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April 15, 2019

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By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
April 15, 2019
Part of
Public Record

Re: Docket No. AB-1270, *Port of Benton County, WA -- Adverse Discontinuance of Rail Service -- Tri-City Railroad Company, LLC*

Dear Ms. Brown:

Hereby transmitted is a Reply In Opposition To Application For Adverse Discontinuance for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Tri-City Railroad Company, LLC

TMcF:kl:1818\efSTB4

cc: (by e-mail & first-class, U.S. mail)
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BEFORE THE
SURFACE TRANSPORTATION BOARD

PORT OF BENTON COUNTY, WA --	)	
ADVERSE DISCONTINUANCE OF RAIL	)	DOCKET NO.
SERVICE -- TRI-CITY RAILROAD	)	AB-1270
COMPANY, LLC	)	

**REPLY IN OPPOSITION TO APPLICATION
FOR ADVERSE DISCONTINUANCE**

TRI-CITY RAILROAD COMPANY, LLC
10 North Washington Street
Kennewick, WA 99336

Protestant

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DATE FILED: April 15, 2019

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<u>Appendix #</u>	<u>Description</u>	<u>Affiliation</u>
1	Map of The Rail Line	TCRY
2	Excerpt from BNSF Website	BNSF
3	Verified Statement of Randolph V. Peterson	TCRY
4	Verified Statement of Rydel Peterson	TCRY
5	Verified Statement of Lisa Anderson	TCRY
6	Verified Statement of Jose Romero	TCRY
7	Verified Statement of Quentin Hanley	TCRY
8	Verified Statement of Jamie Robison	TCRY

9	Verified Statement of Cliff Boyd	Calbag Resources LLC
10	Verified Statement of Jason A. Imes	Columbia River Carbonates
11	Verified Statement of Liz Lucke	Cost Less Carpet
12	Verified Statement of Rocky Smith	A&K Railroad Materials
13	Verified Statement of Katie Medel	Bio-Gro, Inc.
14	Verified Statement of Jason Girus	Great Northwest Transport, LLC

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**REPLY IN OPPOSITION TO APPLICATION
FOR ADVERSE DISCONTINUANCE**

Pursuant to 49 C.F.R. § 1152.25(a)(1)(i-v), Protestant Tri-City Railroad Company, LLC (TCRY), a Class III rail carrier, hereby files this Reply in Opposition to an Application for Adverse Discontinuance (Application) of its rail service filed by the Port of Benton County, WA (the Port) on February 27, 2019.

IDENTITY OF PROTESTANT

TCRY is a family-owned Class III rail common carrier subject to the jurisdiction of the Surface Transportation Board (the Board or STB). For more than 18 years, TCRY has provided the highest quality of rail service pursuant to authority from the Board to lease from the Port and to operate a rail line that extends between Milepost 18.84 at Richland Junction and Milepost 29.73 at Horn Rapids Road, a distance of approximately 10.89 miles in Richland and Kennewick, Benton County, Washington (the Rail Line). The Rail Line is commonly known as the Southern Connection. It connects with BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) at Richland Junction. A map of the Rail Line is attached to this Statement as Appendix 1.

TCRY is not a “squatter” who refuses to vacate a rail line after its lease of the line has expired or been lawfully terminated. The lease between TCRY and the Port will not expire until 2032. The lease has not been lawfully terminated. There are no legitimate grounds for termination of the lease for cause. The continuing validity of the lease is being determined in an appropriate judicial forum.

TCRY provides local rail service that is tailored to the distinct needs of its customers. TCRY provides on-call switching service 24 hours per day, seven days per week. TCRY provides a second switch on its shippers’ busy days, and weekend switching as needed. Large Class I rail carriers like BNSF and UP are unwilling and/or unable to provide that specialized local service. (Appendix 4 at 4).

In recognition of that premium local service, shippers on the Southern Connection are intensely loyal to TCRY. Six of such shippers have submitted statements in opposition to adverse discontinuance of TCRY’s rail service. Not one shipper on the Southern Connection supports adverse discontinuance.

BACKGROUND

Events leading up to TCRY’s lease of the Southern Connection are detailed in the Appendix. 3 at 1-10. As there explained, TCRY’s agreement to pay for track and bridge maintenance in the Railroad Lease made sense only as long as BNSF and UP provided revenue for their use of the rail line that could be used to offset those maintenance costs. BNSF and UP initially did so by including the cost of that maintenance in the switching fees that they paid to TCRY for transporting cars between the interchange point and the shipper facilities (Appendix 4 at 1; Exhibit Rydel 1 at 1).

Due primarily to TCRY's excellent business relationships with local shippers, operations in furtherance of the lease were very successful. Rail traffic increased from approximately 900 cars per year prior to the lease to 4,133 cars in 2007, an increase of 459 percent! (Appendix 3 at 11).

BNSF in 2009 and UP in 2017 began to transport cars over the Southern Connection directly to shippers instead of interchanging those cars with TCRY. That deprived TCRY of revenues on the traffic that TCRY had worked so diligently to develop.

BNSF and UP acknowledged in open Court that it is an established custom and practice in the railroad industry that when one railroad operates over another railroad's track to provide service to shippers, the railroad using the other's tracks is expected and required to pay its fair share of the track and bridge maintenance costs that result from such use, usually on the basis of the percentage of cars transported over the track by the user railroad. (Appendix 4 at 1-2; Exhibit Rydel at 2).

Consistently with that settled industry practice, BNSF and UP offered to pay their fair share of maintenance costs to the Port for distribution to TCRY. However, the Port advised BNSF and UP that they were not obligated to pay any share of maintenance costs because the Court in *BNSF Railway Company v. Tri-City & Olympia Railroad Company, LLC*, 835 F.Supp.2d 1056 (E.D. Wash., 2011) ruled that BNSF and UP are not responsible to pay for track or bridge maintenance on the Southern Connection. Appendix 4 at 3; Exhibit Rydel 7 at 2). The Court in that case made no such ruling, but BNSF and UP were only too pleased to continue to receive substantial revenues from transporting cars over the rail line directly to shippers without

having to pay the first dollar toward the extensive track maintenance costs associated with that transportation.

Based on 2018 maintenance costs and traffic, the failure of BNSF and UP to pay a fair share of maintenance costs saddled TCRY with \$492,672 in track and bridge maintenance costs that should have been paid by BNSF and UP, and that would have been paid by those carriers but for the Port's unfounded claim that a Court had absolved them from such costs.

Despite being seriously financially strapped as a result of the unfairness identified above, TCRY continues to maintain the rail line in accordance with its lease; continues to provide superior rail service to its shippers; continues to attract new shipper traffic; and continues to seek judicial redress for the legal wrongs visited upon it. TCRY has every intention of taking full advantage of the 13 years that remain on its lease with the Port and expects that once BNSF and UP begin again to pay their fair share of maintenance costs, the cars interchanged to TCRY will increase substantially.

ARGUMENT

I. THE ABANDONMENT STATUTE VIEWED IN LIGHT OF THE NATIONAL RAIL POLICY DICTATES DENIAL OF THE APPLICATION

“In regulating the railroad industry, it is the policy of the United States Government — to ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public . . .” 49 U.S.C. § 10101(4). Not long ago, a United States Court of Appeals had occasion to remind the Board of its “statutory duty to preserve and promote continued rail service.” *New York Cross Harbor RR v. STB*, 374 F.3d 1177, 1187 (DC Cir. 2004), vacating and remanding a Board decision that had granted an application for adverse abandonment even

though the rail carrier was actively operating the rail line. The Board had disregarded consistent precedent explained in *Salt Lake City Corporation -- Adverse Abandonment -- in Salt Lake City UT*, 2002 WL 368014, at *5 (Docket No. AB-33 [Sub-No. 183], decision served March 8, 2002), viz, emphasis added:

Neither the Board, nor the Interstate Commerce Commission before it, has ever granted an adverse abandonment when the carrier was operating over the line. In *The Western Stock Show Assn. -- Aban. Exemption -- in Denver, CO*, 1 S.T.B. 113, 131-132 (1996), we reviewed the history of adverse abandonment applications and found that they were generally denied if there was a potential for continued operations and the carrier had taken reasonable steps to attract traffic. In one case where an adverse abandonment was granted, there had been something akin to a de facto abandonment - the carrier had not operated over the line in many years and had no feasible plans to do so in the future . . .

TCRY is actively operating the rail line, having originated or terminated more than a hundred cars in 2018, as well as having identified seven prospects for new traffic in 2019 (Appendix 5 at 9, 10). TCRY's volume of traffic is comparable to the 160 carloads per year that were being transported by the rail carrier whose line was unsuccessfully sought to be adversely abandoned in *New York City Econ. Develop. Corp. -- Adverse Abandonment -- New York Cross Harbor Railroad in Brooklyn, NY.*, 2004 WL 2669790 at *1 (STB Docket No. AB-596, decision served November 23, 2004), on remand from *New York Cross Harbor RR v. STB, supra*. Thus, if settled Board and ICC precedent is to be honored, TCRY's active operation of the Rail Line in and of itself dictates denial of the Application.

The fundamental policy of preserving and promoting continued rail service is no less compelling in view of the ability of BNSF and UP to provide service to shippers if TCRY's service were to be adversely discontinued. The shippers providing verified statements express a distinct need for the specialized local rail service that shortline rail carriers like TCRY provide,

whereas too often they feel like little more than a number in their impersonal dealings with big Class I rail carriers like BNSF and UP. (Appendix 9-14). For example, TCRY provides on-call switching 24 hours per day, seven days per week, plus a second switch on shippers' busy days, and a switch on weekends. (Appendix 4 at 4). UP and BNSF do not do that.

BNSF has recognized the critical local functions that are performed by shortlines. *See BNSF Shortline Services* attached to this Statement (Appendix 2, parentheses added), viz:

Different rail carriers have their strengths. For some, it's fast, consistent long haul business (i.e., BNSF). For others, it's knowing the ins and outs of regional markets so that products can be gathered quickly and easily (i.e., TCRY).

Adverse discontinuance would deprive TCRY's shippers of the service specifically focused on their distinct needs. The Board is well aware that rail service provided by Class III rail carriers is highly valued and needed by shippers. In *Class Exemption -- Acq. & Oper. of R. Lines under 49 U.S.C. § 10901*, 1 ICC 2d 810 (1985), the ICC said (at 813):

. . . (W)e note that shortlines are dependent on local traffic for their survival, and thus have a greater incentive than Class I carriers to provide local shippers with service tailored to their needs. . .

Thus, as to shortline rail service in particular, the National Rail Policy is clearly to preserve and promote continued rail service, not to involuntarily terminate that service. It follows that the abandonment statute viewed in light of the National Rail Policy dictates denial of the Application for Adverse Discontinuance.

II. THE APPLICATION SHOULD BE DENIED BECAUSE THE PORT FAILED TO SUSTAIN ITS BURDEN OF PROOF

A. Applicable Law

The statutory standard governing any application to abandon a line of railroad is whether the present or future public convenience and necessity (PC&N) require or permit the proposed abandonment. 49 U.S.C. § 10903(d). In adverse abandonment cases, the noncarrier applicant, here the Port, has the burden to prove that PC&N require or permit the abandonment. *Salt Lake City Corp. -- Adverse Abandonment -- in Salt Lake City, UT, supra*, 2002 WL 368014 at *4. *See, also, State of South Dakota, ex rel. Dept. of Transp. -- Adverse Discontinuance of Operating Authority -- Napa-Platte Reg'l RR Auth.*, 2008 WL 3153713 (STB Docket No. AB-1253, decision served June 25, 2018).

In determining whether PC&N permit or require adverse discontinuance, the Board balances the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the rail carrier, the shippers on the line, the communities involved, and the applicant-owner of the rail line. *Yakima Interurban Lines Assn. -- Adverse Abandonment -- in Yakima County, WA*, 2004 WL 2635686 at *3 (STB Docket No. AB-600, decision served November 19, 2004), *pet. to reopen den.*, 2005 WL 2237179 (decision served September 15, 2005).

B. The Port Failed To Prove That Discontinuance Of TCRY's Rail Service Is Permitted Or Required By The Present Or Future Public Convenience And Necessity

The Port's Legal Argument begins with a fundamental misstatement of the burden of proof. Contrary to the Port's contention (Application at 10), the law does not permit a rail line

owner to discontinue the service of its rail operator absent compelling evidence of contrary shipper needs. The burden of proof is squarely on the proponent of discontinuance. See *New York Cross Harbor RR v. STB, supra*, 374 F.3d 1177, at 1186:

... (B)y requiring an ‘overriding need’ for rail service to supersede the NYCEDC’s interest, the Board shifted the burden to the objecting carrier to come forward with sufficient evidence of hardship or harm. . . In *Salt Lake City*, however, the Board cautioned against such a shift: there the Board described Salt Lake City’s claim that it embodied the public interest and that the objecting railroad and shippers had to adduce evidence about the market and alternative routes, as an impermissible ‘attempt to shift the burden to the railroad’ which was ‘contrary to the statute and case law interpreting it’ 2002 WL 368014 at *7...

The Port’s attempt to shift the burden of proof to TCRY undermines its credibility as to other issues as well.

