for Nonproject Actions Only) represents deficiency in this application. WAC 197-11-960 and SEPA guidelines specifically require nonproject proposals to address questions about:

- How the proposal would increase discharges to water, emissions to air, or noise production
- Effects on plants, animals, fish, or marine life
- Depletion of energy or natural resources
- Use or effects on environmentally sensitive areas
- Effects on land and shoreline use
- Increased demands on transportation or public services
- Potential conflicts with environmental laws or requirements

The applicant marked ALL SEVEN questions (Questions 1-7, Pages 13-15) as "N/A" without any explanation. This defeats the purpose of completing the supplemental section and fails to satisfy SEPA's requirement for informed decision-making.

Insufficient Location and Geographic Information

Question 12 (Location of Proposal) identifies "306 W Pine Street/404 S. 3rd Ave, Yakima, WA; trolley lines within Yakima and Selah" but provides no:

- Linear footage or mileage of track to be maintained
- Total acreage of right-of-way affected by operations
- Map or geographic coordinates showing the route
- Identification of watercourse crossings
- Proximity analysis to archaeological sites or culturally sensitive areas
- Slope conditions and mass wasting potential along the corridor

The application notes that legal description is "provided in Exhibit B of the agreement" but this exhibit is not included. Without basic geographic data defining the project area, it is impossible to assess potential impacts to any environmental or cultural resource. The trolley route is a significant linear feature traversing landscapes occupied by Yakama ancestors for

thousands of years. We cannot complete meaningful review without knowing where maintenance activities will occur further this SEPA is not a functional.

Inadequate Cultural Resources Analysis

The Historic and Cultural Preservation section (Page 11) presents several concerning deficiencies:

- Question 1 acknowledges the trolley system is listed on national and local registers of historic places, demonstrating the corridor's significance. However, this historic designation applies to the rail infrastructure itself and does not address archaeological resources along the route or traditional cultural properties that may be affected by operations and maintenance activities.
- Question 2 asks about "landmarks, features, or other evidence of Indian or historic use or occupation" and receives the response "None known along trolley route." This statement is inconsistent with the known archaeological sensitivity of the Yakima Valley and the thousands of years of continuous Yakama occupation in this region. The response "none known" suggests no professional cultural resources survey or tribal consultation has been conducted. The Yakima Valley contains numerous recorded archaeological sites, traditional use areas, and culturally significant landscapes.
- Question 3 asks for proposed measures to "avoid, minimize, or compensate for loss, changes to, and disturbance to resources" and receives the response "Continued operations of the Yakima Trolleys for educational and cultural purposes." This response does not address archaeological site protection, inadvertent discovery protocols, or cultural resource management measures that could be helpful.

The linear nature of the trolley corridor presents unique cultural resource concerns. Archaeological sites adjacent to or within the rail right-of-way are susceptible to slope movement and mass wasting, which can have significant upslope and downslope impacts. Vegetation management, track maintenance, drainage work, and visitor access ground-disturbing activities with potential to affect buried archaeological deposits.

Once the scope of the project is defined the applicant could then demonstrate some understanding in order to inform the checklist and the necessary inventory and permitting requirements.

Missing Required Documentation

The checklist references but does not include several pieces of information necessary to understanding project scope and environmental implications:

- Inventory of assets (Exhibit C, referenced in Question 8)
- Yakima Valley Trolleys Operation Agreement
- Legal description (Exhibit B of the agreement, referenced in Question 12)

These documents are essential for reviewers to understand what activities are authorized, where they will occur, what infrastructure exists, and what safety and operational protocols govern the proposal.

Conclusion and Path Forward

This SEPA checklist does not provide sufficient information to complete environmental and cultural resources review pursuant to the State Environmental Policy Act (RCW 43.21C). The wholesale use of "N/A" without explanation, contradictions between claiming "*no project action*" while describing 5-year operational activities, and absence of basic geographic and archaeological data render this application incomplete.

The Yakama Nation is not opposed to trolley operations that preserve this significant historic transportation resource and provide educational and cultural benefits to the community. However, we cannot complete our review or provide informed comment without understanding what this proposal actually entails.

We respectfully request the City of Yakima withdraw this incomplete application and resubmit with the following information:

**Clarification of Project Scope
Completion of Section D
Geographic and Location Data
Cultural Resources Assessment
Operational Details and Measures to Avoid or Mitigate
Attachment of Referenced Documents**

Provide these documents in complete form via email to the Yakama Nation Tribal Council Chairman, Gerald Lewis via Gerald_Lewis@yakama.com as well as Cultural Resource Program Manager, Casey Barney @ Casey_Barney@Yakama.com.

The Yakama Nation looks forward to meaningful consultation on this project once adequate information is provided. We are committed to working cooperatively with the City of Yakima to ensure trolley operations can proceed in a manner that protects cultural resources, preserves this important historic asset, and honors our shared stewardship responsibilities for the Yakima Valley landscape.

Please contact our office if you have questions about these comments or need clarification on information requirements. Thank you for the opportunity to comment on this project.

Respectfully,



Noah Oliver
YNCRP Geographer and Archaeologist
Yakama Nation Cultural Resource Division

MEYER, FLUEGGE & TENNEY, P.S.

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December 3, 2025

Trevor Martin, AICP
City of Yakima Planning Division
129 N. 2nd St.
Yakima, WA 98901
Email: trevor.martin@yakimawa.gov

RE: Environmental Review for Trolley Operation and Maintenance Agreement -- SEPA#014-25

Dear Planning Manager Martin:

We represent Yakima Taxpayers for Fiscal Responsibility (YTFR), an unincorporated association and provide these comments on the Notice of Environmental Review, Land Use Application, and SEPA Environmental Checklist for Operation License Agreement between City of Yakima and Yakima Valley Trolleys -- SEPA#014-25. While we have specifically provided comment on the proposed Operation License and associated environmental review, we were not provided notice or copies of the request for comments on the project application. I have been in hearings which concluded late last night and have just learned of the request for comments. We request that you consider these comments because of the failure to provide specific notification to a party with known interest in the application.

Overview of Proposed Project and Operations Agreement.

Yakima Valley Trolleys has proposed to enter into an *Operation License Agreement* for a three (3) year license to operate and use the City's electric railway system over a rail line that spans across jurisdictional boundaries of the City of Yakima, City of Selah, and unincorporated Yakima County. The electric railway system is depicted on *Exhibit A* to the *Operation License Agreement*. Also included is use of the electric railway barn and museum of 306 West Pine, Yakima, WA. Assets included are set forth on *Exhibit C*.

By way of background, public records disclose that passenger rail service on these tracks was abandoned in 1935 pursuant to an Order of the State Supervisor of Transportation. Freight rail service on these tracks was abandoned in 1985 pursuant to an Order of U.S. Interstate Commerce Commission. There is nothing in the record documenting established railway use rights or authority for operation of the line.

Land Use Application is Incomplete and Deficient.

To begin, the Notice of Environmental Review and Land Use Application Form are inaccurate and incomplete. These documents identify the "Applicant" as the City of Yakima and Planning Manager Trevor Martin. The Applicant should be Yakima Valley Trolleys because the trolley association is requesting the operation and maintenance license agreement from the City -- the City is not granting a license agreement to itself. The application needs to accurately identify the party requesting the license.

We are concerned that City officials view themselves as both the applicant and the responsible official for administering SEPA procedures. This would be a conflict of interest. Under WAC 197-11-926(2), the people

be conducted by an independent reviewing body.

Neither the Land Use Application nor SEPA Notice disclose the *Location, Tax Parcel Numbers, Legal Description* (for the line), *Zoning*, or *Property Owners*. We have seen no certification regarding service on adjacent properties, agencies, or departments.

The Location is listed as "Citywide" but major portions of trolley operations and maintenance would occur outside of Yakima, in the City of Selah and unincorporated Yakima County. The trolley system is over a defined pathway that extends beyond municipal boundaries. The Parcel Numbers are incomplete and incorrectly listed as "Citywide". The parcel numbers are readily available from the County Assessor for properties subject to the four miles under or bordering the line as it crosses miles of property in Yakima, Selah, and unincorporated Yakima County. The Legal Descriptions across Yakima, Selah, and unincorporated Yakima County are missing and are not attached to the application as required. Only a tiny fraction of property legal descriptions was included (trolley barn and museum).

The required "Current Zoning Designations" are not provided. This is required for the entire line. North of the intersection of River Road and 6th Avenue, the abandoned railroad tracks cross at least 15 privately owned parcels in Yakima, Selah, and Yakima County. There are many more private landowners underlying the tracks in city street right-of-way easements along 6th Avenue and Pine Street. These private landowners apparently were not given notice of the SEPA process, nor was notice given to all property owners within 300 feet of the abandoned railroad tracks as required by YMC Chapter 6.88.

As an additional point, it is our understanding that the railroad easements that the trolley wishes to rely on in 2026 were extinguished when Yakima Valley Transportation Company (YVTC) abandoned passenger service in 1935 and abandoned freight service in 1985. In *Congdon Orchards v. City of Yakima et. al* (1987), Yakima County Superior Court ruled that the Yakima Trolleys are not a "Railway" or "Railroad" but instead are a "Tourist Attraction." The court also ruled that abandoned railroad tracks reverted to the original landowners because tourist trolleys were never part of YVTC's railroad operation. Private property rights need to be established in the SEPA documents.

The Naches River Bridge is a structure and fixture attached to real estate owned by BNSF Railway and as such appears to be owned by BNSF, not by the City of Yakima. The 1985 "Bill of Donation" from Yakima Valley Transportation Company YVTC to the City of Yakima specifically excluded structures and fixtures like the bridge. The 1985 Quit Claim Deed from YVTC to Yakima was for *YVTC right-of-way* and did not include the *BNSF right-of-way* in Selah Gap. There was no after-acquired title clause in the Quit Claim Deed. Due to the abandonment of passenger rail service in 1935 and the abandonment of freight service in 1985, it appears that Yakima owns no property and holds no easements north of the Naches River.

SEPA Checklist Comments and Concerns.

The electric rail system spans Yakima, Yakima County, and Selah. SEPA Checklist #10 states that there are "no pending applications" for the operational use authorization. We disagree. The available environmental documents do not disclose any land use, operating, or environmental permits for the electric railway system and its associated operations. Government approvals and permits are required from the City of Yakima, Yakima County, City of Selah, State of Washington, and perhaps others. Each of the required permits needs to be identified and submitted before final operational approval can be granted to Yakima Valley Trolleys.

Second, SEPA Checklist #11 states that "...[t]his SEPA review is only analyzing the Yakima Valley Trolley's

responsibility for operating and maintain [sic] the existing Trolley system, which is a City of Yakima asset. *There is no specific project action associated with this SEPA proposal.* (Italics added). "Actions" include "...[n]ew and continuing activities (including projects and programs) entirely or partly...licensed, or approved by agencies." WAC 197-11-704(1). A project action involves a decision on a specific project, such as a...*management activity located in a defined geographic area.* WAC 197-11-704(2)(a). Projects include decisions to "...[l]icense, fund or undertake any activity that will directly modify the environment, whether the activity will be conducted by the agency, an applicant, or under contract." WAC 197-11-704(2)(a)(i). The Operating License includes not only the licensing but also partial funding and oversight of the activity. The SEPA Checklist does not identify or consider any of these activities.

On a more specific environmental point, about a mile of the electric rail system tracks pass through a designated Geologically Hazardous Critical Area with "High Risk" Over steepened Slopes. The SEPA Checklist incorrectly claims the site is "flat" with a grade "less than 5%." There is a history of rockslides and unstable soils in the immediate vicinity. Yakima Valley Trolleys notified the City that this area is "*dangerous to rail traffic*" from large two-man boulders falling onto the tracks where tourist trolleys would operate along the toe of the high risk over steepened slopes. Yakima Valley Trolley operations and maintenance activities include ground disturbance, excavations, and/or rockslide removals in the geologically hazardous Critical Area. A critical area report and geotechnical analysis is required for these identifiable areas.

The use area contains cultural resource considerations, critical areas, shorelines and other environmentally sensitive areas. Prior to authorizing trolley operations north of the Naches River, the City is required to: (1) hire a geotechnical engineer to assess the risk to public safety and the environment in this Geologically Hazardous Critical Area, (2) hire an archaeologist to survey and prepare cultural resource assessments, and (3) prepare critical area report, and (4) apply for Critical Area and Shoreline permits. See e.g. *Confederated Tribes and Bands of the Yakima Nation v. Yakima County*, 195 Wn.2d 831, 466 P.3d 762 (2020). SEPA checklist fails to include sufficient detail and information.

Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. WAC 197-11-060. Since this proposal spans numerous jurisdictions, the environmental review for all permits should be consolidated and coordinated in a single environmental review process. A lead agency shall be designated following procedures set forth in WAC 197-11-922. The piecemeal review by multiple jurisdictions is contrary to SEPA requirements and procedures.

Public safety will be compromised because proposed trolley operations preclude pedestrian recreational and ADA access, contrary to the State Utilities and Transportation Commission Order to divert pedestrians to the multimodal Naches River Bridge, to prevent pedestrians from accessing the dangerous BNSF bridge. BNSF agreed in writing to this public safety measure.

Yakima Valley Trolley operations include re-building high-voltage electric catenary wires that they may not be qualified to engineer and install under National Electrical Safety Code. Similarly, the car repair barn has exposed conductors of 600 volts DC hazards.

Operations Over Floodplains and Within Shorelines.

Trolley operations/maintenance will occur across floodplains, within shoreline areas designated as "Urban Conservancy," and within 200 feet of the Yakima and Naches Rivers. The SEPA Checklist (p. 4 Surface Water) fails to disclose that trolley operations/maintenance will occur over water, in water, and on land within 200 feet of major rivers. There is a water pollution risk to the Naches and Yakima Rivers from diesel fuel spills, bridge deck

and abutment maintenance, painting or rust abatement, work on creosote timbers, and scour pier maintenance.

SEPA Checklist fails to identify surface waters (Naches River and Yakima River) or disclose activities within or near shorelines.

The SEPA Checklist (p. 10) incorrectly states that the "trolley system" is listed on the National Register of Historic Places. The trolleys are not listed on the National Historic Register. The tracks, car barn, and bridge are listed on the National Register and have federal funds invested—the City must conduct the Section 106 process under National Historic Preservation Act and analyze how trolley operations and maintenance could affect the national register listing, proposed National Historic Landmark designation, and the William O. Douglas Historic Trail.

The museum and car repair barn at South 3rd Avenue and Pine Street are on a designated hazardous waste site and there are site use restrictions, environmental covenants, and institutional controls in effect. Past railroad operations released hazardous substances. SEPA Checklist fails to disclose these facts.

The SEPA Checklist (p. 11 Transportation) fails to disclose that the abandoned YVTC tracks are in the immediate vicinity of the BNSF Railway. As a seasonal tourist attraction, the trolley is not a "transportation improvement," will not "alleviate congestion," and does not qualify for TBD funding under RCW 36.73.020(1).

Yakima Valley Trolleys has proposed a series of project and nonproject actions, physically or functionally related to each other, including volunteer work to re-engineer and re-build demolished overhead electric catenary lines, replace and/or maintain tracks and electric power poles that are more than 100 years old, purchase new equipment (unknown if diesel or electric), conduct ground disturbance activities at the base of high risk over steepened slopes, and operate tourist trolleys at the toe of the potential landslide area. The City must analyze cumulative environmental impacts of connected and reasonably foreseeable actions related to trolley operations and maintenance such as 6th Avenue, Naches River Bridge, and BNSF diamond projects. Segmentation or piecemeal environmental review is barred under case law.

Comments and Concerns Regarding the Operating Agreement.

We have a number of concerns with respect to the *Operation License Agreement*. We will try to highlight a number of the more significant concerns.

To begin, the *Operation License Agreement* contemplates a joint management and financial relationship in which the City bears both legal and financial responsibility for operation of the electric railway system. Financial responsibilities include City funding of work on structures and property exceeding \$1,000; appropriation and funding of reimbursable items set forth on *Exhibit D*; provision of liability insurance subject to reimbursement; and ultimate liability for operations. Agreements to reimburse or indemnify the City by an undercapitalized nonprofit corporation is a recipe for disaster.

Community Development Director has oversight responsibility for annual operation schedules; oversight of museum operation schedules; maintenance funding in excess of \$1,000; budgeting for administrative costs associated with maintenance and operation of the electric railway system and electric railway museum; approval of required maintenance and operation expenditures; and compliance with purchasing policies. *Operation License Agreement* ¶ 8 contains boilerplate language reflecting the City's understanding and agreement that YVT is an independent contractor with regard to the use, operation, promotion and maintenance of the City's electric railway system and electric railway museum. This is contrary to the express terms of the agreement, and it is our opinion

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that the City is entering into a joint venture with a marginally solvent organization that places significant financial risk on the citizens of this community. A similar risk exists with respect to environmental liability, debts and liens, and operational liabilities.

The draft Operation License Agreement authorizes Yakima Valley Trolleys to use, operate, maintain and promote the City's electric railway system and electric railway museum. However, County Superior Court ruled that the trolleys are not a railway or a railroad and instead our tourist attraction. The seasonal tourist excursion trolleys are not railroad transportation under state law definitions. The draft agreement has restrictions for use as a tourist attraction and a tourism promotional activity. Since the system is not a railway, all references to "railway" or "electric railway" should be stricken from the agreement.

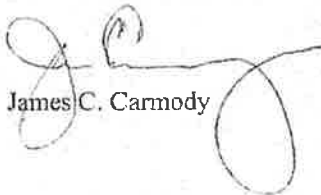
We are concerned about the manner in which liability insurance is implemented. *Operations License Agreement* ¶16. City should not provide YVT with liability, officers, and directors insurance. YVT should acquire insurance for system operations with City named as additional insured. Indemnification provisions are meaningless without adequate and appropriate insurance.

The previous 2020 trolley license agreement expired on December 31, 2024, before City Council took any action to authorize a contract extension or renewal. Thus, during 2025 the trolley group operated without a contract. The prior contract specified that all operation revenues must be used for the system, and for no other purpose; but the latest draft license has a new provision allowing city-owned property to be rented out and the trolley group can use those revenues however they deem appropriate – this may be an unconstitutional lending of property or gift of public funds. Another possible gift of public funds involves the City procuring liability and directors and officers insurance for private persons and entities if the trolley group reimburses the City at less than market value for insurance benefits conferred on private individuals (draft License ¶ 16). This would be incompatible with the trolley association's indemnities in License ¶ 15.

Conclusion.

We appreciate your consideration of our comments on both the environmental review and the substance of the licensing agreement. The environmental deficiencies are patent and the financial and operational structure weak and lacking normal protections for the interest of the City and its citizens. YVT has literally no financial strength or ability to protect the City in the event of even insignificant liability events. We believe that the City Attorney should provide both the City Manager and City Council with written opinion that the process has followed applicable environmental laws and that the proposed *Operating License Agreement* provides substantive and legally supportable protections for the municipality.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.


James C. Carmody

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MEYER, FLUEGGE & TENNEY, P.S.

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September 15, 2025

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Dear City Manager Baker, SEPA Responsible Official Preston, and City Attorney Watkins:

I write on behalf of Yakima Taxpayers for Fiscal Responsibility (YTFR), an unincorporated association. YTFR understands the City Council may soon consider authorizing trolley operations both within and outside of the City of Yakima through an Operating License Agreement. ("Agreement"). *Attachment A*. The Agreement authorizes the use of the City's electric railway system as a tourist attraction running between the City and Selah, Washington.

The City of Yakima ("City" or "Yakima") should postpone taking any action on the "Operation License Agreement" with Yakima Valley Trolleys because: (1) Yakima appears to have no existing authority to operate tourist trolleys outside of Yakima, (2) Yakima is required to conduct SEPA Environmental Review *before* authorizing operations within and outside of Yakima that will impact public safety and the environment in the "High Risk" Selah Gap Hazardous Area, and (3) Yakima taxpayers should be informed of the full costs, direct and indirect, that Yakima will incur to permit, rebuild, and operate the abandoned railroad tracks & wires on the 4-mile Selah Line.

Yakima Valley Trolleys proposes to operate public tourist trolley excursions across a mile-long route in Selah at the base of oversteepened slopes and within the "run-out area" of County-designated "High

Risk" Geologically Hazardous slopes.¹ In 2022, Yakima Valley Trolleys notified the City of Yakima of this "dangerous situation for rail traffic."² Previous Trolley operations have included excavating rockslides at the toe of this potential landslide area. The use of explosives has even been mentioned because rockslides regularly block railroad tracks. The Selah tracks are currently blocked by multiple rockslides. Excavating rocks in the run-out area could destabilize the steep rocky slopes above, triggering more rockslides or a larger landslide. This could be catastrophic to the public riding trolleys and to the BNSF interstate rail line and nearby Yakima River. Rock removal also harms sensitive cultural sites and fish habitat in the adjacent Yakima River.

History of Railroad Tracks in Selah

Starting in 1907 and ending in 1983, Yakima Valley Transportation Company (YVTC) operated an electric interurban railroad between Yakima and Selah. Passenger streetcars operated within Yakima city streets, whereas "interurban" electric railroad cars operated outside Yakima, primarily to transport fruit to the Yakima distribution center from outlying rural orchards in Selah. In 1935, all "interurban" electric passenger service ended and never resumed due to operating costs greatly exceeding income.³ In 1983, Yakima Valley Transportation Company (YVTC) notified Washington State that YVTC was no longer an electric railroad and no longer provided electric freight or passenger service. YVTC also said "tourist trolley cars" or excursions were not part of the railroad's operations.⁴

In a lawsuit against the City of Yakima and the trolley association, the court ruled in 1987 that Yakima's trolleys are "not a railroad" but instead are a "tourist attraction," and a streetcar line is not a railroad.⁵ State law also says streetcars like the trolleys are not a "railroad," and are not "Public Transportation."⁶ The tourist trolleys are not listed on the National Historic Register.⁷

In 1985, all YVTC tracks were fully abandoned, legally and operationally, under Order of the U.S. Interstate Commerce Commission (ICC). The railroad was also abandoned under state law because YVTC gave written "Notice of Intent" to abandon the railroad and actually abandoned use of the tracks and overhead electric power system.⁸ A 1912 license agreement between Northern Pacific Railroad (NP) and YVTC allowed "railroad" operations on NP land (but did not include tourist trolleys); however, when YVTC abandoned the railroad and ceased operations, the unassigned 1912 contract also ended.