While the Port paid lip service to the balancing process by which PC&N is to be determined (Application at 12), the Port nowhere attempted to perform that balancing. The Application does not contain a weighing of harm to TCRY and its shippers if service were to be discontinued, and harm to the Port if discontinuance were to be denied. The Port’s failure to comply with that basic principle is fatal to its case. See the Court’s statement to that effect in *New York Cross Harbor RR v. STB, supra*, 374 F.3d at 1184, emphasis added:

... The Board’s failure to balance the competing interests thus independently requires us to vacate and remand the Board’s decision.

Instead, the Port’s case is predicated on alleged violations of a Lease Agreement between TCRY and the Port, viz:

... TCRY has committed numerous material breaches of its lease obligations leading POB to find the railroad in default ... (Application at 11).

TCRY has failed to maintain the track and bridges on the Line to the standard required by the lease and has failed to provide the Port with financial

records and information about its maintenance work when requested . . .
(Application at 13).

TCRY has failed or refused to provide any bridge safety management program, permits, or scope of work in connection with bridge repairs . . .
(Application at 14).

TCRY has committed numerous material breaches of its lease agreement and has made no effort to cure those breaches . . . Accordingly, the Port has provided TCRY with notice of termination . . . (Application at 8).

Resolution of those allegations would necessarily require the Board to interpret and enforce a private contract between TCRY and the Port, but the Board does not undertake to interpret or enforce operating agreements, contracts or leases. *Kansas City Southern Ry. Co. -- Adverse Discontinuance -- a line of Arkansas & Missouri R. Co.*, 1999 WL 164388 at *4 (STB Docket No. AB-103 [Sub-No. 14], decision served March 26, 1999); *Tacoma Eastern Ry. -- Adverse Discontinuance -- a line of the City of Tacoma in Pierce, Thurston and Lewis Counties, WA*, 1998 WL 721110 at *6 (STB Docket No. AB-548, decision served October 16, 1998). It follows that alleged violations of the Lease Agreement cannot support a determination that PC&N warrants adverse discontinuance of TCRY's operating authority.

Even if the Board interpreted or enforced private contracts, the Board should abstain from interpreting or enforcing the TCRY-Port Lease Agreement in order to avoid piecemeal litigation. Piecemeal litigation occurs when different courts and/or agencies adjudicate an identical issue, thereby duplicating judicial effort and potentially rendering conflicting results. *See Weber v. Fossen*, 496 F. Supp. 2d 826 (D. Mich., 2007). Whether there are grounds for termination of the TCRY-Port Lease Agreement is pending before a Court. *U.S. v. Port of Benton County*, USDC,

ED WA, waed-2-2017-cv-00191. The Board should abstain from litigating that same issue in the present case. *See, e.g., St. Paul Ins. Co. v. Trejo*, 39 F.3d 585 (5th Cir, 1994).

Other allegations in the Application do not support a finding that PC&N permit or require adverse discontinuance. The so-called “on-line customers” who assertedly have voiced displeasure with TCRY service and attitude are not on-line customers at all. Neither Del Hur Industries, Inc. nor Central Washington Corn Processors has ever been located on the Rail Line (*id.*, Application, Exhibits B and C). Those shippers provide nothing that bears on current TCRY operations or traffic. Their statements are not entitled to weight in determining PC&N. Instead, all on-line shippers who submitted verified statements oppose adverse discontinuance.

The Port alleges that BNSF and UP “are unhappy with their relationships with TCRY and support removal”. (Application at 11). BNSF and UP might want to rethink that position. BNSF and UP are deriving very extensive revenues from transporting traffic over the line but neither is bearing the significant cost of track and bridge maintenance, which is being paid solely by TCRY (*id.*). The Port failed to address who would maintain the Line in the absence of TCRY, and who would pay the cost of maintenance.

Perhaps for that reason, the statements submitted by BNSF and UP are cursory and lukewarm. BNSF says that it has concerns about unidentified operational issues relating the an unspecified failure of TCRY to maintain the line. (Application, Ex. E). BNSF’s concern rings hollow because when it began to provide direct service over the line, it represented to a Federal Court that it would pay its fair share of maintenance costs, but it has not spent a dime on maintenance in the many years since. BNSF mistakenly alleges that TCRY no longer operates or serves customers on the line. (Application, Exhibit E). UP’s statement focuses solely on

periodic maintenance issues that are common in the railroad industry, and which UP acknowledges to be “relatively minor” (Application, Exhibit D). Nothing in the BNSF and UP statements would support a finding that PC&N permit or require discontinuance of TCRY’s rail service.

The Port alleges that in the event of adverse discontinuance, the presence of BNSF and UP will ensure that “no customer would lose service” (Application at 12). But the verified statements of shippers in support of TCRY make it clear that shippers would be seriously harmed by loss of TCRY’s personalized local service, which would not be adequately replicated in view of inherent local service limitations of Class I rail carriers like BNSF and UP. (Appendix 9-14).

The Port’s Legal Argument does not rely on the Verified Statement of Mr. Roger Wright. It appears that Mr. Wright’s Statement was included in the Application solely to comply with the requirement of Board regulations that the Port provide evidence of the physical condition of the rail line (Application at 9). Mr. Wright’s testimony does not support a finding that PC&N permit or require discontinuance of TCRY’s rail service. On the contrary, Mr. Wright acknowledges that the rail and ballast in the line are in reasonably good condition (VS Wright at the unnumbered fourth page), and that in the past two to three years, he has “witnessed the TCRY replacing significant quantities of cross ties”. (*id.*, second unnumbered page). Thus, Mr. Wright’s statement is more supportive of TCRY than of the Port.

The Port criticizes the “excepted track” status of the rail line. (Application at 13). The Board’s recent decision in *Boston & Maine Corp. -- Adverse Discontinuance -- Milford - Benington R. Co.* 2018 WL 4951945 at *8 (STB Docket No. AB-1256, decision served October

12, 2018), best explains why that factor does not support a finding that PC&N permit or require adverse discontinuance, emphasis added:

The Board also disagrees with Pan Am's arguments that MBR's operating authority should be discontinued because of Pan Am's safety concerns about MBR's operations. FRA has primary responsibility over rail safety matters and sets track standards based on the condition of the track (citations omitted). Here the track has been classified as FRA excepted track because of its condition, and there is nothing in the record showing that MBR is not complying with the FRA requirements that pertain to excepted track or that FRA has raised concerns about MBR's safety practices . . .

The Port alleges that "(r)elations with customers, BNSF, and UP have become so contentious to the point of threatening the movement of freight in violation of TCRY's common carrier obligation" (Application at 14). TCRY vehemently denies that unwarranted allegation. There is no evidence in the Application that would support that reckless contention. The Port has not cited any such evidence.

The Port alleges that "some of the Port's shippers and public officials support discontinuance" (Application at 15). Neither of the two shippers who support discontinuance is located on the rail line under consideration. No public official supports discontinuance (except the Port itself). In contrast, six shippers located on the line oppose adverse discontinuance. (Appendix 9-14).

The Port alleges that "(o)ther shippers were reluctant to make a statement for fear of retribution or litigation by TCRY" (Application at 15). There is no record support for that false and outrageous allegation. That is the kind of allegation that an applicant makes when shippers will not support the relief that the applicant seeks. In contrast, four shippers have agreed to stand up and be counted in opposition to adverse discontinuance of TCRY's rail service.

C. It Would Be Too Late For The Port To Perform The Required Balancing Process For The First Time On Rebuttal

As noted, *supra* at 8, the Port failed to undertake the balancing process that is essential for an appropriate determination of PC&N. That failure provides an independent ground for denial of the Application. *New York Cross Harbor RR v. STB, supra*, 374 F.3d at 1184.

If the Port were to attempt to perform the balancing process for the first time on rebuttal, the Board should reject such late-filed material as improper rebuttal. That is the teaching of *Malone Freight Lines, Inc. v. United States*, 204 F.Supp. 745 (N.D., Ala, S.D., 1962). The plaintiff in that case contended that the evidence that it filed in purported rebuttal was improperly stricken by the ICC. In rejecting that contention, the Court said (at *755):

...We hold that such evidence was not in rebuttal of any facts appearing in any statements but merely served to aid plaintiff's case in chief after its deficiencies had been pointed out by protestants. Under the Commission's General Rules of Practice (then Rule 1.49), it was proper to strike such evidence.

At the time of the decision in the *Malone Freight Lines* case, Rule 1.49 provided in pertinent part (at 759, n. 20):

...Complainant's statement of reply shall be confined to rebuttal of the defendant's statement.

The current counterpart of former Rule 1.49 is 49 C.F.R. § 1112.6, which provides in pertinent part:

... Rebuttal statements shall be confined to issues raised in the reply statements to which they are directed.

Permitting the Port to present evidence of the balancing process for the first time in its rebuttal statement would unlawfully deprive TCRY of an opportunity to reply to such evidence because under Board rules, a reply to a reply is not permitted. 49 C.F.R. § 1104.13(c). The Port has had

its opportunity to try to show that PC&N permit or require adverse discontinuance. It has failed to take advantage of that opportunity. It is too late to attempt to do so now inasmuch as Board timelines for disposition of abandonment or discontinuance applications preclude procedural delay that would result from the filing of improper rebuttal and surrebuttal.

III. EQUITABLE CONSIDERATIONS COMPEL DENIAL OF THE APPLICATION

Equitable considerations compel denial of the Application because the Port and its allies have attempted to discontinue TCRY's rail service on a *de facto* basis without Board approval by starving TCRY of revenues and continuing to saddle TCRY with burdensome track and bridge maintenance costs, in the hope and expectation that in view of that grossly unfair situation, TCRY would throw in the towel and exit the rail line voluntarily. The PC&N standard of the abandonment statute is broad and flexible enough to condemn that patently unfair behavior. *See, e.g., New Mexico Navajo Ranchers Association v. ICC*, 702 F.2d 227, 232 (DC Cir, 1993).

Track and bridge maintenance costs were borne by BNSF and UP indirectly for many years by means of inclusion of those costs in the switching charges that they paid to TCRY upon interchanging cars at Richland Junction. Then BNSF in 2009 and UP in 2017 began to operate over TCRY's leased tracks to provide service to shippers directly, no longer interchanging with TCRY and depriving TCRY of the revenues previously received through interchange. Both BNSF and UP acknowledged in open court that the established custom and practice in the railroad industry is that a railroad who uses another railroad's tracks to provide service to shippers is expected and required to pay its fair share of the track and bridge maintenance costs that result from such use, usually on the basis of the percentage of cars transported over the other railroad's tracks.

In accordance with that time-honored practice, BNSF and UP offered to pay their fair share of maintenance costs to the Port for distribution to TCRY. But such payment would have been inconsistent with the goal of forcing TCRY off the rail line voluntarily as a result of extreme financial pressure. Accordingly, the Port told BNSF and UP that the Court in *BNSF Railway Company v. Tri-City & Olympia Railroad Company, LLC, supra*, 835 F.Supp.2d 1056, ruled that BNSF and UP were not required to pay any share of Southern Connection maintenance costs. The Court did no such thing. The Court ruled only that there was a contractual basis for BNSF to operate over the Southern Connection to provide service to shippers directly. The Court did not hold nor state in dicta that BNSF and UP are not responsible for a share of maintenance costs on the line. Maintenance costs were simply not an issue in that decision. Nevertheless, BNSF and UP were only too pleased to continue to rake in large amounts of revenue for transportation over the rail line without paying the first dollar toward associated maintenance costs.

The 2018 experience illustrates the grossly inequitable result. TCRY paid over \$500,000 in maintenance costs in that year. BNSF and UP transported approximately 4,500 cars and 3,500 cars, respectively in the same year. TCRY transported only 119 cars in 2018. Set forth briefly below is what would have resulted from application of the “fair share” custom and practice of the railroad industry.

TOTAL MAINTENANCE COST - \$500,000
TOTAL NUMBER OF CARS - 8,119

BNSF FAIR SHARE OF COSTS - $4,500 \div 8,119 \times \$500,000 = \$277,128$
UP FAIR SHARE OF COSTS - $3,500 \div 8,119 \times \$500,000 = \$215,544$
TCRY FAIR SHARE OF COSTS - $119 \div 8,119 \times \$500,000 = \underline{\$7,328}$

Total Maintenance Cost \$500,000

Based on 2018 maintenance and traffic experience, TCRY is being deprived of \$492,672 per year as a result of the failure of the Port and its allies to pay their fair share of track and bridge maintenance costs. Equity does not countenance unfairness of that kind.

Probably to the Port's surprise, TCRY has not capitulated. Instead, TCRY continues to maintain the tracks and bridges in accordance with its lease. TCRY continues to provide superior rail service to its shippers. TCRY continues to seek judicial redress for the legal wrongs identified in this Statement. TCRY has exhibited every intention of taking full advantage of the 13 years that remain of its lease term. In sum, the Port's attempted *de facto* discontinuance has been unsuccessful.

Only when faced with TCRY's resilience did the Port file this Application. The equitable considerations identified in this Statement strip that Application of legal merit. That provides an additional compelling ground for denial of the Application.

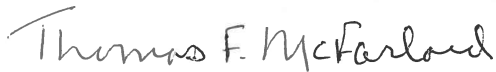
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for all of the reasons stated, the Application should be denied.

Respectfully submitted,

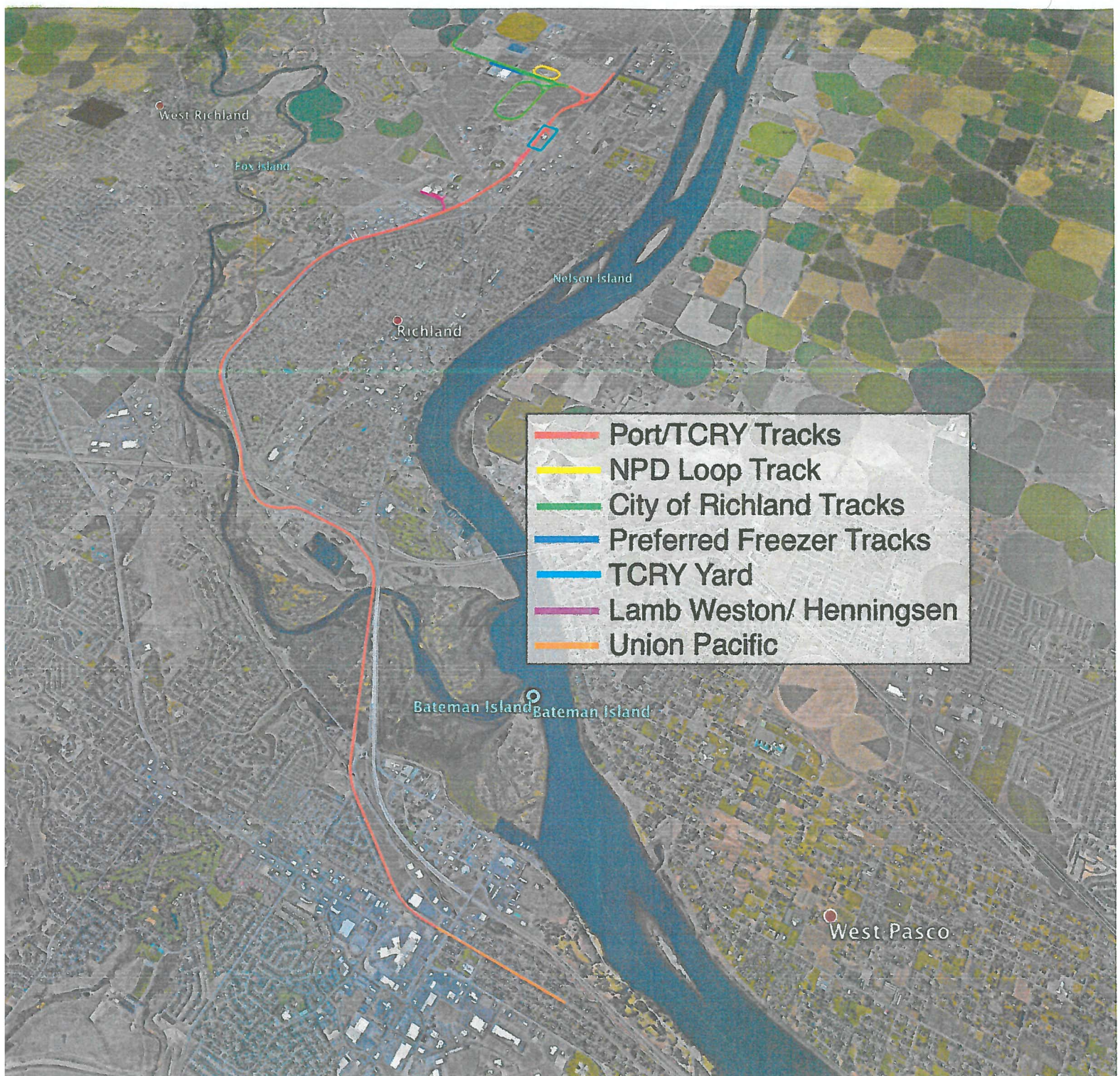
TRI-CITY RAILROAD COMPANY, LLC
10 North Washington Street
Kennewick, WA 99336

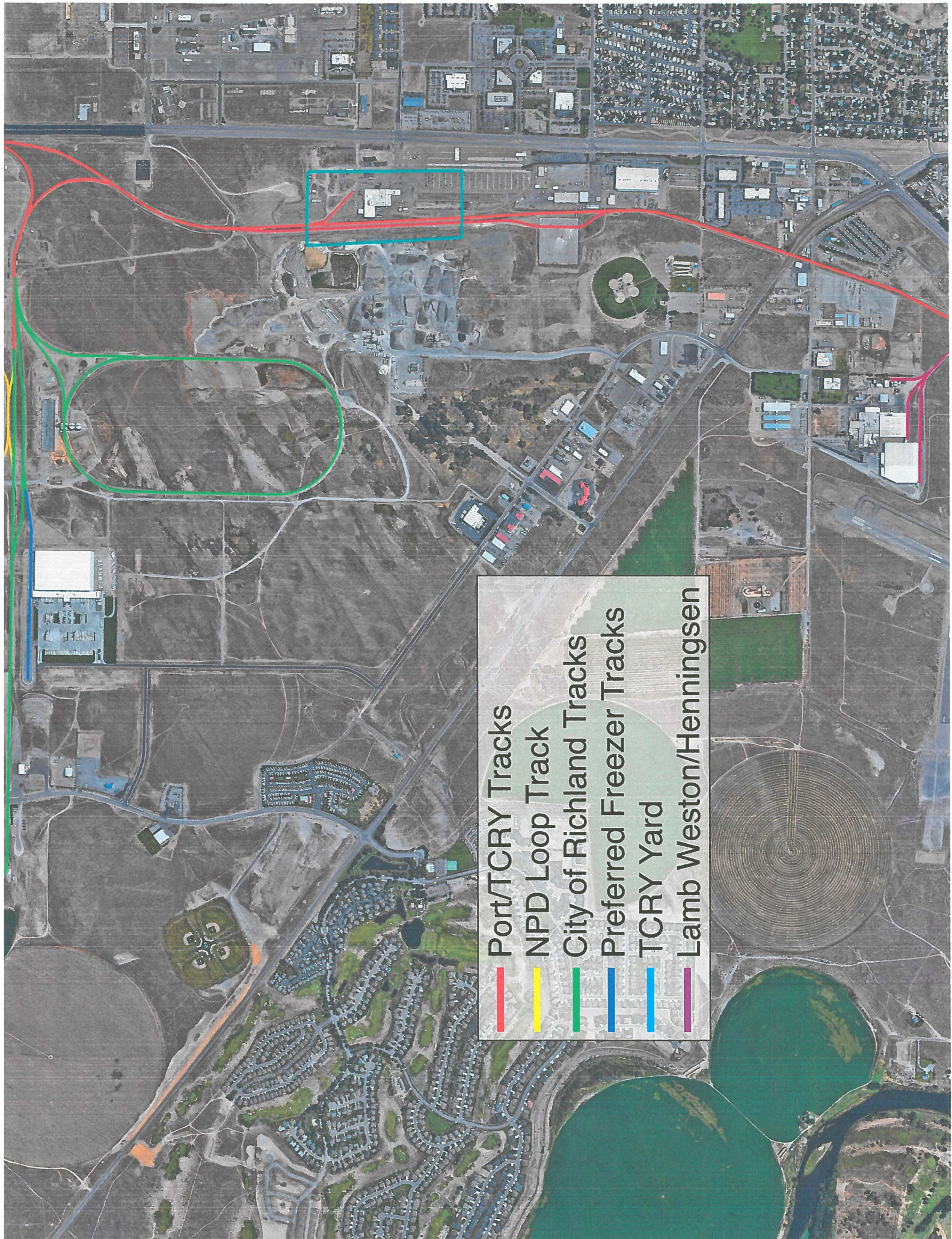
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DATE FILED: April 15, 2019





Port/TCRY Tracks
NPD Loop Track
City of Richland Tracks
Preferred Freezer Tracks
TCRY Yard
Lamb Weston/Henningsen

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Shortline Services

Different rail carriers have their strengths. For some, it's fast, consistent long-haul business. For others, it's knowing the ins and outs of regional markets so that products can be gathered and delivered quickly and easily.

The BNSF Shortline Development Group brings these elements together, facilitating interaction between shortline carriers and various functions within BNSF, including the sales, marketing and operations functions.

We connect with all other Class I carriers, and approximately 200 shortlines, regional carriers and switch carriers. These long-term relationships supply shippers and receivers with seamless, efficient transportation from door-to-door, providing the most direct, efficient and cost-effective passage possible.

Search the BNSF [Shortline Directory](#) for more information about our Shortline connections.

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Shortline Service Contact

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Locating a STCC Code or Marketing Rep

Shortline Directory

**VERIFIED STATEMENT
OF
RANDOLPH V. PETERSON**

My name is Randolph V. Peterson. I am the majority owner of Tri City Railroad Company, LLC. ("TCRY") located in Richland, WA. As the majority owner of TCRY since it was formed on October 25th 1999, certified by the Washington State Secretary of State I am intimately familiar with the relationship between TCRY and the Port of Benton ("Port").

Prior to the formation of TCRY, I was the President and majority shareholder of Livingston Rebuild Center, Inc. ("LRC"), a Montana corporation. LRC's primary business was that of repairing and rebuilding railroad equipment including cars, locomotives, and components for the same. I am intimately familiar with the relationship between LRC and the Port.

LRC and the transition to TCRY

In 1997, as President of LRC, I was made aware of some railroad shop space available to lease in Richland, Washington. After some time spent investigating the possibility which included numerous trips to Richland, WA for both myself and other employees of LRC, a lease ("Lease")(Appendix RVP-1), was executed for the shop space between the LRC and the United States Department of Energy ("DOE"), the owner of the shop facility. The Lease was for a minimum term of ten years and it was not to exceed

twenty years. The Lease was signed between the parties on March 5, 1998 that called for monthly payments, totaling \$182,600 annually subject to CPI adjustment.

After LRC signed the Lease with the DOE, LRC transferred certain equipment, materials, parts, supplies and employees from its Montana operations to Richland and began business in the spaced it had leased from the DOE.

During this time period both before signing the DOE lease and after, I became aware through direct conversation and meetings with the executive management and two of the three current commissioners at the Port, that the Port had been in negotiations with the DOE for transferring certain property from the DOE to the Port, that included approximately 16 miles of the 23 miles of railroad track, that was known as the Southern Connection.

I was told by the then Port Executive Director, Ben Bennett, that the Lease between LRC and the DOE was a critical component for the Port to proceed with the transfer of the surplus DOE property to the Port because the LRC/DOE Lease would be included as a part of the transferred property. The Lease provided a cash flow of rental income to the Port.

The transfer documents included an Indenture and Amendment to the Indenture ("Indenture"). Section 3 of the Amendment, Appendix RVP-2, required the Port to

devote all lease payments or other sources of revenue from the transferred property, including the track, to first cover maintenance of the track. Only in the case where there were revenues left over after first spending revenues to first cover maintenance of the track, could the Port use those surplus revenues at its discretion.

The lease money LRC was paying for the shop space it had leased from the DOE, was therefore money the Port was required to first cover maintenance of the track.

Prior to the transfer of property from the DOE to the Port on October 1st, 1998, the Port issued a "Request for Proposals" on June 1, 1998 in which LRC responded to the RFP with its proposal of June 18, 1998, Appendix RVP-3. LRC proposed that in trade for the annual lease of the entire shop facility and grounds, LRC would provide maintenance and service of the rail line including track, roadbed and crossings. The cost for insurance premiums would be a direct pass through cost to the Port. When operations began on the rail line, the revenues derived from those operations would be split between LRC and the Port with LRC retaining 70% as an operation and maintenance fee and the Port receiving 30% of the operation revenues as owner of the rail line.

Based on the LRC proposal, the Port and LRC negotiated a new transaction ("Transaction") to expand the 17,000' feet leased from the DOE to leasing the entire shop facility of 80,000' feet from the Port. It also included expanding the land area surrounding the shop space, and the entire railroad track that was included in the transfer from the DOE to the Port.

The Transaction consisted of two parts. The first part, a building and land lease ("B&L Lease") for the shop space and certain land surrounding the facility, and the second part, an operation and maintenance contract ("Contract") Appendix RVP-4, for the rail line.

The B&L Lease called for LRC to pay to the Port (excluding state leasehold tax) monthly payments totaling \$288,000 annually subject to CPI adjustment. The Contract called for the Port to pay LRC monthly payments totaling \$325,000 plus sales tax.

Both the B&L Lease and the Contract were signed on October 1, 1998. Both parties reserved the right for 90 days, to rescind the Contract, should the DOE not transfer the railroad track to the Port within the 90 days.

The Contract called for the payments from the Port to LRC be equalized to not amount to more than the B&L Lease payments from LRC to the Port.

Further, in consideration of LRC's services in managing the Contract, seventy percent (70%) of the net revenues from the Contract, after the payment of all costs for operations, were to be paid to LRC. The remaining net revenues (30%) were to be paid to the Port. In other words, the Port and LRC became "Net Revenue Sharing Partners" ("NRSP") in the Contract.

The movement of railcars to and from the shippers on the railroad was then handled by either Burlington Northern Santa Fe Railway ("BNSF") or Union Pacific Railroad ("UPRR") with the UPRR handling about 90% of the traffic to one single shipper. Carloads were less than 900 per year.

At the time, the Port claimed it was not a Railroad and stated such in the Contract.

The Port and LRC agreed that in the future it may be economically feasible for the NRSP to provide for the operation on the tracks for this could generate net revenues for the NRSP.