The former railroad's rights of way, vehicles, and equipment were donated to Yakima for seasonal tourist trolley excursions and museum. However, the 1985 Quit Claim Deed from YVTC to Yakima did not convey any right-of-way in Selah Gap to Yakima because YVTC did not own the right-of-way in

¹ High Risk Geologic Hazards Map, Yakima County GIS (August 29, 2018)

² Letter from Trolley Association Attorney Paul D. Edmondson submitted to Yakima City Council (June 23, 2022)

³ Johnsen, Kenneth G., *Apple Country Interurban: A History of the Yakima Valley Transportation Company* (Golden West Books, 1979); Johnsen, Kenneth G., *Images of Rail: Yakima Valley Transportation Company* (Arcadia Publishing 2010)

⁴ Letter from President of Yakima Valley Transportation Company to WA Historic Preservation Officer (Nov. 14, 1983)

⁵ Memorandum Opinion, *Congdon Orchards, Inc. v. City of Yakima, Yakima Valley Transportation Co., and Yakima Interurban Lines Association* (86-2-00503-9, April 8, 1987)

⁶ See, e.g., RCW 36.75.010(12) and RCW 81.104.015(4).

⁷ *National Register of Historic Places Inventory—Nomination Form: Yakima Valley Transportation Company*, Prepared June 1983, NPS Received September 18, 1984; Listing Number: 84004012

⁸ *Abandonment of Yakima Valley Transportation Company in Yakima, County, WA* (U.S. Interstate Commerce Commission, Docket No. AB-131, (November 1985)

Selah, which was owned by BNSF Railway.⁹ Yakima does not own the former railroad line north of the Naches River. Landowners north of the river include BNSF, State of Washington, and City of Selah.

Transportation Benefit District (TBD) Funding

HLA Engineering estimated the 2024 cost to rebuild trolley tracks & electric wires is about \$5 Million per mile; the cost to rebuild the 4-mile Selah Line could be \$15 Million to \$20 Million. Under state law, the trolley is not eligible for TBD funding because: (1) the trolley is not a railroad, (2) the trolley is a seasonal tourist attraction, (3) the trolley is not "Public Transportation," (4) the trolley is not a "Transportation Improvement," (5) rebuilding the trolley is not "necessitated by existing or reasonably foreseeable congestion levels," (6) the seasonal trolley will not "alleviate congestion," and (7) the trolley does not otherwise satisfy the criteria in RCW 36.73.020(1).¹⁰

The City of Yakima has invested taxpayer dollars in the Trolley for many years. The City should not invest additional funds in the Tourist Trolleys that do not qualify for transportation funding. The City should not assume responsibility for environmental, cultural resources, and other financial risks and liabilities rightly held by the trolleys. The Trolleys should fully address all legal concerns and explain their financial responsibilities and contributions to their enterprise.

Conclusion

Yakima is required to postpone any action on the Trolley "Operation License Agreement". SEPA requires SEPA review for any proposal which is defined as a "proposed action". WAC 197-11-784. An "action" is defined as any "...new or continuing activity ... entirely or partly financed, assisted, conducted, regulated, *licensed*, or approved by agencies." WAC 197-11-704. The City is required to conduct the SEPA process *before* licensing trolleys to operate on deteriorated/unsafe tracks that will not be usable for the foreseeable future.

Simultaneously, Yakima must also conduct the SEPA process and analyze cumulative impacts *before* working on any trolley-connected projects, such as 6th Avenue, BNSF diamond near River Road, or other degraded/missing segments of the 4-mile Selah line. SEPA requires comprehensive environmental and cultural resource review at the earliest possible stage, before committing to a particular course of action. *King County v. Boundary Review of King County*, 122 Wn.2d 648, 860 P.2d 1024 (1993).

SEPA requires cities to make a threshold determination for any proposal that meets the definition of action. "Under SEPA, the definition of 'action' covers just about everything, and within that category are project and nonproject actions," such as decisions on policies, plans or programs.¹¹ One of the fundamental principles of environmental review law is that when there is evidence that a project under review "will facilitate future action that will result in additional impacts," the impacts of said project must be analyzed simultaneously with those of the proposed future action, and the cumulative impact of these actions must be considered when making a threshold decision under SEPA.¹² Segmented or piecemeal environmental review is not allowed.

⁹ Quit Claim Deed from Yakima Valley Transportation Co., Grantor, to City of Yakima, Grantee (Dec. 19, 1985)

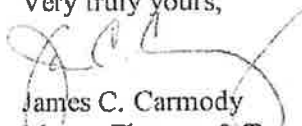
¹⁰ RCW 81.104.015(4); RCW Chapter 36.73; City of Yakima Ordinance 2017-002

¹¹ *King County vs. Friends of Sammamish Valley*, 3 Wn.3d 793 (2024); RCW 43.21C.033(1); WAC 197-11-310(1), -704(2)(b)

¹² *Boehm v. City of Vancouver*, 111 Wash. App. 711, 720 (2002).

Please give advance notice to YTFR of any processes, meetings, decisions, determinations, or public comment opportunities under SEPA, NEPA, TBD, and Section 106 of the National Historic Preservation Act for all trolley-related projects, including 6th Avenue, Naches River Bridge, BNSF diamond crossing, and other connected projects to rebuild or operate trolley-related facilities.

Very truly yours,



James C. Carmody
Meyer, Fluegge & Tenney, P.S.

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ATTACHMENT A

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**OPERATION LICENSE AGREEMENT
BETWEEN THE CITY OF YAKIMA
AND
YAKIMA VALLEY TROLLEYS**

THIS OPERATION LICENSE AGREEMENT (hereinafter "License Agreement") is made and entered into by and between the City of Yakima, a Washington municipal corporation (hereinafter the "City"), and the Yakima Valley Trolleys, a Washington non-profit corporation (hereinafter "YVT").

WHEREAS, YVT desires to operate and use the City's electric railway system as shown in the Exhibits to this Agreement during calendar years 2025 through 2034.

WHEREAS, the City is willing to grant an operation license to YVT to operate the City's electric railway system in accordance with the terms and conditions of this License Agreement.

WHEREAS, the City will provide a Trolley Liaison to attend YVT Board meetings and assist the YVT with agreement compliance and guidance regarding City policies and procedures.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, it is agreed by and between the City and YVT as follows:

1. Use and Operation License.

a. YVT is licensed to use, operate, maintain and promote the City's electric railway system and electric railway museum located at 306 West Pine Street. Said license to use, operate, maintain and promote said system shall include but not be limited to the authority to:

i. Operate, use and promote the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, and other associated equipment and materials. A map of the electric railway system is attached hereto as Exhibit "A" and incorporated herein by this reference. YVT shall provide the Community Development Director, or their designee, with a written operation schedule for each year on or before February 1st of the calendar year, except the calendar year 2025, when the written operation and promotion schedule shall be provided within thirty (30) days of the date YVT signs this Agreement. Updates and additions to the operation schedule should be forwarded to the Community Development Director in a timely manner.

ii. Operate, use and promote the City's electric railway museum located at 306 West Pine Street, Yakima, Washington, including associated exhibits, gift shop, ticket office, and restrooms. A map and legal description of the railway museum site is attached hereto as Exhibit "B" and incorporated herein by this reference. YVT shall provide the Community Development Director, or their designee, with a written museum operation schedule at the same time it provides the operation schedule outlined in section 1a(i) above. Updates and additions to the operation schedule should be forwarded to the Community Development Director in a timely manner, and before any updates in the schedule are implemented.

iii. Store and maintain the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, and other associated equipment and materials. Said electric railway system trolleys, cars, engines, equipment, parts, supplies, tools, machines and other materials will be stored neatly in and upon the subject property located at 306 West Pine

Street, Yakima, Washington.

b. An Inventory of the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, and other associated equipment and materials is attached hereto as Exhibit "C" and incorporated herein by this reference. YVT shall update this inventory as necessary and provide an updated Exhibit to the City to attach to this Agreement. Failure to update the inventory list may be considered a default.

2. Electric Railway System and Museum Use Restricted.

a. Electric Railway System Use Restriction. The operation, use and promotion license granted herein for the City's electric railway system shall be restricted to the use and operation of the electric railway system on a non-profit basis for the transport, benefit, and enjoyment of the public, as an educational resource, as a tourist attraction and a tourism promotional activity, and to activities necessary for the maintenance and operation of the electric railway system.

b. Electric Railway Museum. The operation, use and promotion license granted herein for the City's electric railway museum shall be restricted to the use and operation of the electric railway museum on a non-profit basis for the benefit, education and enjoyment of the public, as a tourist attraction and a tourism promotional activity, and to activities necessary for the care and maintenance of the electric railway museum.

3. Maintenance.

The Trolley system is an asset of the City of Yakima. Any work on a building, within the right-of-way, or improvement to any physical asset associated with the Trolley system that meets the definition of a 'public work' under RCW 39.04 shall be performed in compliance with RCW 39.04 and any other applicable requirements under Washington law. Nothing in this Agreement is intended to expand or limit the definition of a 'public work' beyond what is set forth in RCW 39.04.

a. General Maintenance. In consideration of the license granted herein, YVT assumes responsibility for and agrees to maintain the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, associated equipment and materials and the electric railway museum in good repair and in as clean, neat and orderly manner as reasonably possible. YVT must coordinate all significant general maintenance work with the, Community Development Director, or their designee. Significant general maintenance work shall be defined as any work within the City R/W, work requiring the use of any City funding including the Trolley Fund over \$1000.00, or work with an estimated cost exceeding \$5,000.00. This includes work or additions to a building or structure that is not already present, work on trolley tracks or poles, landscaping improvements not already installed, replacement of track, ties, catenary lines, poles, lighting, and bridge work.

4. **Budget and Expenditures.**

The City has created Fund 162 – Trolley for administration costs associated with maintenance and operation of the electric railway system and electric railway museum. \$10,000 yearly may be available to YVT to provide for overhead costs if appropriated by the City Council, in its sole discretion. YVT shall submit quarterly invoices for administration costs. Certain recurring administration expenditures, mutually agreed upon by the City and YVT and designated herein under Exhibit D, shall be considered routine and shall be approved by the Community Development Director without delay, subject to the availability of funds. Those expenditures from Fund 162 – Trolley not considered routine will be covered under section 4 (b). Failure to submit quarterly invoices may result in non-payment or untimely payment from the City.

a. **Annual Operation and Maintenance Budget.** YVT shall submit a proposed annual budget of expenditures relating to Fund 162 – Trolley to the Community Development Director for the operation and maintenance of the electrical railway system and the electrical railway museum. This proposed budget shall be submitted during the City Council's normal budget preparation cycle in October of the year before the proposed annual budget is to be implemented. YVT will coordinate with the Community Development Director or their designee to provide a budget consistent with City format for timely internal review by the City. The first year of the agreement the budget proposal for 2025 is due to the City by June 30, 2025. Any requests for reimbursement exceeding the Fund 162 amount shall be rejected. YVT is responsible for all expenses in excess of the Fund 162 balance unless otherwise outlined in this Agreement or approved by the City Council.

b. **City Approval Required for Maintenance and Operation Expenditures.** To the extent that YVT requires and seeks funding from the City for any expense and/or costs related to the maintenance and/or operation of the City's electrical railway system and electrical railway museum, beyond those expenditures mutually agreed upon in advance by the YVT and City under Exhibit D, YVT shall seek and obtain approval of the City before incurring the respective expense and/or costs in accordance with the following:

- The Community Development Director or their designee must review and approve all expenses/costs of \$2,500 or less.
- The City Manager or their designee must review and approve all expenses/costs between \$2,500.01 and \$10,000.
- The City Council must review and approve all expenses/costs in excess of \$10,000.
- No expenditure may be made from the trolley fund established under YMC Chapter 3.95 without Community Development Director approval and can only be used for the purposes specified in YMC § 3.95.010.
- Failure to receive approval prior to expenditures may result in expenses not being eligible for reimbursement and/or denial of reimbursement requests.

c. Compliance with City Purchasing Policies. YVT shall comply with applicable City purchasing policies, procedures and instructions when purchasing equipment, materials, and supplies necessary for the operation and maintenance of the electrical railway system with funds provided and/or obtained by the City for trolley purposes. YVT shall work through the Trolley Liaison to purchase all such equipment, materials and supplies purchased with funds provided and/or obtained by the City in the name of the City. Purchasing policies are found online and will be provided upon request to YVT. YVT should consult Purchasing, or the Trolley Liaison, whenever purchasing equipment, materials, and supplies. Failure to follow City purchasing policies will result in denial of reimbursement for expenses.

d. Revenues from Operation of the Electrical Railway System and Electric Railway Museum. Fare revenue derived from the operation of the electrical railway system and electric railway museum shall be used in accordance with YMC §3.95.010 for the acquisition, operation, maintenance and capital improvements of the electrical railway system and electric railway museum and for no other purposes. Should this Agreement be terminated for any reason, any funds obtained prior to termination still held by YVT shall be transferred to the City to be used in accordance with YMC 3.95.010 and this Section.

e. Revenues from Other Sources. Should YVT derive revenue from sources other than from the operation of the electrical railway system and electric railway museum, such as, but not limited to, donations to YVT, gift shop sales, charter fees, special events, or membership dues to YVT, those revenues are solely the property of YVT to be used as YVT deems appropriate for YVT and/or the electrical railway system and electric railway museum.

Yakima Valley Trolleys (YVT) shall obtain written approval from the City of Yakima's Community Development Director prior to initiating contact with potential funding sources or submitting any grant applications or requests for capital improvement funding related to City-owned trolley infrastructure or equipment. This requirement applies specifically to activities involving capital projects. Written approval is not required for routine YVT fundraising activities or events intended to support maintenance and operations, including those at which general donations are accepted.

Safety and Accident Reporting Requirements. When operating and maintaining the electrical railway system and museum under this License Agreement, YVT shall comply with safety and accident reporting requirements of the City of Yakima and any other applicable federal, state and/or local laws, rules, and regulations. YVT shall prepare a Safety Plan within three (3) months of execution of the agreement. The Plan will include how YVT will conduct operations to ensure volunteer and passenger safety as well as reporting accidents to the City. The Plan should be similar to plans in accordance with WAC 488-550-040(4). The Safety Plan shall be approved by the Community Development Director. Failure to operate under an approved Plan may be considered a default.

Notification and Investigation of Accidents. YVT shall be responsible for and shall comply with all notification, reporting and investigation requirements of the approved Safety Plan regarding accident, incident, or unacceptable hazardous conditions as those terms are defined in the Safety Plan, including but not limited to: notifying the City within twenty-four (24) hours of the occurrence of any reportable incident, or the discovery of any unacceptable hazardous condition; and investigating all reportable incidents and unacceptable and issuing a written investigation report to the City within forty-five (45) calendar days after the occurrence of the incident, or discovery of the unacceptable hazardous condition. Failure to comply with this section shall result in termination of this Agreement.

5. Surrender of Property. YVT agrees that at the expiration of this License Agreement, YVT will quit and surrender to the City the electric railway system and electric railway museum. YVT shall surrender the electric railway system and electric railway museum in as good a state

and condition as when received by YVT or as improved thereafter, with the exceptions of ordinary wear and tear, theft, vandalism, natural or manmade disaster, or other circumstances beyond YVT's control. YVT will deliver all keys to said property to the City Community Development Director.

6. **Term.** The term of this License Agreement shall commence on January 1, 2025 and shall terminate at midnight, December 31, 2034, unless sooner terminated by either party in accordance with Section 24 of this License Agreement.

7. **Inspection and Audit.** YVT shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the costs, expenses and revenues of the operation and maintenance of the City's electric railway system and electrical railway museum as licensed under this License Agreement. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the City and/or of the Washington State Auditor. YVT shall make such books, accounts, records, documents and other materials available and shall afford the proper facilities for such inspection and/or audit within forty-eight (48) hours of inspection/audit notification from City representatives and/or the Washington State Auditor. Such books, accounts, records, documents and other materials may be copied by representatives of the City and/or of the Washington State Auditor as part of such an inspection/audit. YVT shall preserve and make available all such books, accounts, records, documents and other materials for a period of at least three (3) years after termination of this License Agreement. In addition, and as a non-profit corporation, YVT shall maintain and make available its tax returns to anyone who desires to review and inspect such tax returns as applicable by IRS law. Upon termination of the agreement, YVT shall provide all tax returns for all years YVT operated under this Operations and Maintenance Agreement.

8. **Independent Contractor Status of YVT.** YVT and the City understand and expressly agree that YVT is an independent contractor with regard to the use, operation, promotion and maintenance of the City's electric railway system and electric railway museum under this License Agreement. No officer, employee, volunteer, and/or agent of YVT shall act on behalf of or represent him or herself as an agent or representative of the City. No officer, employee, volunteer, and/or agent of YVT shall make any statement in the name of or on behalf of the City. YVT, as an independent contractor, assumes the entire responsibility for using, operating, promoting, and maintaining the electric railway system and electric railway museum. YVT and its officers, employees, volunteers, agents and/or subcontractors shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between YVT and the City.

9. **Taxes and Assessments.** YVT shall be solely responsible for compensating its employees, agents, and/or subcontractors and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this License Agreement.

10. **Nondiscrimination Provision.** During the performance of this License Agreement, YVT shall not discriminate in violation of any federal, state, and/or local law and/or regulation on the basis of race, age, color, sex, religion, national origin, creed, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, or termination, rates of pay or other forms of compensation, selection for training, and the provisions of services under this License Agreement.

11. **The Americans with Disabilities Act.** YVT shall comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA), and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations ("WLAD"), with regard to the activities and services provided pursuant to this License Agreement. The ADA and the WLAD provide comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, public transportation, state and local government services, and telecommunications.

12. **Compliance With Law.** YVT shall obtain and maintain all permits and/or licenses from the City, state and/or federal government necessary and/or required to use, operate, promote and maintain the City's electric railway system and electric railway museum under this License Agreement. Further, YVT shall use, operate, promote and maintain the City's electric railway system and electric railway museum under this License Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

13. **Debts and Liens.** YVT shall not permit/allow any lien to attach to the City's electric railway system, electric railway museum and/or any other City property. YVT shall not permit/allow any debt to be imposed on the City as a result of YVT's use, operation, promotion and/or maintenance of the City's electric railway system and electric railway museum under this License Agreement. In the event of any such lien and/or debt, YVT shall immediately take all necessary steps to have the City and City property legally released from said lien and/or debt.

14. **Compliance With Environmental Laws.**

a. YVT represents warrants and agrees that it will use, operate and maintain the City's electric railway system and/or electric railway museum in compliance with all applicable environmental laws. As used in this License Agreement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and any Washington or other comparable local, state, or federal regulation, statute, ordinance and/or law pertaining to the environment or natural resources.

b. Toxic or hazardous substances are not allowed on the subject property without the express written permission of the City and under such terms and conditions as may be specified by the City. For the purposes of this License Agreement, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq. Within thirty (30) days of execution

of this Agreement, YVT shall provide the City with a written list of any substances/materials/products necessary to operate, use and maintain the City's electric railway system and electric railway museum that have specific MSDS storage or use requirements. The City shall notify YVT in writing of the City's approval or rejection of the list of substances/materials/products no later than thirty (30) days after receiving said list. In the event the City's approval of the use of any particular listed substance/material/product is granted, the disposal of such must be done in a legal manner according to applicable laws and regulations by the YVT.

c. YVT agrees to protect, indemnify and hold harmless the City from and against any claims or losses arising out or related to the presence or release of any hazardous substances by YVT while performing this Agreement, except to the extent caused by spilling, generating, handling, disposing, or releasing of hazardous waste or substances, by the City, its agents, employees, or contractors or third parties. YVT may operate, use and store standard products and equipment such as batteries in order to conduct business provided such use is in accordance with all applicable environmental federal, state and local laws, requirements and regulations. YVT agrees to cooperate in any environmental investigations conducted by the City or independent third parties where there is evidence of contamination on the subject property, or where the City is directed to conduct such audit by an agency or agencies having jurisdiction. YVT shall provide the City with notice of any inspections of the subject property, notices of violations, and orders to clean up contamination.

d. Failure to provide this information may result in termination of the agreement per Section 24.

15. General Indemnification and Hold Harmless.

a. YVT shall take all necessary precautions in performing its obligations under this Agreement to prevent injury to persons or property. YVT agrees to release, indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of YVT, or any of YVT's agents or subcontractors, in performance of this Agreement, except for claims caused by the City's sole negligence.

b. Industrial Insurance Act Waiver. It is specifically and expressly understood that YVT waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. YVT's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. YVT shall require that its subcontractors, and anyone directly or indirectly employed or hired by YVT, and anyone for whose acts YVT may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.

c. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of YVT and the City, YVT's liability, including the duty and cost to defend, shall be only to the extent of YVT's negligence.

- d. Nothing in this section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.
 - e. The terms of this section shall survive any expiration or termination of this Agreement.
16. **Liability Insurance.** The City agrees to provide YVT with liability and directors and officers insurance, each with a minimum liability limit of \$2,000,000 combined single limit bodily injury and property damage. Said policy shall be in effect for the duration of this License Agreement. The policy shall name the City, its elected officials, officers, agents, and employees as additional insureds. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
17. **Documents, Records, and Records Retention.**
- a. The records relating to this Agreement shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve YVT of responsibility for performance of this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. YVT shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. Contractor's records relating to this Agreement will be provided to the City upon the City's request.
 - b. YVT shall promptly furnish the City with such information and records which are related to this Agreement as may be requested by the City. Until the expiration of six (6) years after termination of this Agreement, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, YVT shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of YVT's books, documents, papers and records which are related to this Agreement. If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
 - c. All records relating to this Agreement must be made available to the City, and the records relating to this Agreement are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to YVT's responsibilities under this Agreement must be retained by YVT for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
 - d. Nothing in this Agreement shall be interpreted to require YVT to disclose records that are unrelated to the performance of this Agreement (including personnel files or trade secrets that have no direct bearing on the contractual obligations) unless disclosure of such records is specifically required by law.
 - e. The terms of this section shall survive any expiration or termination of this Agreement.
18. **Assignment.** This License Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by YVT to any other person or entity
19. **Waiver of Breach.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this License Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party

agreement compliance and guidance regarding City policies and procedures.

27. **Venue.** The venue for any action to enforce or interpret this License Agreement shall lie in a court of competent jurisdiction that is located in Yakima County, Washington.