Following that line of thinking, the Port signed a Memorandum of Agreement ("MOA") Appendix RVP-5, with the DOE on January 13, 1999 in order to gain access to the remaining six miles of track of the Southern Connection, the ("Railway") that had not been transferred to the Port, thus allowing rail access to Energy Northwest, Inc.

("Northwest") The Port agreed to maintain the Railway portion of the DOE Railroad from the "NEW Southern Connection" north boundary at Horn Rapids Road and the Northwest leasehold in the 600 Area of the DOE reservation. That condition was to be effective for a period of five (5) years, unless renewed by mutual agreement. The Port accepted the Railway in "as is" condition with no warranties of any nature. All Railway maintenance costs that the Port would incur would be at its own expense.

As consideration, the Port was allowed to charge access fees or a tariff for use of the former DOE Railroad, Southern Connection, and the Railway by Northwest.

The NRSP decided that the actual operation of trains on the tracks may require a "carrier by rail" ("CBR") which would be subject to the tax and insurance requirements of the Railroad Retirement Board ("RRB") and/or the Federal Employers Liability Act ("FELA").

The Port agreed that in the event it would be desirable for a CBR to perform a portion of the activities under the Contract in order to comply with the provisions of RRB or FELA, LRC may enter into an agreement with the CBR to provide for the operation. The selection of the CBR would be mutually acceptable to both the Port and LRC. Any contract with the CBR would be subject to all of the terms and conditions of the Contract.

Not having success in finding a CBR, the NRSP decided that it was feasible for a new company to be formed with the idea the new company would become a CBR and then provide operations on the track under the Contract.

I formed TCRY for the specific purpose to be the CBR and provide operations on the track under the Contract for the NRSP.

On November 16, 1999, both the Contract and the B&L Lease were assigned from LRC to TCRY with the consent and approval of the Port.

So thereafter, the NRSP consisted of the Port and TCRY.

TCRY filed for exemption for its acquisition and operation of the rail property with the Surface Transportation Board ("STB") on May 5, 2000 which was granted by the STB on June 16, 2000 STB Finance Docket #33888 and TCRY became a CBR.

Both the UPRR and the BNSF had been using the tracks without paying for their use as was allowed by the DOE under its prior ownership.

The DOE and the Port had agreed, in the Indenture, that the Indenture would be governed by the laws of the State of Washington. This created at a minimum, a question as to whether their free use of the tracks was in violation of the Washington State Constitution.

On May 8, 2000, BNSF signed an Interchange Agreement with TCRY and began interchanging rail carloads to TCRY, the UPRR did not.

After deliberation between the Port and TCRY, and because UPRR refused to interchange carloads to TCRY, the NRSP decided that TCRY was to contact UPRR and

negotiate a fee with UPRR for its use of the track, thus generating revenue for the NRSP.

TCRY did contact the UPRR and began discussions and negotiations on the subject. UPRR met this effort with resistance and on September 12, 2000 the attorney for the Port sent a draft for the Port to write and instruct TCRY, Appendix RVP-6, to inform the UPRR it was no longer allowed to use the tracks for its failure to pay charges invoiced to it by TCRY for use of the tracks.

TCRY followed the Port's directive and sent the letter to the UPRR. Appendix RVP-7.

Letters and conversation continued between TCRY and UPRR. I got involved directly several months later at the end of 2000 and was successful in negotiating an agreement with the UPRR to resolve the matter. The resolution was for the UPRR to sign an Interchange Agreement with TCRY and a Cooperative Marketing Agreement. The Interchange Agreement was signed on December 12, 2000 and the Cooperative Marketing Agreement became effective on January 1, 2001. Thus, began a revenue flow to the NRSP from the UPRR carloads to add to the BNSF revenue flow for carloads for all rail traffic on the tracks.

A new RR Lease could only make sense so long as revenues continued to flow from the carloads that were using the rail line. At the time of this Port proposal, all carloads were

generating revenue to the NRSP. Under the new proposal, those future net revenues would no longer be shared.

The ability to enforce the BNSF and UPRR to pay for use of the tracks rested with the Port in that it chose to retain the responsibility to enforce its ownership rights as owner of the tracks having stepped into the shoes of the DOE. The Indenture gave the Port ultimate control over the track it received from the DOE in dealing with the BNSF and UPRR in that it can cancel their rights to operate on the tracks with or without cause by providing them six month notice, just as it had previously instructed TCRY to provide to UPRR. TCRY relied on the Port to honor its part to ensure TCRY would be able to collect the net revenues for all carloads traveling on the tracks for the entire balance of the RR Lease term including options to extend through 2032.

Ultimately, the new RR Lease written by the Port was signed by TCRY and the Port on August 1, 2002. Scott Keller signed the RR Lease as Executive Director on behalf of the Port. Robert Larson and Jane Hagerty were two of the three Port Commissioners at that time and have continued as commissioners through today. Roy Keck was not a Port Commissioner prior to or at the time the RR Lease was signed. He did not become a Port Commissioner until 2008.

At the time the RR Lease was being negotiated, there was discussion that the DOE would allow TCRY to operate the Northern Section of the DOE track. TCRY was interested in this opportunity to serve the contractors working for DOE.

On August 21, 2002 the Amendment 2 to the MOA, Appendix RVP-8, was signed with the Port and the DOE that added the entire DOE Railroad north of Horn Rapids Road as well as the proposed lay down area at the Willa Junction and such other designated sites approved by DOE. The portions of the DOE Railroad north of the Energy Northwest site would be used solely for the purpose of supporting DOE operations, unless agreed otherwise.

Amendment 2 stated, the Port, or its designated contractor; would notify DOE of maintenance and repairs required for the railroad and the parties would negotiate an agreement for payment of the costs of repair and maintenance. By this agreement, the DOE stated it did not obligate itself to fund any particular level of maintenance.

Either party could terminate the MOA in whole or in part upon 90 days written notice to the other party.

Amendment 2 was included and an integral part to the RR Lease, (see Section 1.3 and 1.4) Appendix RVP-9. Amendment 2 eliminated the Class 3 track standard for the Railway section of the Northern Connection and there never was a Class 3 track standard for the track north of the Railway. The maintenance cost for the entire DOE Railroad was to paid for by the DOE on pre-approved basis and based on money available.

RR Lease 2002 -2009

The transition from the Contract to the RR Lease, as described above, brought both immediate and long term benefits to the Port. TCRY was a startup company that was formed specifically to bring a local CBR into existence for the sole purpose of generating new net revenues for the NRSP.

TCRY was confident that the Port had made it clear to the UPRR and the BNSF that they had to pay in order to use the NEW Southern Connection. The Port had instructed TCRY to give notice to the UPRR that if it did not pay, it would not be allowed to use the tracks.

With this background, TCRY was confident the Port would continue to honor its past practice and commitments when the Contract was replaced with the RR Lease. It would not have made business sense for TCRY to exchange its position in the Contract for the RR Lease if had known at the time, the Port would some years later abandon its pledge to this important fundamental business premise.

The Port did in fact honor its word to this fundamental business premise for the years following from 2002 through the middle of 2009. In those years, TCRY with the support of the Port, grew the rail business from the 900 carloads a year in 1998 to 4,133

carloads handled in 2008 a growth in rail carloads of 459% over the ten years since the Port was gifted the tracks from the DOE and since LRC/TCRY began managing the rail operations on the tracks.

RR Lease 2009 -2012

In July of 2009, BNSF filed suit against TCRY in Federal Court requesting a Temporary Restraining Order (TRO) preventing TCRY from stopping BNSF from operating on the tracks. Much to my dismay, I learned later that the BNSF and the Port had met and been in communication in the weeks that preceded the lawsuit regarding BNSF's intent.

This was of great concern to TCRY because it meant that TCRY would lose that revenue which it was being paid by the BNSF for handling the BNSF traffic after it had been interchanged to TCRY. Further, it destroyed the fundamental premise for which TCRY had agreed to swap the Contract for the RR Lease. BNSF had paid in excess of \$2,600,000 to TCRY in 2008 for providing the rail service to shippers on its side of the interchange.

TCRY brought this to the attention of the Port Commissioners at an official Port commission meeting when I hand delivered a letter to the commissioners at that meeting pleading the case why the Port should not now permit BNSF to run direct. (Appendix RVP-10). A more detailed letter was delivered to the Port on July 27, 2009. (Appendix RVP-11)

Two of the three commissioners, Bob Larson and Jane Hagerty, were commissioners when the Contract was signed and later when the Contract was swapped out for the RR Lease. This was the first time, that I had any significant interface with third commissioner, Roy Keck, who had just been elected in 2008.

The BNSF suit was filed on July 20, 2009 against TCRY and the TRO hearing followed on July 22, 2009.

To justify its request for the TRO, the BNSF presented the situation to the court as an “emergency”. It claimed that it would suffer irreparable harm if the court did not award the TRO. The irreparable harm claimed was to its reputation with shippers if it was not allowed to immediately serve those shippers directly without interchanging the railcars to TCRY as it had done for the previous nine years. BNSF claimed it could reduce its costs by \$200 per railcar interchanged to TCRY.

TCRY was not prepared to defend itself properly just 24 hours after being served with the lawsuit. To this day, I believe the Port was aware of the BNSF planned legal maneuver in advance of the TRO hearing as evidenced by meeting arrangements made through email exchange prior to the BNSF lawsuit which have been produced through public records request.

The BNSF effectively described TCRY not allowing the BNSF to operate over the tracks subject to the RR Lease as it had “blockaded” the tracks. The blockade amounted to a red flag and a locked switch.

The red flag, requires a train to stop and not proceed until it has secured proper authorization from TCRY, the manager of the tracks. In any event, the use of the word “blockade” has stuck and has been used numerous times since in various efforts to malign TCRY.

What didn’t survive since the TRO hearing was the BNSF pledge to the Judge at the hearing to pay maintenance costs associated with its use of the track subject to the RR Lease.

The BNSF quote below is from page 57 of the TRO hearing transcript;

*“And finally, we would **agree** that **maintenance costs** for the tracks would be allocated on a per capita basis, based upon the number of cars that are operating over the track. So, for example, if there were a hundred cars operating on the tracks and BNSF accounted for 60 of those, and the maintenance cost was a thousand dollars, **BNSF would pay** \$600 of the maintenance costs associated with those operations. And those are all recognized railroad procedures and that's what we would ask the Court for.”.*

The BNSF has NEVER paid a dollar for maintenance costs attributable to its use of the tracks subject to the RR Lease.

BNSF has refused to pay invoices submitted to it for its share of maintenance costs per the formula pledged by the BNSF at the TRO hearing as quoted above.

Requests to the Port for assistance in collecting from the BNSF have been ignored.

Today, the Port says because the pledge wasn't included in the Judge's order, the BNSF doesn't have to pay.

BNSF even repeated its pledge to the Judge, in a follow up hearing on August 11, 2009.

The quotes below are from that hearing.

Judge Shea: quoting from a letter that states: Customers of TCRY have informed the Port that service performed by TCRY is responsive and timely, and overall its service is very good -- it's service is very good. Finally, if the BNSF uses the Port railroad -- the operations agreement should detail how BNSF shall reimburse TCRY for the costs of operating and maintaining the Port railroad, end of quote.

Judge Shea: Your company was considered in order to make sure your rights were -- that the treatment was equitable, just and fair to all the parties, right?

UPRR: That's correct.

Judge Shea: So talk to me.

UPRR: I do think TCRY as the lessee of these tracks or the leaser of these tracks and the operating railroad they are entitled to be --

Judge Shea: The lessee.

UPRR: Yes, the lessee. They are entitled to be compensated for the two division ones' use. We have a partnership with TCRY. We have a cooperative marketing agreement. We've had a good working relationship with TCRY. I don't think we can forget about TCRY's rights here, as

well. It's basically a three railroad facility, and they're entitled to be treated equitably, justly and fairly.

Judge Shea: When you say that, you say you've got a cooperative marketing agreement, that as the owner of – the lessee of the tracks, the entity in control of the tracks, that when others seek to use those tracks that some sort of compensation has to be paid.

UPRR: I would agree with that.

Judge Shea: That's my sense of it. I wanted to make sure that I'm not overlooking something here that no one's talked about is once BNSF, if they're permitted to use the tracks, the question is what's the compensation, how is compensation worked out.

UPRR: Well, I'll leave to Mr. Thornton to address with regard to BNSF, but I seem to recall -- and I don't want to speak on behalf of BNSF, but they agreed in item one to recognize TCRY as the operating railroad. They agreed to –

Judge Shea: I think they said there was some compensation that had to be paid.

BNSF: We've offered before in the TRO hearing and offer it again that we would expect and anticipate that we would pay our fair share of the maintenance on the tracks, and that's frequently done by just allocating the maintenance charges based upon the number of cars handled, that if BNSF is putting 50 percent of the cars, that we would expect to and commit to pay 50 percent of the maintenance charges with an opportunity to have a right to audit the books to make sure that what we're being charged for is what was really spent out there on the tracks.

UPRR: UP has said there should be just compensation because TCRY is the operator.

Judge Shea: Nobody doubts that. Nobody disputes that.

BNSF: BNSF from the beginning has been willing to compensate for costs associated for its use of those tracks.”

Since July of 2009 the BNSF nor the UPRR since December 8, 2017 have paid a single dollar for their fair share of the track maintenance costs associated with their use of the tracks subject to the RR Lease.

To me, the Port has failed to uphold the standard of “equal, just and fair” treatment when it comes to TCRY by allowing the two Class 1s to operate on the tracks without paying for their share of the wear and tear they cause as they had both pledged to do in

federal court. The Port was represented at both hearings, and as I remember Commissioner Keck was also in attendance.

TCRY has learned that BNSF explicitly offered to the Port to pay a fair share of maintenance costs, but the Port did not accept that offer.

Now, the Port has the moral turpitude to submit a petition to the STB for an order for adverse discontinuance of TCRY common carrier status basing its petition on TCRY's failure to maintain the tracks.

Beginning November 16, 1999 TCRY has maintained the track in accordance with the Contract until the Contract was swapped out for the RR Lease on August 1, 2002.

TCRY has maintained the track in accordance with RR Lease ever since.

So long as both Class 1s were interchanging railcars to TCRY, they were paying their share of the maintenance costs attributable to their traffic. But once they began operating on the tracks and not interchanging with TCRY, there has been no financial contribution for their share of the wear to the track.

Now that the UPRR has joined the BNSF in the free ride concept, it is TCRY alone that bears the burden of keeping the tracks safe and useable.

Yes, we have reduced the allowable speed on the track. With no new capital commitment from the Port for track upgrades, and no financial commitment from the class 1s for their share of the maintenance costs, the options get limited in balancing safety with use.

RR Lease 2012 -2019

TCRY's relationship with UP remained strong until after 2016 when TCRY successfully opposed an effort by the City of Richland (the City), supported by the Port, to condemn land for a road crossing over TCRY tracks. Thereafter, the evidence indicates that the City and the Port conspired to prepare a "Southern Connection Options List" which consisted of several alternatives to oust TCRY from the rail line.

Under threat of litigation, the City and the Port convinced UP to cancel its interchange and handling carrier agreements with TCRY, and to serve the Southern Connection shippers directly. That occurred in December, 2017. As I noted in quoting from the Court hearing earlier in my statement, UP stated in open Court that a carrier who operates over another carrier's tracks is obligated to pay its fair share of the maintenance costs that result from its operation.

Consistently with that obligation, UP offered to pay to the Port its fair share of maintenance costs for distribution to TCRY, but the Port did not accept that offer because it would have been inconsistent with the City-Port plan to oust TCRY from the rail line.

Thereafter, in continued furtherance of that plan, the Port refused to approve TCRY tariffs that would have assessed fees for track and bridge maintenance from the entities

who are responsible for such maintenance costs. The details are in the Verified Statement of Lisa C. Anderson.

The City-Port plan to discontinue TCRY's rail line on a de facto basis by forcing it out of business has not been successful. TCRY continues to maintain the tracks in accordance with the terms of its Lease. TCRY continues to serve the smaller shippers on the line.

TCRY intends to use all legal means to defeat this Application and thereafter to remedy the blatant unfairness of paying the entire cost of track maintenance while the users of the rail line pay none of that cost.

TCRY has every intention of honoring its lease of the rail line through 2032 and hopefully beyond that date.

AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Signed on April 4, 2019.



RANDOLPH V. PETERSON

EXHIBIT RVP-1

DEPARTMENT OF ENERGY
1171 ANNEX GENERAL PURPOSE LEASE
LRC

DEPARTMENT OF ENERGY
1171 ANNEX GENERAL PURPOSE LEASE

PART I

THIS LEASE, entered into this 5th day of March, 1998, between the UNITED STATES OF AMERICA, acting by and through the Department of Energy, hereinafter referred to as the "Government" or "Lessor", and Livingston Rebuild Center, Inc., hereinafter referred to as "Lessee,"

WITNESSETH:

1. That the Secretary of Energy, under the authority of Section 161(g) of the Atomic Energy Act of 1954 (P.L. 83-703), having determined that leasing the property herein described and which is not currently needed, will promote economic development of the community and is therefore advantageous to the Government and in the public interest, hereby leases to the Lessee the following described property, hereinafter referred to as the "Leased Property:"

The high bay shop area, three lines of service track that enter and exit the high bay shop area, adjacent loading dock, adjacent lunchroom/office space, adjacent land, and related personal property in and around the building commonly known as the 1171 Building located in the 1100 Area of the Hanford Site as further described in Exhibit "A". Description of the Premises, and as further delineated on the maps marked Exhibit "B" which are attached hereto and made a part hereof.

The Leased Property includes all improvements thereon, as well as the right of ingress and egress and the right, in common with others, to the use of supporting facilities, roadways, and parking areas provided the Leased Property to the extent necessary to enable the Lessee to use same for the purpose of this Lease. Lessee acknowledges that historical artifacts have been identified among the leased property and are designated as such in Exhibit "A"; and agrees to notify the Local DOE-RL Representative prior to removing these artifacts for other uses.

2. Attached hereto and made a part hereof is a Joint Survey and Inspection of Condition of Government Leased Property, marked Exhibit "C," signed by the representatives of the Government and the Lessee, which sets forth the condition of each item of the Leased Property as determined from their joint inspection thereof.

3. The initial term of this Lease shall begin on April 1, 1998, and end on March 31, 2008, unless sooner terminated in accordance with the provisions of Article 5 or 6 of Part II, General Provisions of this Lease.

4. This Lease may be renewed by Lessor and Lessee for such term and rent as the parties shall mutually agree. Lessee shall provide written notice of its desire to renew this lease to the Local DOE-RL Representative at least ninety (90) days before the end of the then current term. In any event, this Lease shall not be in effect for more than twenty (20) years from the beginning of the initial term. In the event that the Lessee holds over at the expiration or termination of this lease, such holding over shall be deemed to create a tenancy at will which may be terminated at any time by the Lessor or by the Lessee.

5. The Lessee shall pay the Government an annual rental of \$182,600.00. The rent shall be payable at the rate of \$15,216.66 per Month, in arrears, in conformity with the provisions of Article 23 of Part II, General Provisions of this Lease. The lease rate shall include:

- (1) Roof repair
- (2) Major structural repairs
- (3) Emergency response services
- (4) Facility orientation training
- (5) Hanford General Employee Training (HGET) training
- (6) Facility administration (i.e. building monitoring, electrical inspection, etc)
- (7) Water and sanitary sewer
- (8) Fire system inspection and maintenance
- (9) Installation, maintenance, and operations of HVAC systems (on a prorata basis)
- (10) Internal power and lights (on a prorata basis)
- (11) Facility heating (on a prorata basis)

provided that the costs of these services to Lessor at Lessor's then current rates and charges shall not exceed \$118,000.00 in total in a given fiscal year. Lessee shall be responsible for costs in excess of \$118,000.00 in total for roof repair, major structural repairs, emergency response services, orientation training, Hanford General Employee Training (HGET), and facility administration in any given fiscal year. Lessee may at its option forgo repairs and services in excess of \$118,000.00 in any given fiscal year so long as this does not impair the general health, safety, and environment for employees or the public, or pose a threat to the environment or further damage to the property. The Lessor will notify the Lessee if at any time during the fiscal year it projects that these costs will exceed \$118,000.00. The Lessee has the right, at the lessee's option, to accomplish any major repairs over \$118,000.00 in a given fiscal year with its employees or independent contractors or to subcontract said major repairs to DOE or to its subcontractors.

Lessee is responsible for all costs associated with:

- (1) Doors and minor facility repair
- (2) Internal water systems
- (3) All facility modifications related to Lessee operations
- (4) Site interface training including lock and tag.

The Lessee shall not use the sanitary sewers for disposal of process materials.

All portable fire systems will be the sole responsibility of the Lessee.

Lessee shall provide all grounds support such as snow removal and general cleanup.

On site training is available for use by the lessee and shall be charged at the then current on site rates.

6. The sole purpose for which the Lessee shall use the Leased Property is the operation of a general purpose equipment repair business as more fully described in Exhibit "D" which is attached hereto and incorporated herein. The Lessee must obtain the written approval of the Local DOE-RL Representative prior to using the Leased Property for any purpose other than that specified above.

7. The initial minimum amount and types of insurance which the Lessee shall procure and maintain on the Leased Property in accordance with the provisions of Article B of Part II, General Provisions hereto are the following:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
Physical Damage, Fire, Extended Coverage, and Malicious Mischief	\$10,000,000
Comprehensive General Liability Bodily Injury and Property Damage	\$10,000,000
Workers' Compensation	Statutory Limits

8. No environmental bond will be required at this time; however the Lessor shall have the right to impose an environmental bond in an appropriate amount under appropriate terms and conditions should Lessee alter its operation, as described in Exhibit D, in a way that materially increases the risk of environmental hazard.

9. There are hereby incorporated into this Lease, by attachment hereto, the following specified additional provisions which shall be controlling in the event of any conflict with Part II, General Provisions of this Lease:

- (1) General Purpose Lease Special Provisions Part III
- (2) Exhibit C - Joint Survey and Inspection of Condition of Government Leased Property.

10. For the purpose of this Lease, notices as required hereunder shall be forwarded to the Local DOE-RL Representative:

DOE-RL Realty Officer

P.O. Box 550
Richland, WA 99352

11. For the purpose of this Lease, notices as required hereunder shall be forwarded to the Lessee's Representative:

Mr. Randy Peterson
Livingston Rebuild Center, Inc.
P.O. Box 992
Livingston, MT 59047

Copy to:

Mr. Ken Tolliver
Wright, Tolliver, and Guthals, P.C.
P.O. Box 1977
Billings, MT 59103-1977

12. The Lessee shall have the authority to designate parking spaces on the Leased Property. Lessee shall have the right to mark these spaces subject to Lessor's approval of any signage or marking and consistent with rules and regulations applicable to the Hanford site. Enforcement of its rights to use such parking shall be the sole responsibility of the Lessee consistent with all applicable laws governing such enforcement and Lessee shall indemnify and hold harmless the Lessor and its contractors and subcontractors from any and all liability that may result from its (Lessee's) enforcement activities.

13. The leased portion of the building is to be heated at Lessee's expense so that water systems and fire systems do not freeze. The Lessee shall ensure that the temperature in leased portion of the building shall not fall below 50 degrees F.

14. The Lessee shall not be allowed the use of the existing process sewers and drains in, around, or under the Leased Premises. The Lessee shall capture and dispose of all process water that is used in the Lessee's operations at an offsite facility that is properly licensed and permitted to handle the material. Lessee shall be allowed to use the existing sanitary sewers.

15. Lessor and its contractors and subcontractors, agents, and employees shall in no event be liable to Lessee for any indirect, consequential, or incidental damages flowing from any breach or alleged breach of Lessor's obligations under this Lease, including, but not limited to, loss of sales or revenue; costs associated with idled plant, labor or equipment; additional production costs; cost of delays; lost materials or increased materials costs; increased shipping costs or demurrage; cost of money, interest, or penalties; and cost of replacement or temporary facilities or equipment. Should the Leased Property be rendered unusable due to Lessor activity for a period of time exceeding 48 hours, the Lessee's base rent as defined in Article 5, Part I of this Lease may, upon agreement by Lessor and Lessee, be suspended until such time as Lessor again makes the Leased Property usable for Lessee's activities.

DEPARTMENT OF ENERGY

GENERAL PURPOSE LEASE

GENERAL PROVISIONS

PART II

1. GENERAL MAINTENANCE OBLIGATION

Lessee, at its own expense, shall so protect, preserve, maintain, and repair the Leased Property, so that the same will at all times be kept in at least as good condition as when received hereunder, subject, however, to ordinary wear and tear and loss or damage for which Lessee is not liable hereunder.

2. INSURANCE

Lessee agrees, at its expense, to maintain insurance coverage under its corporate blanket property and general liability policies as may be in effect from time to time and as are standard and customary in the normal course of Lessee's business in the context of market conditions from time to time. Lessor will be named as a loss payee as Lessor's interests may appear in respect of damage to the Leased Property. Lessee may self-insure and select deductibles for any or all insurance coverages consistent with its standard practices in the context of market conditions from time to time.

Lessee shall adjust all losses with its insurer and shall be responsible to Lessor for all losses within the respective policy deductibles.

Lessee shall provide or arrange for its insurance broker to provide to the Lessor a certificate of insurance for the insurance required by this Lease and at each renewal of the lease.

3. CONDITION OF LEASED PROPERTY

Lessee has examined, knows, and accepts the condition and state of repair of the Leased Property and the Installation of which it forms a part, and acknowledges that the Government has made no representation concerning such condition and state of repair, nor any agreement or promise to alter, improve, adapt, repair, or keep in repair the same, or any item thereof, which has not been fully set forth in this Lease which contains all agreements made and entered into between Lessee and the Government.

4. EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY

This Lease is subject to all outstanding easements and rights of way over, across, in, and upon the Leased Property, or any portion thereof, and to the right of the Government to grant such additional easements and rights of way over, across, in, and upon the Leased Property as the Government shall determine to be in the public interest, provided, that any such additional easement or right of way shall not unreasonably interfere with Lessee's right of peaceful occupancy. The Government shall notify the lessee of any easement activities that could impact commercial operations. In the event of incompatibility of use, this Lease shall be terminated in accordance with Article 5 of this Part II. There is hereby reserved to the holders of such easements and rights of way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located thereon, and to any Federal, state, or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Leased Property as shall be necessary for the performance of their duties with regard to such facilities.