28. **Integration.** This written document constitutes the entire License Agreement between the City and YVT and supersedes any and all previous written and/or oral License Agreements between the parties. There are no other oral or written License Agreements between the parties as to the matters covered herein. No changes or additions to this License Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

CITY OF YAKIMA

YAKIMA VALLEY TROLLEYS

By: _____
Victoria Baker, City Manager

By: _____
Ken Johnsen, President of the Board

Date: _____

Date: _____

ATTEST:

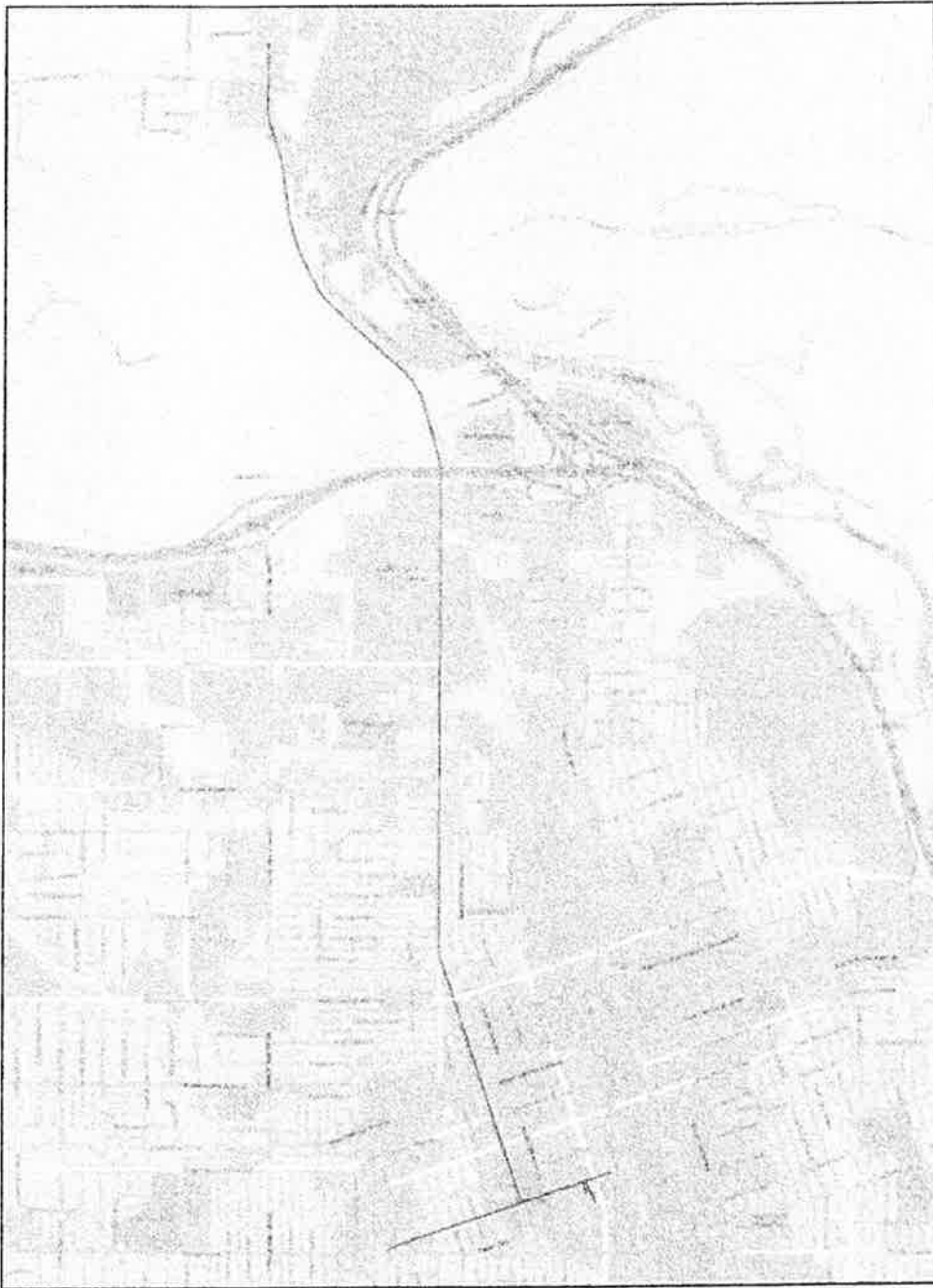
City Clerk

City Contract No. _____

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Exhibit A



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Exhibit B

City of Yakima Property for the Yakima Valley Trolleys (YVT)
Parcel #181324-44465

Yakima County Assessor's Legal Description for this parcel # 181324-44465

County Narrative Description : LUND'S ADD TO NORTH YAKIMA: PT BLK 255 & VAC ALLEY & VAC ST DESC
AS FOL: BEG NE COR SD BLK 255, TH S $71^{\circ} 23' 15''$ W 187 FT, TH S $18^{\circ} 37' 15''$ E 177 FT, TH N $63^{\circ} 37' 15''$ E
51 FT, TH S $18^{\circ} 37' 15''$ E 153.76 FT, TH N $71^{\circ} 23' 15''$ E 138.45 FT TO E LN OF SD BLK 255, TH N
 $18^{\circ} 37' 15''$ W AL SD E LN TO POB



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EXHIBIT "C"

**An inventory of the electric railroad system owned by the City of Yakima
As of January 27, 2025, compiled by Kenneth G. Johnsen.**

Items located on City property which are not owned by the City are not included in this list.

1. Approximately 5 miles of standard gauge track located in the YVT yard, on Pine Street; on North 6th Avenue, in Selah Gap and in Selah.
2. Approximately 5 miles of overhead contact system, portions of which are temporarily removed due to theft or accidental damage.
3. Structures
 - A. Powerhouse
 - B. Car barn
 - C. Oil Shed
 - D. Pegram Truss Bridge at Naches River
4. Locomotives, trolley cars and freight cars
 - A. Master Unit #21, Brill, 1930
 - B. Master Unit #22, Brill, 1930
 - C. Oporto #1776, STCP, 1928
 - D. Oporto #1976, STCP, 1928
 - E. Freight Motor #298, General Electric, 1922
 - F. Line Car #A, Niles Car Company, 1910
 - G. Tank Car U.P. #68130, 1958
 - H. Flatcar YVT #1014, 1928
 - I. Flatcar YVT #1015, 1928
5. Three four-wheel track push cars
6. Motor Vehicles
 - A. Chevrolet YVT #A-6, 1968
 - B. International Harvester YVT #A-7, 1956
 - C. Chevrolet van #Yakima Interurban Trolley Lines
7. Track materials in YVT yard
 - A. Approximately 300 railroad ties
 - B. Approximately 65 33-foot lengths of 60# rail
 - C. Switch points and frogs for approximately 12 turnout switches.
 - D. 9 railroad crossing sign posts
 - E. 20 pallets of tie plates (mostly 60# rail, some 90# rail)
 - F. 9 pallets of fish plates (mostly 60# rail, some 90# rail)
 - G. 7 pallets of other miscellaneous track parts H
 - H. 2 Nelson in-street switch machines
 - I. 13 standard YVT switch machines
 - J. 3 barrels of railroad spikes
 - K. 1 barrel of track bolts
 - L. 2 pair truck wheelsets (enough for one truck)
 - M. 2 couplers and other miscellaneous railcar parts
 - N. 5 5000-foot spools of guy wire
 - O. 3 3000-foot spools of aluminum feeder wire (damaged by vandals)
 - P. 6 spools messenger wire

- 8. Car barn main room
 - A. Motor/generator set #3
 - B. Two wheel grinder
 - C. Belt drive machine shop equipment
 - 1. General Electric motor
 - 2. Halldie Machinery Company lathe
 - 3. National Machinery Company milling machine
 - 4. Halldie Machinery Company milling machine
 - 5. Cincinnati Shaper Company 20-inch shaper
 - D. Press
 - E. 5 spare trolley poles with harps and wheels
 - F. 57 mast arm assemblies
- 9. Car barn forge room
 - A. Blacksmith's forge and hood
 - B. Assorted blacksmith's tools
 - C. P & H arc welder on highway wheels
- 10. Car barn Office
 - A. Desk
 - B. Table and 10 folding chairs
 - C. Air conditioner
- 11. Car barn tool room
 - A. Assorted hand tools (drills, wrenches, hammers, screwdrivers, saws, etc.)
 - B. Assorted spare parts for trolleys
 - C. Assorted spare parts for overhead wire
 - D. Assorted railroad crossing signs
- 12. Car barn sand room
 - A. Assorted outdoor tools (shovels, rakes, picks, bars, brooms, etc.)
 - B. 6 track jacks
 - C. Gas powered rail saw
 - D. Rail drill
 - E. Assorted road work signs
 - F. 3 large cones
 - G. Miscellaneous other materials and parts
- 13. Powerhouse main room
 - A. Motor/generator #1
 - B. Motor/generator #2
 - C. Switching equipment for motor/generators #1 and #2
 - D. Rectifier #1
 - E. Rectifier #2
 - F. Rectifier #3
 - G. Dynamic brake unit #3
 - H. Automatic voltage sensing unit
 - I. Cabinet with spare parts for rectifiers
 - J. YVT McKee waiting-station

- K. 2 donation boxes
- L. 2 rows of five theater seats
- M. Television and VCR on portable dolly
- N. Bathroom with toilet, 1911 sink and inline water heater.

14. Powerhouse gift shop

All items, display cases and cash register are Yakima Valley Trolleys property.

15. Powerhouse vault

Storage for Yakima Valley Trolleys' records and proprietary items.

16. Powerhouse office

- A. Desk and chair
- B. Typewriter
- C. Adding machine
- D. Mimeograph machine
- E. 4 file cabinets
- F. YVT Telephone

17. Fuel shed

- A. Assorted lubricants for trolleys
- B. Assorted paints
- C. Electric gasoline pump
- D. Fuel for power car

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Exhibit D

The following items are mutually agreed upon by the City and YVT to be recurring administration expenditures which YVT shall routinely submit to the City for prompt reimbursement from Fund 162 – Trolley, subject to availability of funds. Backup material for all reimbursement items must be provided.

1. Gas utility bills
2. Electric utility bills
3. Water and sewer utility bills
4. Solid waste utility bills
5. Phone, internet, and telecommunications bills

BEFORE THE DEPARTMENT OF PUBLIC WORKS OF WASHINGTON
Division of Transportation

In re Electric Railway Service of
YAKIMA VALLEY TRANSPORTATION COMPANY
in Yakima County, State of Washington

Cause No. 6832

FINDINGS OF FACT AND ORDER GRANT-
ING DISCONTINUANCE OF SERVICE

This matter came on regularly for hearing at Olympia, Washington, on the 8th day of March, 1935, before W. D. Lane, Supervisor of Transportation, and W. W. Chamberlain, Examiner, and at Yakima, Washington, on the 1st day of April, 1935, before W. D. Lane, Supervisor of Transportation, pursuant to notice duly given.

The parties were represented as follows:

APPLICANT

By F. T. Merritt, Att'y,
Hayden, Merritt, Summers & Bucey,
540 Central Bldg., Seattle, Wash.;
Arthur A. Murphy, Pres., W. S.
Howard, Vice Pres. and Sup't, and
Geo. W. Beeman, Sec'y.

PROTESTANTS:

At hearing held March 8 - none
At hearing held April 1:

LEE C. DELLE and L. D. BUCE

By Lee C. Delle, Att'y,
405-6 Miller Building,
Yakima, Washington.

JOHN D. MORRISSEY

By Self,
Route 2, Selah, Washington.