5. TERMINATION BY GOVERNMENT

(1) If Lessee fails to perform any of the terms or conditions of this Lease, the Government may elect to terminate this Lease and no adjustment of any advance rentals paid by Lessee shall be made. The Government shall be entitled to recover and Lessee shall pay to the Government:

- (a) The reasonable costs incurred in resuming possession of the Leased Property.
- (b) The costs incurred in performing any obligation on the part of Lessee to be performed hereunder.
- (c) An amount equal to the aggregate of all rents and charges assumed hereunder and not theretofore paid or satisfied, less the net rentals, if any, collected by the Government on the reletting of the Leased Property, which amounts shall be due and payable at the time when such rents, obligations, and charges would have accrued or become due and payable under this Lease.

(2) The Lessor's right to terminate this Lease under subsection (1) of this article, may be exercised if the Lessee does not cure its failure to perform, or diligently commence to cure such default within 15 days (or more, if authorized in writing by the Local DOE-RL Representative) after receipt of the notice from the DOE-RL Representative specifying the failure.

(3) Repeated and unexcused failure by Lessee to comply with one or more requirements of this Lease shall constitute a default notwithstanding

that one or all such failures have been timely cured pursuant to this clause.

- (4) In the event that the Government's requirements necessitate possession of the Leased Property, such as in the event of a national emergency or a change in the scope of the strategically essential mission of the Installation, so as to require immediate removal and vacation of the Leased Property, the Government may terminate this Lease, and Lessee shall be entitled to just compensation.
- (5) The rights and remedies of the Lessor under this article are in addition to any other rights and remedies provided by law or under the terms of this Lease.

6. TERMINATION BY LESSEE

- (1) Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to the Local DOE-RL Representative in the event of damage to or destruction of all of the improvement on the Leased Property or such substantial portion thereof as to render the Leased Property incapable of use for the purposes for which it is leased hereunder, provided, that the Local DOE-RL Representative either has not authorized or directed the repair, rebuilding, or replacement of the improvements, or has made no provision for payment of such repair, rebuilding, or replacement by application of insurance proceeds or otherwise.
- (2) In the event of substantial damage to or destruction of the Leased Property at any time during the term so that it is not reasonable to expect that the Leased Property could again be tenantable by Lessee within 120 days of the date of such casualty, then either Lessor or Lessee may terminate this Lease by written notice to the other and this Lease will thereupon be and become null and void subject only to the requirement that Lessor shall refund to Lessee the prorata portion of any pre-paid rent or other charge allocable to the period subsequent to the date of such casualty.
- (3) In the event of substantial damage to or destruction of the Leased Property at any time during the last six (6) months of the term, either Lessor or Lessee may cancel this Lease upon written notice to the other party hereto given within thirty (30) days after such damage or destruction.

7. SURRENDER

Upon the expiration of this Lease or its prior termination, Lessee shall quietly and peacefully remove itself and its property from the Leased Property and surrender the possession thereof to the Government; provided, in the event the Government shall terminate this Lease upon less than thirty (30) days notice, Lessee shall be allowed a reasonable period of time, as determined by the Local

DOE RL Representative, but in no event to exceed seventy-five (75) days from receipt of notice of termination, in which to remove all of its property from and terminate its operations on the Leased Property. During such period prior to surrender, all obligations assumed by Lessee under this Lease shall remain in full force and effect; provided, however, that if the Local DOE RL Representative shall, in his sole discretion, determine that such action is equitable under the circumstances, he may suspend, in whole or in part, any further accruals of rent between the date of termination of the Lease and the date of final surrender of the Leased Property.

8. RESTORATION OF LEASED PROPERTY

Before the expiration or prior termination of this Lease, at the direction of the Local DOE-RL Representative, Lessee shall restore the Leased Property and each item thereof to the condition in which it was received, or to such improved condition as may have resulted from any improvement made therein by the Government or by Lessee during the Lease term, subject however, to ordinary wear and tear and loss or damage for which Lessee is not liable hereunder; provided, in the event the Government shall terminate this lease upon less than thirty (30) days notice Lessee shall have seventy-five (75) days from receipt of notice of termination to accomplish such restoration, or such additional time as the Local DOE-RL Representative may determine is fair and reasonable.

9. INSTALLATIONS, ALTERATIONS, AND REMOVALS

- (1) It is expressly agreed and understood that Lessee will make no permanent alterations, additions, or betterments to or upon the Leased Property without the prior written approval of the Local DOE-RL Representative, and then only subject to the terms and conditions of such approval which may include an obligation of removal and restoration upon the expiration or termination of this Lease, as the Local DOE-RL Representative may direct. As a minimum, the Lessee must comply with configuration control, fire, safety, and environmental standards and regulations currently in effect on the Hanford Site.
- (2) During the term of this Lease, or any extension thereof, with the prior written approval of the Local DOE-RL Representative, Lessee shall have the right, at its own expense, to install such improvements and additions and to attach such removable fixtures in or upon the Leased Property as may be necessary for its use of the Leased Property pursuant to this Lease, and to remove same at any time prior to the expiration or termination of this Lease or any extension thereof; provided, that in the event of termination by the Government upon less than thirty (30) days notice Lessee shall, as may be directed by the Local DOE-RL Representative (at his sole discretion), remove such items within seventy-five (75) days from the receipt of notice of termination. All property not so removed shall be deemed abandoned by Lessee and may be used or disposed of by the Government in any manner, whatsoever, without any liability to account to Lessee therefor, but such abandonment shall in no way reduce any obligation of Lessee to

perform restoration under Article 8 of this Part II. In the event that the Leased Property is not restored to the condition at the time of Lease commencement, subject to normal wear and tear and loss or damage for which Lessee is not liable hereunder, then the Government may cause the Leased Property to be restored at the sole expense of Lessee.

10. GOVERNMENT NON-LIABILITY/LESSEE LIABILITY

- (1) Lessee covenants that it will indemnify and save and hold harmless the Government, its contractors and subcontractors at any tier, its officers, agents, and employees for and from any and all liability or claims for damages to property or injuries to or death of persons which may arise from or be incident to the use and occupancy of the Leased Property by Lessee, or for damages to the property or injuries to the person of Lessee (if an individual), or damages to the property or injuries to or death of the person of Lessee's officers, agents, servants, employees, or others who may be on said premises at their invitation or the invitation of any one of them, resulting from use and occupancy of the leased property. To the extent necessary to effectuate the foregoing indemnification obligation, Lessee specifically waives any and all immunity provided by any industrial insurance or workers' compensation act (including the Washington Industrial Insurance Act, RCW Title 51) and agrees to release, indemnify, and save harmless the Government, its Hanford site contractors, and their agents, employees, and representatives from liability for any action brought by or on behalf of Lessee's own employees or agents or the agents or employees of any of Lessee's subcontractors at any tier in accordance with the provisions of this clause.
- (2) Lessee further covenants that any property of the Government (other than leased property) damaged or destroyed by Lessee incident to Lessee's use and occupancy of the Leased Property shall be promptly repaired or replaced by Lessee to the satisfaction of the Local DOE-RL Representative, or in lieu of such repair or replacement shall, if so required by the said officer, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of the destruction of the property.
- (3) Lessee shall be responsible for any loss or damage to the Leased Property resulting from Lessee's use or occupancy of the Leased Property, provided that Lessee shall not be responsible for loss or damage to the Leased Property caused by the Government, its contractors, their subcontractors at any tier, or any third party, or any loss or damage to the Leased Property caused by an act of God, including fire, flood, windstorm or earthquake. Lessee's liability to repair, replace or rebuild the Leased Property in the event of loss or damage resulting from a single occurrence shall in no event exceed \$10,000,000.

11. UTILITIES AND SERVICES

In the event that the Government shall furnish Lessee with any utilities (includes telephone, water, sewer and power) and services maintained by the Government which Lessee may require in connection with its use of the Leased Property, Lessee shall pay the Government the charges therefor in addition to the cash rent required under this Lease. Such charges and the method of payment thereof shall be determined by the appropriate supplier of such services, in accordance with applicable laws and regulations, on such basis as the appropriate supplier of such service may establish, which may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. These charges are described in Part 1, Section 5.

It is understood that there may be temporary utility outages for maintenance, utility upgrades and incidents beyond the control of the government and that the government will notify Lessee when possible of such outages.

12. LIENS

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of the Government, which at any time may arise or exist with respect to the Leased Property for materials or equipment, or any part thereof, furnished therefore for the account of the Lessee and if the same shall not be promptly discharged by Lessee, the Government may discharge, or cause to be discharged, the same at the expense of Lessee.

13. ACCESS

The Government shall have access to the Leased Property at all reasonable times for any purposes not inconsistent with the quiet enjoyment thereof by Lessee, including, but not limited to, the purpose of inspection. Wherever practicable, the Government shall give advance notice of such inspection to Lessee and offer the opportunity to accompany the Local Government Representative or his designee.

14. STATE AND LOCAL TAXES

In the event that as a result of any future Act of Congress, subjecting Government-owned property to taxation, any taxes, assessment or similar charges imposed by State or local authorities upon the Leased Property, Lessee shall pay the same when due.

15. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of work under this Lease, Lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, age, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessee agrees to post hereafter in conspicuous places available

for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. Lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. The Lessee is responsible for actions required to comply with the American Disabilities Act.

16. COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees or bonafide established commercial or selling agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Lease without liability or in its discretion to add to the rental price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practices, and who have not obtained such licenses for the sole purpose of effecting this Lease, may be considered as bonafide employees or agencies with the exception contained in this clause.)

17. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Lease, or to any benefit arising from it. However, this clause does not apply to this Lease to the extent that this Lease is made with a corporation for the corporation's general benefit.

18. FAILURE OF GOVERNMENT TO INSIST ON COMPLIANCE

The failure of the Government to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of the Government's right to the future performance of any such terms, covenants, or conditions and Lessee's obligations with respect to such future performance shall continue in full force and effect.

19. ASSIGNMENT OR SUBLETTING

Lessee shall not transfer or assign this Lease or any interest herein nor sublet or otherwise make available to any third party or parties, any portion of the Leased Property or rights therein without the prior written consent of the Government, which consent shall not be unreasonably withheld. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of Lessee hereunder, but no assignment shall relieve the assignor of any of Lessee's obligations hereunder except for an extension of the lease term beginning after such assignment, and then only if the Government shall have consented thereto.

20. GRATUITIES

- (1) The right of Lessee to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that Lessee, its agents, or another representative:
 - (a) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (b) Intended, by the gratuity, to obtain a lease or favorable treatment under a lease.
- (2) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (3) If this Lease is terminated under paragraph (1) above, the Government is entitled to pursue the same remedies as in a breach of the lease.
- (4) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this Lease.

21. GOVERNMENT RULES AND REGULATIONS

Lessee shall comply with such rules and regulations regarding installation security, ingress, egress, safety, and sanitation as may be prescribed, from time to time, by the Local DOE-RL Representative.

22. NOTICES

No notice, order, direction, determination, requirement, consent, or approval under this Lease shall be of any effect unless in writing. All notices required under this Lease shall be addressed to Lessee, or to the Local DOE-RL Representative, as may be appropriate, at the addresses thereof specified in this Lease or at such other addresses as may from time to time be agreed upon by the parties hereto.

23. PAYMENTS

All payments to the Government required under this Lease shall be made by check or money order made payable to the Department of Energy and delivered to the Local DOE-RL Representative or designee. All amounts payable by Lessee shall be payable on a monthly basis.

24. INTEREST

Notwithstanding any other provision of this Lease, unless paid within thirty (30) days of the date due, all amounts that become payable by Lessee to the Government under this Lease shall bear interest from the date due until paid. The interest rate per annum shall be the interest rate in effect which has been established

by the Secretary of the Treasury pursuant to Public Law 92-42; 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this Lease; (ii) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this Lease provides for revision of prices, the date of written notice to the Lessee stating the amount of refund payable in connection with a negotiated pricing agreement not confirmed by Lease amendment.

25. ADMINISTRATION

The Local DOE-RL Representative specified in Part I, Article 10 of this Lease shall have complete charge of the administration of this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

DEPARTMENT OF ENERGY

GENERAL PURPOSE LEASE

SPECIAL PROVISIONS

PART III

1. RESERVED USE OF THE PREMISES: The Government reserves unto itself, its contractors and its assigns the right (1) to use, maintain, repair, remove and replace existing roads, railroads, water lines, power lines, and other facilities that may touch or intersect the Premises; (2) to construct, use, maintain, repair, remove, and replace railroads, water lines, canals, power lines and other facilities over, under, across and upon the Premises; and (3) to place, use, maintain, repair, remove, and replace monitoring equipment such as fire control and fire alarm facilities over, under, across, and upon the Premises. DOE's use will not be inconsistent with the purpose of this lease.

2. ACCESS: The Lessee and its authorized representative shall have a non-exclusive right of ingress to and from the Premises over abutting Government-owned lands and such roads within DOE's property as DOE may specify from time to time for the installation, operation, maintenance, repair, and replacement of the Utilities. The Lessee's use of the aforesaid lands and road shall be subject to such security limitations and conditions as DOE may require from time to time. The Lessee's use and occupation of the Premises shall be subject to such rules and regulations and limitations regarding safety, security, and access as DOE may prescribe from time to time. DOE may authorize other contractor(s) access to remove materials and equipment currently in the Building not owned or leased by the lessee. The lessee will be provided a 30-day written notification.

3. DOE APPROVAL OF EQUIPMENT OWNED BY OTHERS: Lessee shall not install or allow the installation of any equipment owned and operated by others on the Premises without prior written approval of DOE. Lessee shall assume all responsibility for ensuring that all equipment installed on the Premises is operated in conformance with the terms of this Lease; such written approval will not be unreasonably withheld. All obligations imposed by acceptance of this lease on the Lessee for compliance with applicable laws and regulations and for the indemnification of the Government, DOE and its authorized representatives apply with equal force to Lessee in regard to the operation of any equipment installed on the Premises, regardless of ownership, unless that equipment is installed by or on behalf of the Government, DOE or its authorized representatives. DOE shall not assume any obligation to provide an alternate site for operation of Non-Lessee owned equipment which DOE determines interferes with DOE operations and programs.

4. INTERFERENCE WITH OTHER OPERATIONS: The Lessee's operation and activities on the Premises shall be so conducted that interference is not caused to the

operations of the Government and/or its operating contractors on Government-owned land in the vicinity of the Premises or elsewhere within the Hanford Site. If such interference results from the Lessee's operation hereunder, DOE may, at its discretion, issue written notice to the Lessee, which will include details of its defaulting conduct. A reasonable opportunity to take corrective action at Lessee's expense will be provided the Lessee unless DOE determines that said interference creates an emergency situation. It is recognized by the parties that the men's locker room and women's restroom, along with hallway access to each, and all trackage from the Union Pacific or BNSF delivery point to the Y north of the high bay shop, as described in Exhibit "A" and/or delineated in Exhibit "B", are joint use areas with each party having reasonable access.

5. INTERFERENCE WITH OTHER OPERATION - EMERGENCY SITUATION: It is understood by Lessee that radio-electronic type operations of the Government and its operating contractors which are now located or hereinafter placed in the vicinity of the Premises or elsewhere within the Hanford Site, are, or will be, maintained and conducted in the interests of the national defense and security and that it is of vital importance that these installations remain operable at all times. Therefore, should Lessee's electrical or utility lines at any time or for any reason cause interference with such radio-electronic type operations to the extent of making their signals unintelligible, and Lessee or its representatives are not immediately available to take corrective action, DOE shall have the right to, and Lessee hereby authorizes DOE to, enter onto the Premises and de-energize the offending station or stations. This right will be exercised only in emergency situations and Lessee shall be given such advance notice as and if circumstances permit, and in any event, Lessee shall be notified as soon as practicable after the de-energizing has been accomplished and shall be allowed to resume operation of the offending station or stations as soon as corrective measures have been effected to DOE's satisfaction. The Lessee shall hold the Government and its authorized representatives harmless from any and all claims, cost or liabilities of any nature arising out of any action taken under the authority reserved in this section.

6. ENVIRONMENTAL INDEMNITY: The Lessee, by acceptance of this lease agrees that it shall indemnify and save harmless the Government, DOE, contractors of DOE, and authorized representatives of DOE, from any claims, costs (including, but not limited to, reasonable attorneys fees, consultant fees and/or expert witness fees) or liabilities (including, but not limited to, sums paid in settlement of claims) which arise during or after the term of the lease from or in connection with the presence or suspected presence of hazardous substances in the air, soil, water, groundwater or soil vapor on or under the facilities or the lease property or premises which the Lessee is allowed to use under this lease, or arising from or in connection with the presence or suspected presence of hazardous substances which have been released upon or from the facilities or premises, unless hazardous substances are present solely as a result of the actions of the Government, DOE or its authorized representatives. Hazardous substances, for the purposes of this lease shall include, but not be limited to, any hazardous or toxic substance, material or waste which is (1) petroleum or petroleum derivative; (2) asbestos; (3) polychlorinated biphenyls (PCB); (4) designated as "Dangerous Waste" or "Extremely Hazardous Waste" by the State of Washington under

authority of the Hazardous Waste Disposal Act, RCW Chap. 70-105, and associated regulations, WAC 173-303; (5) DESIGNATED AS "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sections 9601, et seq.; (6) designated as "Hazardous Waste" pursuant to the Resource Conservation and Recovery Act (RCRA) 42 USC Sections 6901, et seq.; (7) designated as a "Hazardous Substance" under the Clean Water Act, 33 USC § 1321, or listed pursuant to 33 USC § 1317; (8) listed by the U. S. Department of Transportation at 49 CFR 172.101 or the U. S. Environmental Protection Agency at 40 CFR Part 302; (9) is subject to corrective action requirements pursuant to Section 3003 of RCRA; and (10) any other substance, waste or material which is regulated as hazardous, dangerous or solid waste by any federal, state or local agency.

On the date of execution of this lease, the Lessee's responsibilities under the indemnification clause become effective. The Lessee's responsibilities of indemnifications are prospective from the date of execution.

The indemnification shall specifically cover costs incurred in connection with any investigation of site conditions or any cleanup, removal, restoration or remedial action required by any federal, state or local regulatory authority, or undertaken by the Government, DOE or its authorized representatives to comply with federal, state or local environmental protection or restorations laws, regulations or ordinances deemed applicable to the site by the Government or DOE. The obligation undertaken by Lessee to provide indemnification to the Government, DOE or its authorized representatives shall survive the expiration or early termination of this lease.

To insure that DOE is in compliance with requirements stated in the Hanford Resource Conservation and Recovery Act Permit, Chapter 1 SE.15, the Licensee shall immediately report to DOE the release of any dangerous waste or hazardous substance occurring on the Hanford Site. This immediate verbal report shall contain the following information:

- a. Name, address, and telephone number of the point of contact for the Licensee;
- b. Location at which the release occurs;
- c. Name and quantity of material(s) involved;
- d. The extent of injuries, if any;
- e. An assessment of actual or potential hazard to the environment and human health, where this is applicable;
- f. Estimated quantity of released material that resulted from the incident; and why.
- g. Actions which have been undertaken to mitigate the occurrence.

7. PERMITS AND LICENSES: Lessee shall obtain all necessary permits, licenses, certifications and /or authorizations required for construction, occupancy and operations during the term of the lease. Lessee shall abide by all federal, state and local laws and regulations applicable to the its operations. Lessee shall ensure that its operations are fully protective of the environment and of human health and safety. At the request of DOE, Lessee shall produce any required licenses, permits, certifications or authorizations as evidence of compliance with this provision. Failure to comply with any part of this provision shall constitute grounds for termination of this Lease per Part II, Section 5. In addition to any other permits required hereunder, Lessee shall obtain permit from Hanford Fire Marshall.

8. DOSIMETRY READINGS: Lessee will pay and monitor employee's dosimetry badging (if any) and dosimetry counts while on the Hanford Site.

9. FACILITY MODIFICATIONS: All building modifications must be reviewed and approved by DOE-RL or the designated representative. The Lessee does have the right to accomplish the modifications with its employees or independent contractors or to subcontract the modifications work to DOE or to its subcontractors. The following codes and standards will apply to modifications to be performed by the Lessee:

- (1) The modification to the building and all interior areas shall meet or exceed current codes and standards in effect at the Hanford Site; National Fire Protection Association (NFPA); Federal Health and Safety Standards (including Occupational Safety and Health Administration Requirements); and the Americans With Disabilities Act (ADA) of 1990.
- (2) All mechanical systems and equipment shall be in compliance with applicable portions of the current editions of the following codes, standards, and guides:
 1. Air Diffusion Council (ADC)
 2. National Fire Protection Association, with special emphasis NFPA 90A Standard for the installation of air conditioning and ventilating systems.
 3. Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA)
 4. American National Standards Institute (ANSI) R117.7. latest edition
 5. Institute of Electrical and Electronics Engineers (IEEE 802.3)
 6. American National Standards Institute RP-7 latest edition
 7. Illuminating Engineering Society (IES) Handbook
 8. American Water Works Association (AWWA)

- (3) All electrical systems and equipment shall meet or exceed the requirements of the latest edition, National Electrical Code (NEC 70). Equipment and Materials shall be Underwriters Laboratory (UL) Listed whenever applicable.

10. HAZARDOUS MATERIALS AND SOLID OR HAZARDOUS WASTE HANDLING PLAN: The Lessee shall provide a Handling/Storage Disposal Plan. The Lessee shall be solely responsible for the storage treatment and disposal of hazardous materials or solid or hazardous waste, to include obtaining all permits, licenses, and financial protections required under federal, state, or local statutes, regulations, and ordinances, and to include full compliance with the same.

11. SECURITY/SITE BADGING ORDER PLAN: Lessee shall comply with the "LRC 1171 Annex General Security Plan", Exhibit E. Any badged personnel will have to comply with current site rules and procedures.

12. HANFORD SITE TRAINING FOR ALL EMPLOYEES: Lessee's employees shall be required to successfully complete an initial training course to familiarize them with applicable site rules and procedures and to successfully complete annual refresher training.

13. ROOF ACCESS AND REPAIRS: Lessor will install a fence/barrier to identify safe routes for work requiring access to the roof.

- (1) Lessee shall develop procedures satisfactory to the Lessor to prevent unauthorized access to the roof of the Leased Premises or adjacent premises by its employees, agents, or contractors.
- (2) Lessee's acceptance of this provision shall constitute an express acceptance and acknowledgement of the dangers inherent in accessing the roof of the Leased Premises or adjacent premises and lessee shall indemnify and hold harmless the Lessor, its contractors, subcontractors, agents, and assigns from any and all liability for personal injury or death or loss or damage to property occasioned by or arising from access to the roof by its employees, contractors, subcontractors, or agents.

14. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA: The Lessee shall comply with all requirements of all applicable federal, state, and local statutes, regulations, codes and ordinances regarding handling, training, records and information requirements attendant to Hazardous Materials used or stored at the Leased Premises. Lessee shall make all related records and documents available to the Lessor at its request.

15. SIGNAGE: Subject to the approval of Lessor and consistent with applicable site rules and regulations and safety, the Lessee may install location and building signs that direct Lessee's visitors, customers, and employees to its facilities and offices.

16. EXIT SURVEY: A Phase 1 Environmental survey of hazards and Environmental Concerns for the Leased property will be conducted jointly by the Lessee and the Lessor upon completion of the lease. The survey will review and note changes from the Baseline Survey in Exhibit C.

17. SERVICES: The Government or its designee, the Hanford Fire Marshall, reserves the right to periodically inspect the contractor's facilities for compliance with health, safety, and fire protection when it is determined that conditions exist that may pose a threat to health, safety, and operations or the ability to comply with the provisions of the lease.

The Government will make any and all of the Hanford Fire Department services available to the Lessee, including fire, ambulance, and hazardous material emergency response services as supported by state registered Incident Command Agency. NOTE: Lessee shall receive any fire or emergency response services, including ambulance or emergency medical services, in accordance with the then current procedures and priorities applicable to the Hanford Site, including any support arrangements for mutual aid from surrounding communities. Testing and inspection of fire alarms that report to the Central Fire Station, to include the site fire marshal's inspection program, will be performed by the government.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on their behalf by their duly authorized representatives as of the date first above written.

LESSEE: Livingston Rebuild Center, Inc.

By 

Title: President

LESSOR: THE UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
RICHLAND OPERATIONS OFFICE

By 

Title: Realty Officer

EXHIBIT RVP-2

AMENDMENT TO INDENTURE



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Benton County

Return Address:

PORT OF BENTON
3100 GEORGE WASHINGTON WAY
RICHLAND, WASHINGTON 99352

RECEIVED

AUG 10 2007

FORWARD
FRONT DESK

DOCUMENT TITLE(S)
Amendment to Indenture

Reference of related documents:

on page of document 1999-026695 and 2001-000479

Grantor(s): (Last name first, then first name and initials)

1. United States Department of Energy

2.

3.

etc. additional names on page of document

Grantee(s): (Last name first, then first name and initials)

1. Port of Benton

2.