Witnesses were sworn and examined, documentary evidence was introduced, and the Department, being duly advised in the premises, makes and enters the following

FINDINGS OF FACT

The above entitled matter was heard upon the application of the Yakima Valley Transportation Company to discontinue interurban passenger service on the Ahtanum-Harwood and Selah-Speyers lines. Petitioner is the holder of a franchise for this service from Yakima County, dated October 7, 1907, and is now operating on its said Ahtanum-Harwood line on a regular schedule for the carrying of passengers, mail and express two round trips per day between Wiley City and Henryborg on the one hand and the intersection of Sixth Street and Yakima Avenue in the City of Yakima on the other, and upon its Selah-Speyers line is operating on a regular schedule for the carriage of passengers, mail and express two round trips per day between Speyers and the intersection of Sixth Street and Yakima Avenue in the City of Yakima.

We find that due to the establishment of new roads, the improvement and paving of roads in Yakima County, the increased use of private automobiles, and other causes, the number of passengers and the volume of mail and express being transported by applicant on said Ahtanum-Harwood and Selah-Speyers lines are, and for a long period of time have been, very small, and the gross revenues derived from the operation of said lines are, and for a long period of time have been, less than the "out of pocket cost" of operation.

We further find that for the same reasons which have caused a decline in the gross revenues of applicant, there is no reasonable prospect of any sub-

DOC. JUNE 1935 #

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stantial increase of revenue in the future, and that substantial losses from passenger operation will continue; that the revenues derived from said passenger, mail and express service do not justify or require continuance of the operation, and that the continuance of such service is not required by public convenience and necessity.

We further find that the County Commissioners of Yakima County after a hearing on December 20, 1934, upon due public notice, entered an order on December 21, 1934, authorizing discontinuance of passenger, mail and express service, and amending applicant's franchise accordingly.

At the hearing in Yakima only three witnesses appeared to protest against the granting of the application, and of these only two use the transportation, L. D. Luce and Agnes Stever. They need the service, and are victims of changed conditions in transportation. The revenues derived from the carrying of passengers on the lines mentioned do not justify the Department in requiring the service to be continued.

O R D E R

WHEREFORE, IT IS ORDERED That Yakima Valley Transportation Company, a corporation, be, and hereby is, authorized to discontinue interurban passenger, mail and express service on its Ahtanum-Harwood and Selah-Speyers lines as prayed for in its application.

Dated at Olympia, Washington, *Dec 21 1934*

DEPARTMENT OF PUBLIC WORKS OF WASHINGTON

BY

E. K. Murray
Director

W. H. Hall
Supervisor of Transportation

W. H. Hall
Supervisor of Public Utilities

WDL/Mc

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1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250
(360)664-1257 or (360)664-1100
Fax: (360)586-1150
Web: www.wutc.wa.gov
E-mail: records@utc.wa.gov

TR-072009

GRADE CROSSING PROTECTIVE FUND APPLICATION FOR FUNDING

The Washington Utilities and Transportation Commission (commission), through its Grade Crossing Protective Fund (GCPF), funds projects that eliminate or mitigate public safety hazards at railroad crossings and along railroad rights-of-way in Washington State. Any public, private, or non-profit entity may submit an application to the commission for GCPF monies.

Please complete and submit the following information as part of the application process:

Applicant Information

Applicant Name: Dick Zais, City Manager
Organization: City of Yakima
Address: 129 North Second Street, Yakima, WA 98901
Phone: (509) 575-6040
E-mail:
Fax: (509) 576-6335

Please list all other companies, organizations or state or local agencies that may be involved in implementing this proposal and the contact name, address and phone number for each.

Yakima Valley Trolleys
Kenneth G. Johnson
P.O. Box 796
Yakima, WA 98907-0796
yakimavalleytrolleys@hotmail.com

Burlington Northern Santa Fe Railroad Company
Daniel MacDonald, P.E.
Managing Engineer - Seattle
2454 Occidental Avenue South, Suite 1_A
Seattle, WA 98134
(206) 625-6150, Fax (206) 625-6115
daniel.macdonald@bnsf.com

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Grade Crossing Protective Fund Application Form

Project Information

1. *Provide a detailed summary of the hazard being addressed. Include:*
 - *Any information about accidents or incidents at the site.*
 - *Photographs, drawings or other materials that supports the application.*

Currently, there are only two pedestrian crossing facilities for crossing the Naches River at the northern city limits of the City of Yakima. One is located at the eastern city limits (I-82) and the other is at the western city limits (Powerhouse Road). Due to this lack of pedestrian facilities, and despite "No Trespassing" signs, pedestrians occasionally use the BNSF railroad bridge to cross the Naches River. On July 12, 2007, a man and woman who were crossing the Naches River on the railroad bridge were struck by a passing train and seriously injured.

On several occasions recently, railroad police hired by BNSF have had to remove trespassers from the railroad property in this vicinity.

2. *Provide a detailed description of the proposed project and explain how it will eliminate or mitigate the hazard. Include any drawings or construction plans for the proposed project.*

This project will construct six-foot chain link fence to impede pedestrian and motor vehicle trespass onto BNSF property in the vicinity of the Naches River Bridge. As part of the William O. Douglas Trail project, a pedestrian pathway is planned to be constructed across the trolley bridge within the next couple of years. Fencing as shown on the attached drawing would deter pedestrians from accessing the railroad bridge. The fence would begin where Gordon Road crosses underneath the railroad tracks, then heads west approximately 150 feet across the trolley tracks to approximately 8-feet west of the trolley tracks, then head in a northwesterly direction parallel to the trolley tracks for approximately 670 feet, then make a 90 degree turn across the trolley tracks, then head in a northeasterly direction for approximately 70 feet to end adjacent to the BNSF south bridge abutment. At both locations where the fence crosses the trolley tracks, 20-foot gates will be installed. The fencing will continue east of the BNSF bridge for approximately 150 feet parallel to the Greenway Path.

In addition to improving safety, this fencing project may reduce the railroad's requirement for police enforcement.

3. *Provide cost estimates. Include:*
 - *Total costs of the project.*
 - *Names of parties contributing to the project and the amount each is contributing.*

Total project costs are estimated to be \$37,000. The City is requesting a grant of \$20,000 toward this total from WUTC.

Grade Crossing Protective Fund Application Form

4. *Provide the name of the party responsible for long-term maintenance.*
The City of Yakima and/or the Yakima Greenway Foundation will provide longterm maintenance of the fence.
5. *Provide an estimated timeline of project, if approved.*
Weather permitting; the project will be completed this fall. If not, the project will be completed next spring
6. *Provide a description of how the project's success would be measured.*
Success of this project can be measured by demonstrating a decrease in trespass incidents and pedestrian accidents on the BNSF Bridge.
7. *Provide any other information the applicant believes would be useful to the commission in considering the project.*
At several recent meetings, BNSF personnel have expressed their encouragement and approval of our plans to channel pedestrians away from railroad property and to reduce trespass by means of fencing.
8. *If the project involves any construction, modification or demolition on a railroad right-of-way, complete the attached Railroad Commitment form. This includes fencing, gates or other structures located near enough to the tracks to be on the railroad right-of-way, modification to a grade crossing or any other project that involves railroad property or rights-of-way.*
See accompanying email from BNSF engineer Daniel MacDonald expressing the railroad's concurrence with this project.

Submitting the Application

After completing the GCPF application, please send the original to:
Washington Utilities and Transportation Commission
Attention: Grade Crossing Protective Fund
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

A signed application may be filed electronically at records@utc.wa.gov. When filing electronically, please specify "Grade Crossing Protective Fund" in the subject line.

Assistance

For questions or assistance, please contact:

- Kathy Hunter at (360)664-1257 or by e-mail at khunter@utc.wa.gov.
- David Pratt at (360)664-1100 or by e-mail at dpratt@utc.wa.gov.

Railroad Commitment
TR-072009

The undersigned represents the Railroad Company in the GCPF application described as (enter a brief description):

The City of Yakima has applied for GCPF funds to erect fencing for trespass abatement purposes. The City's trolley bridge and the adjacent BNSF Railway bridge cross the Naches River at the northern end of Yakima City limits. See attached photos for location of fencing. It is believed the BNSF has a 200 ft. right-of-way at this location and much of the fencing would be on that right-of-way. The City of Yakima and/or the Yakima Greenway Foundation will provide long-term maintenance of the fence.

We have reviewed the application and are satisfied the conditions are the same as described by the applicant in this matter. We agree to allow construction, modification or demolition on a railroad right-of-way as described in the application.

See notes below.

John Li

Printed name of Railroad Representative

[Signature]

Signature of Railroad Representative

Manager, Public Projects

Title

206 625 6146

Phone

john.li@bnsf.com

E-mail

Date: 4/21/08

Notes: BNSF supports this application for safety improvements. The final design and location of the fencing will need to be approved by BNSF prior to its installation. The city will also need to obtain a permit from BNSF with current indemnity language and insurance limits and with a 30-day cancellation clause, if the fencing would be on BNSF's Right-of-Way.

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COMMISSION

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From: MacDonald, Dannel
To: Wayenberg, Karen
Cc: Polnick, Bruce K; Assoc. David W
Subject: RE: Yakima, WA - UTC Grant Application
Date: Friday, October 05, 2007 3:24:51 PM

Ms. Wayenberg,

Thank you for the opportunity to review the City of Yakima's UTC GCPF application. BNSF supports this application for safety improvements. The final design and location of the fencing will need to be approved by BNSF prior to its installation. We look forward to working with the City of Yakima address this safety concern.

Please contact me if you need additional information regarding BNSF's participation. Again, we look forward to working with the City on this issue.

Respectfully,

Dan

Dannel MacDonald, P.E.
Manager Engineering - Seattle
BNSF Railway Company
2454 Occidental Avenue South, Suite 1A
Seattle, WA 98134
Office: (206) 625-6150
Fax: (206) 625-6115
dannel.macdonald@bnsf.com

From: Wayenberg, Karen [mailto:kwayenbe@ci.yakima.wa.us]
Sent: Friday, October 05, 2007 12:53 PM
To: MacDonald, Dannel
Subject: RE: Yakima, WA - UTC Grant Application

Thanks for reviewing our application and the page requiring BNSF signature. Feel free to call me or reply to this email.

From: MacDonald, Dannel [mailto:Dannel.MacDonald@BNSF.com]
Sent: Friday, October 05, 2007 12:47 PM
To: Wayenberg, Karen
Subject: Yakima, WA - UTC Grant Application

Ms. Wayenberg,

With reference to our conversation this afternoon, my contact information is following. I look forward to reviewing this application.

Respectfully,

Dan

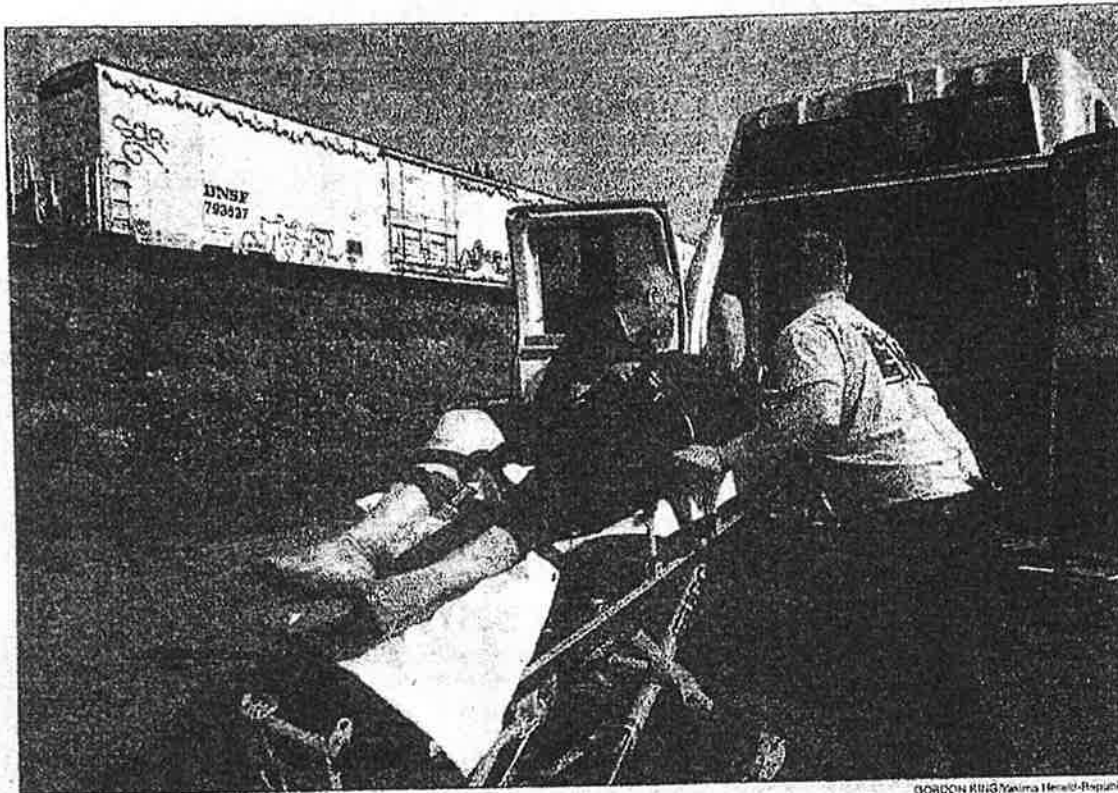
Dannel MacDonald, P.E.

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HOME FRONT

Yakima Herald-Republic
Friday, July 13, 2007



GORDON KING/Yakima Herald-Republic

A woman is placed in an ambulance after nearly being struck by a train near Berglund Lake in Yakima on Thursday. She was injured when she was thrown off the tracks by a companion as the train approached.

Man hit by train after saving companion

By RNO ANTUNE
YAKIMA HERALD-REPUBLIC

A man was struck by a train Thursday morning after Yakima police said he saved a woman moments earlier by throwing her from a trestle as the train bore down on them.

The man, who has not been identified, suffered serious injuries and was taken to Seattle's Harborview Medical Center.

The two were among four people attempting to walk across a railroad bridge over the Naches River shortly after 8 a.m.

Although two of the men reached safety, the woman fell on the tracks, police said. She was helped to her feet by the third

He tosses woman from the tracks

man, who attempted to get them both to safety. But he ended up throwing her down a 10 to 15 foot embankment moments before being struck, police said.

The crew of the train, an east-bound Yakima day-switcher returning from Ellensburg with two locomotives and two refrigerated boxcars of corn, tried to warn the group by sounding the horn and then applying emergency brakes, said Burlington Northern Santa Fe spokesman Gus Melonas.

The train had slowed from 35 mph to between 10 and 15 mph when it struck the man, he said.

"This is an unfortunate situ-

ation," he said. "But this time of year we see an increase in trespassing situations."

"People take shortcuts and risks often by crossing railroad property and we encourage the public to use designated areas."

Yakima police initially said the man may have suffered back injuries. Authorities initially said it appeared the woman, who was also not identified, broke a leg when she landed on rocks below the trestle.

Melonas later said she suffered only cuts and bruises. There was no immediate word on their conditions. Although Yakima police



T.J. MULLEN/Yakima Herald-Republic

handled the initial investigation, it has been handed off to BNSF investigators.

Melonas said nine people have been killed on railroads this year in Washington state.

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Gra

'No doubt he saved my life'

Train encounter broke
victim's leg, pelvis

By ROD ANTONI
YAKIMA HERALD-REPUBLIC

As they crossed the bridge over the Naches River, Lisa Boitano was telling her three friends how cool it would be to see a passing train from up close.

That's when they saw the locomotive bearing down.

From her hospital bed Friday, Boitano recalled her friend Mark Brown's reaction.

"He said, 'You might get your chance — run.'"

But as they ran, Boitano fell, and her right leg slipped and became stuck between the wooden ties.

"I was freaking out and tried to pull myself up," she said. "But Mark came up behind me, grabbed both arms and pulled me out."

"No doubt he saved my life."

As the two prepared to leap off the tracks to an embankment about 10 to 15 feet below the tracks, they were struck.

"I felt the train hit my lower back, but he got the full force of it," said 21-year-old Boitano.

The impact threw them about 20 feet into the rocks below. Boitano said she broke her nose and fractured her right leg and pelvis. But then she looked up she saw that Brown, or Green as he is known to his friends, was hurt much worse.

"It was the scariest thing I've ever seen. Blood was everywhere," she said. "I kept saying, 'Green, don't die. Green, don't die. Wake up, wake up.'"

TRAIN

Continued from Page 1A

The crew of the train, an eastbound Yakima day-switcher returning from Ellensburg with two locomotives and two boxcars, spotted the group and began sounding the horn and applying emergency brakes, which slowed the train from 35 to about 10 to 15 mph, Burlington Northern Santa Fe spokesman Gus Melonas said Thursday.

Boitano said that the horn came too late — the train was almost on them when it sounded. And while braking probably saved their lives, she had no idea at the time that the train had slowed at all.

"It sure as hell didn't feel like it was going 15 mph when it hit us," she said.

Although Melonas said that technically the four were trespassing on railroad property, he did not say whether BNSF would pursue charges.

Boitano said she and her friends did not know they were

trespassing.

All she does know is that Brown, a man whom she described as being like a brother to her for the past four to five years, was willing to sacrifice himself to save her. The two met while she was a teenager living on the streets and have been close friends ever since.

"I would have been stuck in the tracks if he hadn't helped me out," she said. "He's just a wonderful person."

• Rod Antoni can be reached at 577-7028 or rantoni@yakimaherald.com.

he is now at Yakima Memorial Hospital. Brown, 26, was taken to Seattle's Harborview Medical Center, where he was listed in serious condition after undergoing surgery Friday.

Boitano said doctors there told her he suffered multiple injuries, including two broken legs, a shattered pelvis, a broken jaw and a broken arm.

"He would have been okay if he had just jumped, if he hadn't stopped to help me," she said.

Earlier that morning, the four had watched the sunrise from the ridge between Yakima and Selah. They were walking the tracks back to Yakima, and were crossing the bridge shortly after 8 a.m.

Boitano said two of her friends had nearly reached the end of the bridge; she and Brown were only about halfway across.

SEE TRAIN PAGE 8A

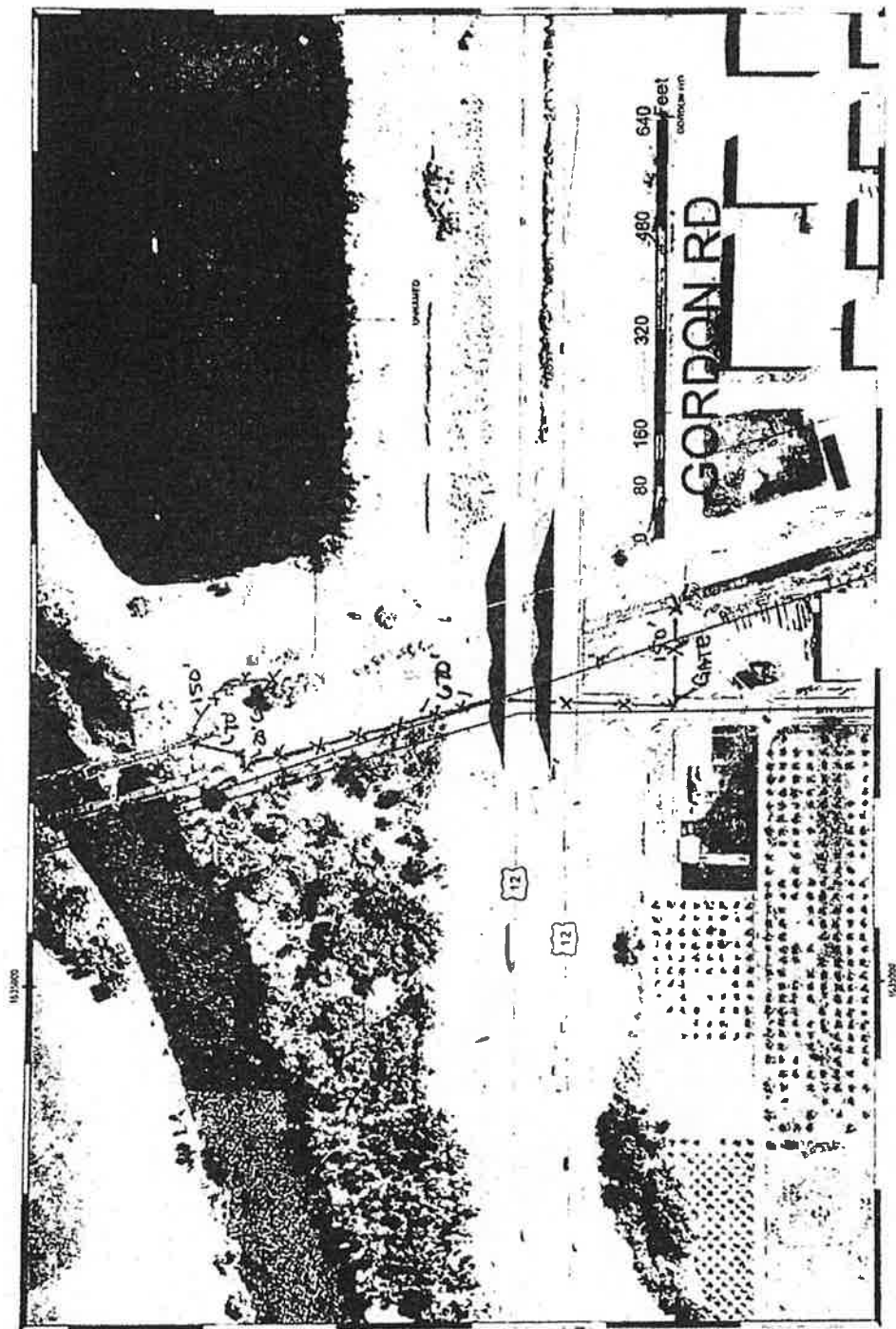


SARA BETTYS/Yakima Herald-Republic

Lisa Boitano recovers in Yakima Valley Memorial Hospital on Friday, after being hit by a train while she and three others were crossing the trestle over the Naches River.

DOC. INDEX #

D-3



TR-072009

Boston, Bob (UTC)

From: Sheffield, Brett [bsheffie@ci.yakima.wa.us]
Sent: Tuesday, November 04, 2008 11:59 AM
To: Boston, Bob (UTC)
Subject: Grade Crossing Protective Fund Grant
Attachments: YVT Fence.pdf

Bob,

As we have discussed, part of the William O. Douglas Trail will include a pathway across the Trolley Bridge to allow pedestrians access across the Naches River. I believe that the description in the original application should have been modified to read like the following:

This project will construct six-foot chain link fence to impede pedestrian and motor vehicle trespass onto BNSF property in the vicinity of the Naches River Bridge. As part of the William O. Douglas Trail project, a pedestrian pathway is planned to be constructed across the trolley bridge within the next couple of years. Fencing as shown on the attached drawing would deter pedestrians from accessing the railroad bridge. The fence would begin where Gordon Road crosses underneath the railroad tracks, then heads west approximately 150 feet across the trolley tracks to approximately 8-feet west of the trolley tracks, then head in a northwesterly direction parallel to the trolley tracks for approximately 670 feet, then make a 90 degree turn across the trolley tracks, then head in a northeasterly direction for approximately 70 feet to end adjacent to the BNSF south bridge abutment. At both locations where the fence crosses the trolley tracks, 20-foot gates will be installed. The fencing will continue east of the BNSF bridge for approximately 150 feet parallel to the Greenway Path.

In addition to improving safety, this fencing project may reduce the railroad's requirement for police enforcement.

I have also attached a drawing showing the proposed fencing project. If you have any questions or require additional information, please don't hesitate to contact me. Thanks for your help.

Brett H. Sheffield, P.E.
Chief Engineer
City of Yakima
PH. (509) 576-6797
Fax (509) 576-6305



STATE OF WASHINGTON

DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

1083 S. Capitol Way, Suite 108 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

January 29, 2008

Mr. Trent de Boer
Archaeologist
WSDOT, Highways & Local Programs
PO Box 47390
Olympia, WA 98504-7332

RECEIVED
FEB 04 2008
CITY OF YAKIMA
PLANNING DIV.

In future correspondence please refer to:

Log: 010207-42-FHWA
Property: William O. Douglas Trail, 6th Ave Greenway Interconnect, Fed Aid # STPE-1485(020)
Re: Determined Eligible

Dear Mr. de Boer:

Thank you for contacting our office. I have reviewed the materials you provided to our office and we concur with your professional opinion that the following historic properties are eligible or listed on to the National Register of Historic Places:

- YVTC—Naches River Bridge
- YVTC—Trolley line between Yakima and Selah
- YVTC—Car Barn
- YVTC—Stone shed
- YVTC—Substation

I also concur with your professional opinion that the undertaking, as proposed, will not adversely affect the Yakima Valley Transportation Company Historic District or the YVTC—Naches River Bridge.

I would appreciate receiving any correspondence or comments from concerned tribes or other parties that you receive as you consult under the requirements of 36CFR800.4(a)(4) and the survey report when it is available. These comments are based on the information available at the time of this review and on behalf of the State Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations 36CFR800.

Sincerely,

Russell Holter
Project Compliance Reviewer
Russell.Holter@dahp.wa.gov

Cc: Matthew Sterner (DAHP)

Vaughn McBride (Yakima)



DOO: INDEX 28

D-3



September 14, 2005

Yakima Valley Conference of Governments
6 South 2nd Street, Suite 605
Yakima, Washington 98901

Subject: Letter of Support, Transportation Enhancement Grant Application:
William O. Douglas Trail: Pathway to Greenway Interconnect

Dear Enhancement Advisory Committee:

Please accept this letter of support from the Washington Trust for Historic Preservation (the "Trust") for the William O. Douglas Trail Foundation's Transportation Enhancement Grant Application for its William O. Douglas Trail: Pathway to Greenway Interconnect project.

The Washington Trust for Historic Preservation is a statewide, tax exempt 501(c) 3 non-profit organization founded in 1976 to safeguard Washington's historic places through advocacy, education, stewardship and collaboration. We work to be an effective problem-solver when local preservationists need our help on issues involving historic resources.

The proposal to build two new pathways for pedestrians and bicyclists—one on 6th Avenue (near the trolley line) from "I" Street to the Yakima Greenway and the other on the historic Naches River Bridge, demonstrates local and regional commitment to multi-modal transportation. The two pathways will provide important links to the William O. Douglas Trail and to the Yakima Valley Transportation Company Electric Railway, the country's only intact, ca. 1910, continuously operating, interurban electric railway. Any work on the historic Naches River Bridge should respect the integrity of the bridge's original design and we believe the proposed pathway will accomplish this by using the Secretary of the Interior's Standards for Rehabilitation.

Sincerely,

Mary Thompson
Interim Executive Director

Naches River Bridge Repair Project for Seasonal Tourist and Sightseeing

Trolleys is Not Eligible for STIP Inclusion (STIP ID WA-15913)

Summary Statement:

A seasonal, non-ADA-accessible tourist trolley that operates on summer weekends and holidays does not provide continuous or functional mobility and therefore does not qualify as "*transportation*" or "*public transportation*" for purposes of inclusion in the State Transportation Improvement Program (STIP). Federal and state planning statutes emphasize mobility, continuity, accessibility, and performance outcomes. Because the service is seasonal, non-accessible, and oriented toward tourism and sightseeing rather than mobility, it fails the statutory and regulatory definitions of transportation, is excluded under RCW 81.104.015(4), and would divert limited transportation funds from projects that advance essential, year-round mobility goals.

Background Information:

The Yakima Valley Transportation Company operated an electric railroad between 1907 and 1983 when it ceased operations and abandoned its tracks. The City of Yakima plans to renovate historic railroad tracks/bridge and then operate tourist and sightseeing trolley excursions on summer weekends using the abandoned railroad tracks on the Selah Line and across the Naches River Bridge.

The City of Yakima proposes to license Yakima Valley Trolleys to operate these seasonal tourist trolley excursions that are "*scenic*" but restricting the use to trolley rides "*as a tourist attraction and a tourist promotion activity.*" Yakima Valley Trolleys' website says: "*Enjoy a charming ride through the picturesque Selah Gap and into downtown Selah. This route offers stunning river and valley views!*" The summer weekend tourist trolleys will not use the

bridge on more than 90% of the days in a year. Yakima Valley Trolleys are not part of the Yakima City Transit system.

The Naches River Bridge Repair project is intended to enable scenic tourist trolley excursions across the currently closed bridge. These tourist trolley excursions were not part of historic railroad operations. Contrary to Yakima's application federal funding, the more modern Yakima Valley Trolleys are not listed on the National Historic Register. Yakima County Superior Court ruled that tourist trolleys are not a "*railroad*" but instead are a "*tourist attraction*." State law says seasonal tourist service is not "*public transportation*." Federal law says sightseeing tourist trolleys and charters are not "*public transportation*," which requires "*regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income.*"

The Naches River Bridge Repair project currently excludes ADA access and excludes pedestrian access, notwithstanding prior federal and state grant commitments by Yakima to allow ADA and pedestrian bridge access. Using previous federal and state "*multimodal*" funds, Yakima contracted with a licensed professional structural engineer to design safe ADA and pedestrian access, but the current proposal excludes all public bridge access except for summer weekend tourist trolleys.

Moreover, the current proposal conflicts with a WA Utilities and Transportation Commission (UTC) Order and grant commitments providing for safety fencing to block pedestrians from crossing the nearby BNSF high-speed railroad bridge and instead to divert pedestrians to the safe City shared-use bridge walkway. These public safety measures were approved by BNSF Railway, as a party to the UTC Order. The current proposal also conflicts with Transportation Alternatives mobility policies to enhance (and not reduce) equitable, non-motorized pedestrian and ADA access to historic transportation facilities.

Therefore, the current Naches River Bridge Project is not eligible for inclusion on the STIP or local TIPs. But the project would be eligible for STIP inclusion if it is revised to comply with the UTC Order and fulfill prior grant commitments by including ADA and pedestrian bridge accessibility.

Notes:

1. Lack of Mobility Purpose

- Seasonal tourist trolleys primarily provide sightseeing, not functional mobility.
- Federal and state planning rules require projects to advance mobility for people and goods (23 C.F.R. § 450.104; 49 U.S.C. § 5302).
- NTD/FTA explicitly excludes sightseeing services from public transportation reporting.
- Washington RCW 47.01.330 and the Washington Transportation Plan emphasize mobility as a core planning goal.

2. Lack of Regularity and Continuity

- Operates on summer weekends/holidays → no year-round service other than isolated private charters.
- STIP and MPO/RTPO planning prioritize regular, continuing services.
- Seasonal-only operation fails continuity/mobility requirements (23 U.S.C. § 134(c); 23 C.F.R. § 450.200).

3. State Law Exclusion

- RCW 81.104.015: "Rail fixed guideway public transportation system ... does not include a system that is not public transportation, such as seasonal, tourist, or intraterminal service."
- Seasonal tourist trolleys are therefore excluded under Washington statute.

4. ADA Accessibility Concerns

- Federal STIP projects must meet ADA requirements (42 U.S.C. § 12141; 49 C.F.R. Part 37).
- Non-ADA-accessible trolleys (e.g., trolley with steep, narrow stairs only) cannot serve all potential riders, failing accessibility standards.

5. Inequitable Use of Transportation Funds

- STIP funds prioritize projects that provide inclusive, year-round mobility.
- Seasonal sightseeing trolleys do not meet this public purpose.

6. Precedent / Administrative Consistency

- WSDOT and FHWA STIP typically include trolleys/streetcars only when year-round, mobility-oriented, ADA-compliant, and integrated with the transit network.
- Seasonal tourist trolleys do not meet these criteria.

7. Failure to Advance STIP Performance Targets

- STIP projects must support federal performance targets (safety, congestion, accessibility, environmental).
- Seasonal tourist trolleys provide negligible mobility impact and do not advance measurable performance objectives.

Street, Yakima, Washington.

b. An inventory of the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, and other associated equipment and materials is attached hereto as Exhibit "C" and incorporated herein by this reference. YVT shall update this inventory as necessary and provide an updated Exhibit to the City to attach to this Agreement. Failure to update the inventory list may be considered a default.

2. Electric Railway System and Museum Use Restricted.

a. Electric Railway System Use Restriction. The operation, use and promotion license granted herein for the City's electric railway system shall be restricted to the use and operation of the electric railway system on a non-profit basis for the transport, benefit, and enjoyment of the public, as an educational resource, as a tourist attraction and a tourism promotional activity, and to activities necessary for the maintenance and operation of the electric railway system.

b. Electric Railway Museum. The operation, use and promotion license granted herein for the City's electric railway museum shall be restricted to the use and operation of the electric railway museum on a non-profit basis for the benefit, education and enjoyment of the public, as a tourist attraction and a tourism promotional activity, and to activities necessary for the care and maintenance of the electric railway museum.

3. Maintenance.

The Trolley system is an asset of the City of Yakima. Any work on a building, within the right-of-way, or improvement to any physical asset associated with the Trolley system that meets the definition of a 'public work' under RCW 39.04 shall be performed in compliance with RCW 39.04 and any other applicable requirements under Washington law. Nothing in this Agreement is intended to expand or limit the definition of a 'public work' beyond what is set forth in RCW 39.04.

a. General Maintenance. In consideration of the license granted herein, YVT assumes responsibility for and agrees to maintain the City's electric railway system, including trolley cars, engines, way cars, associated railway rolling stock, and electric railway system parts, overhead wiring, track, supplies, tools, machines, associated equipment and materials and the electric railway museum in good repair and in as clean, neat and orderly manner as reasonably possible. YVT must coordinate all significant general maintenance work with the, Community Development Director, or their designee. Significant general maintenance work shall be defined as any work within the City R/W, work requiring the use of any City funding including the Trolley Fund over \$1000.00, or work with an estimated cost exceeding \$5,000.00. This includes work or additions to a building or structure that is not already present, work on trolley tracks or poles, landscaping improvements not already installed, replacement of track, ties, catenary lines, poles, lighting, and bridge work.