3.

etc. additional names on page of document

Legal Description: (Include abbreviated form (lot, block, plat name, section-township-range))

1. See Quit Claim Deed which is part of this document and 1999-026695 and 2001-000479

2. Additional legal description is on Attachment A of document

Assessor's Property Tax Parcel Account Number(s): Unknown



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Benton County

AMENDMENT TO INDENTURE
Between the United States of America
Acting by and through the U.S. Department of Energy and
The Port of Benton, Washington

THIS AMENDMENT TO THE INDENTURE, effective the 1st day of October 1998, between the UNITED STATES OF AMERICA, acting by and through the U.S. DEPARTMENT OF ENERGY, (the "Grantor") and the PORT OF BENTON, acting through its Board of Commissioners, (the "Grantee") (collectively, the "Parties") is made this 30th day of September 1998 by and between said Grantor and Grantee in consideration of the promises and mutual covenants contained in this Amendment, in which the Parties agree as follows:

1. Insert a new paragraph F. in Section V. of the Indenture regarding notice of construction or alterations to the Federal Aviation Administration - "Grantee agrees to give adequate notice to the Administrator, Federal Aviation Administration of any construction or alteration described in 14 U.S. Code of Federal Regulations § 77.13(a)."
2. Insert a new paragraph G. in Section V. of the Indenture regarding mortgages or other disposition of property rights - "Grantee shall obtain the written consent of Grantor before any part of the Real Property or Railroad is mortgaged or otherwise disposed of, or any rights or interests conveyed for which Grantor holds a reversionary interest, license, or easement in said Real Property and Railroad. However, Grantee shall only be obligated to submit licenses, leases, or easements to Grantor for consent with a term greater than ten (10) years."
3. Insert a new sentence at the end of paragraph B. in Section VII. of the Indenture regarding funding of the Railroad - "Grantee agrees to devote all lease payments or other sources of revenue from the Real Property and Railroad to first cover maintenance of the Railroad; provided, however, that any surplus lease payments or other sources of revenue shall be used at the discretion of Grantee."
4. Substitute a new paragraph A in Section XVII. of the Indenture regarding compensation to the United States for disposing of property rights - "For the ten (10) years next following the effective date of this Indenture, in the event that any of the aforesaid terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions are not met, observed, or complied with by Grantee, whether caused by the legal inability of said Grantee to perform any of the obligations herein set out, or otherwise, the title, right of possession, and all other rights conveyed by the Deed to Grantee, or any portion thereof, shall at the option of Grantor revert to the UNITED STATES OF AMERICA in its then existing condition, including any reservations, restrictions, licenses, easements, equitable servitudes, contracts, and leases, sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur, and title, right of possession, and all other rights conveyed, except those that have reverted independently, shall remain vested in Grantee. However, nothing in this section shall prohibit Grantee from selling, granting, conveying, or otherwise alienating any interest granted to it by this Indenture during this ten (10)-year term if Grantor consents in writing to such action pursuant to Section XVI. above and is compensated for the appraised value or net proceeds, whichever is less, of the Real Property, Railroad, and Personal Property sold, granted, conveyed, or otherwise alienated less sales expenses. The appraised values of the Real Property

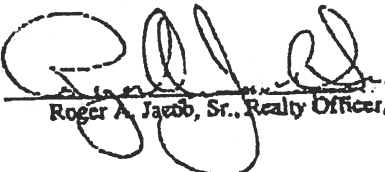


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14.00 Benton County

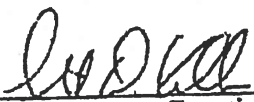
and Railroad can be obtained from the Realty Officer, U.S. DEPARTMENT OF ENERGY at the address noted in Section XL above."

5. Insert a new paragraph D. in Section XVII of the Indenture regarding reversion for the national defense - "If at any time the UNITED STATES OF AMERICA determines that the Real Property, Railroad, and Personal Property conveyed in this Indenture, or any part thereof, are needed for the national defense, all rights, title, and interests in and to said Real Property, Railroad, and Personal Property, or part thereof determined to be necessary to such national defense, shall revert to and become the property of the UNITED STATES OF AMERICA for just compensation to Grantor or its successor(s). However, this reversionary interest shall terminate ten (10) years next following the effective date of this Indenture."
6. Substitute a new paragraph A. in Section XIX of the Indenture regarding access - "Subject to the provisions of Section V.A. above, Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the land access routes and maintain free access to the Real Property and Railroad for Grantor, GSA, and their invitees. Grantee shall, either by the acquisition and retention of easements or other interests in or rights for the use of land or by adoption and enforcement of zoning regulations, prevent the construction, creation or alteration of any structure in the access routes to and from the Real Property and Railroad."
7. Substitute a new Quitclaim Deed to the Indenture, attached as Exhibit "A" hereto.
8. Substitute a new Attachment G (Licenses) to the Indenture, attached as Exhibit "B" hereto.

United States of America by and through the U.S. Department of Energy
GRANTOR:

By: 
Roger A. Jacob, Sr., Realty Officer, Richland Operations Office

Port of Benton, Washington
GRANTEE:

By:  Assistant Executive Director
Ben Bennett, Executive Director, Port of Benton, Washington

Attachments



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Benton County

EXHIBIT "A"



QUITCLAIM DEED

STATE OF WASHINGTON)

Know All Men by these Presents

COUNTY OF BENTON)

THAT the United States Department of Energy, Richland Operations Office (hereinafter called GRANTOR) for good and valuable consideration paid by the Port of Benton (hereinafter called the GRANTEE) does hereby grant, release, and quitclaim unto GRANTEE, and its successors and assigns:

ALL THOSE certain plots, pieces, or parcels of land, with the buildings, appurtenances, and improvements thereon erected, situate, lying, and being in the attached description and map for the 1100 Area contained in Exhibit A hereto, and the attached description and map for the Hanford Railroad, Southern Connection contained in Exhibit B hereto;

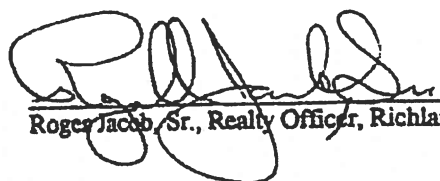
TOGETHER WITH all rights, titles, interests, and estates of GRANTOR not otherwise reserved in the Indenture and Amendment to Indenture, attached in Exhibit C hereto, executed between GRANTOR and GRANTEE and to any streets and roads abutting the above described premises to the center lines thereof;

EXCEPT FOR an easement for a road, currently known as Stevens Drive, comprising the following: south from the northeastern corner of the 1100 Area along the easternmost terminus of said property, and extending west the entire length of said easternmost terminus for exactly 200 feet, said terminus running S 0° 23'34" E 699.55 feet to the point of a 5689.65-foot radius curve, the radial bearing to center being N 89° 26'36" E; thence along the arc of said curve to the left through a central angle of 5° 44'59", 568.07 feet to the point of tangency; thence S 6° 06'48" E, 1123.54 feet to the point of a curve of a 5769.65-foot radius curve, the radial bearing to center being N 83° 53'12" E; thence along the arc of said curve to the right through a central angle of 5° 44'59", 578.99 feet to the point of tangency; thence S 0° 21'49" E, 4,921.67 feet; thence S 1° 13'35" W, 3,920.74 feet to the north margin of Spengler Street; thence continuing S 1° 13'35" W, 30.34 feet to the easterly prolongation of the north line of the southeast quarter of the southeast quarter of Section 27, Township 10 North, Range 28 East, W.M.;

EXCEPT FOR a license for a motor pool site operated by the General Services Administration (hereinafter called GSA), said site being approximately 150 feet by 450 feet and located south of building 1175 (address: 2565 Stevens Drive, Richland, Washington), a legal description of which shall be provided within 180 days of the effective date of conveyance under this instrument by Grantor herein, GSA retaining the right to add or remove any improvements or fixtures.

IN WITNESS WHEREOF, GRANTOR has executed this Quitclaim Deed on the 30th day of September 1998.

U.S. DEPARTMENT OF ENERGY
RICHLAND OPERATIONS OFFICE


Roger Jacob, Sr., Realty Officer, Richland Operations Office

STATE OF WASHINGTON
COUNTY OF BENTON

I certify that I know or have satisfactory evidence that Roger Jacob, Sr. is the person who appeared before me to execute this document for the Department of Energy.

Signature: 
Notary Public for the State of
Washington

Dated: 10/7/98 Commission Expires: 7/9/01



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Benton County

EXHIBIT "B"

ATTACHMENT G

1100 AREA FACILITIES LICENSED FROM PORT OF BENTON TO DOE WITH PROJECTED VACATE DATES

Facility No.	Facility Name	Size	Projected Vacate Date
1161	Nitrogen Bottle Facility and Propane Fill Station	480	09/30/00
1162	Flammable Material Storage Facility	8,900	09/30/00
1163	Central Warehouse Facility	181,780	09/30/00
1164	Hazardous Material Storage Facility	2,000	09/30/00
1167	Excess Salvage Warehouse Facility and Yard	36,000	09/30/00
1167A	Excess Salvage Office Building	2,185	09/30/00
1168	Cylinder Storage Facility	4,110	09/30/00
1169	Chemical Storage Facility	2,400	09/30/00
1171	Paint Facility	300	09/30/05
MO-404	Mobile Office Near 1167 Building	7,392	09/30/00
MO-916	Mobile Office Near 1167 Building	1,584	09/30/00
MO-938	Mobile Office Near 1167 Building	1,584	09/30/00
MO-940	Mobile Office Near 1167 Building	1,344	09/30/00

EXHIBIT RVP-3

LRC PROPOSAL FOR PORT OF BENTON



PROPOSAL FOR PORT OF BENTON



July 9, 1998

LIVINGSTON REBUILD CENTER, INC.

P. O. Box 992
704 East Gallatin St.
Livingston, Montana 59047
Telephone: (406) 222-4200
Fax: (406) 222-7679



July 9, 1998

**Commissioners
Port of Benton
3100 George Washington Way
Richland, WA 99352**

Dear Commissioners:

Attached is our response to the Request For Proposals (RFP) issued by the Port of Benton on June 1, 1998.

Within this proposal, please note that Livingston Rebuild Center, Inc., is referred to as LRC and the Port of Benton is referred to as Port.

It is with our continued enthusiasm for the Tri-Cities, the Port and the surrounding market that we submit this proposal for LRC to become the company selected to provide services to the Port. We are particularly excited about the prospect to promote future development and use of the rail system that the Port is about to obtain from the Department of Energy.

As the President of LRC, I am excited about the future development and business opportunities that will be realized for the Port and the region through excellent management of the 18.2 mile rail system. LRC has already heavily invested in the Tri-Cities market and we anticipate we will continue to grow our investment through our established and anticipated new relationships in the Tri-Cities.

LRC is taking bold steps into promoting economic development in Richland, Pasco, and Kennewick. For example, LRC and Columbia Basin Community College have started designing a new curriculum in railroad technology leading students to an Associates Degree in Applied Sciences for Railroad Technology. We are working with Battelle to research and develop new technologies. We have initiated talks with HAMMER to establish new emergency response training for the rail industry. We are participating in local programs and promotions.

LRC has accomplished all of the above while at the same time opening and operating our own locomotive rebuild and maintenance facility at the 1171 Building in north Richland. We are demonstrating daily our commitment to the positive growth and economic development of the Port, Richland and the rest of Tri-Cities. Much of this activity is the result of my personal interest in taking a leadership position wherever we do business.

July 9, 1998
Commissioners
Port of Benton



Page 2

The RFP issued by the Port called out nine specific areas of need. LRC has added a tenth area, Economic Development, which we consider a high priority for the success of the rail system and the Port.

For the convenience of the readers of this proposal, we have included a fold-out, "Key To Proposal Points", at the end of the proposal binding. Before you begin to read our proposal, simply fold out the Key To Proposal Points page and you will have a convenient reference to the Port's specific areas of need.

Choosing LRC to be your contractor for managing the 18.2 mile rail line will provide great benefits to the Port. LRC is a locally operating business which has demonstrated its ability to get things accomplished and open new horizons of opportunity. LRC is already on future Port property operating a business which will provide maintenance and repair of the Port's rail and track equipment. LRC will bring exceptional counsel and advice to the Port on their future goals and objectives regarding rail and railroads. LRC has the strength and ability to sustain the growth potential that exists for the rail system and the Port. LRC will be a very good partner for the Port.

I am proud to offer, for your consideration, the following proposal to provide contract services in response to the Port's Request For Proposals.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Randolph V. Peterson". The signature is fluid and cursive, with the first name "Randolph" being more prominent.

Randolph V. Peterson
President

RVP/jf

Attachment



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EXECUTIVE SUMMARY

Privitization and Economic Development

Port Alliance Washington - Vision 2050

LRC fully understands the RFP specific needs

UNDERSTANDING OF NEEDS

LRC knows the importance of demonstrating to:

- ◆ Port of Benton
- ◆ Department of Energy
- ◆ State of Washington
- ◆ Tri-Cities
- ◆ Other operating ports
- ◆ National transportation industry

that Privitization of Department of Energy facilities can be successful.

- ◆ LRC understands the need to develop the Port's railroad line into a profit based operation.
- ◆ LRC understands the role of the rail line in the future progress of Alliance Washington - Vision 2050.
- ◆ LRC is ready to perform its role in assisting the Port to realize success for Vision 2050.

LRC:

- ◆ Will provide services which exceed the work and needs called out in the RFP
- ◆ Has a vision for the future of potential development along the rail line
- ◆ Has prepared a fully responsive proposal to the specific needs called for in the RFP
- ◆ Understands the need to assure the Port of its ability to perform all of the services in the RFP including economic development, management and maintenance processes



EXECUTIVE SUMMARY

**LRC President,
Randy Peterson
his vision and
action**

**Goal is for
Privatization and
successful rail
system**

**LRC as part of
Port Vision**

ECONOMIC DEVELOPMENT

A critical element in the future success of the Port's rail system is LRC President, Randy Peterson. Randy is a motivator, entrepreneur, negotiator and business leader. Mr. Peterson bought the Livingston Rebuild Center in Livingston, Montana six years ago and has since taken the company on a steep upward growth trend.

With Randy's leadership, LRC is currently involved in local economic development and the promotion of the community. Highlights of the LRC activities include:

- ◆ Support of the Port Alliance Washington Vision 2050
- ◆ Operation of a maintenance facility in Richland
- ◆ Participation in local activities and organizations
- ◆ Columbia Basin College curriculum
- ◆ Agreements with Battelle on rail issues pursuing:
 - DOD contracts
 - Diesel engine emission control
 - A Failure analysis model
- ◆ HAMMER rail safety training discussions
- ◆ Commitment to recruit a new business along the rail line

◆ LRC understands that the transfer of this portion of the Department of Energy rail system is being made to allow the Port to enhance economic development and job growth in the Tri-Cities.

◆ LRC is ready to provide maximum efficient, safe and effective use of the rail line to accomplish the goals of the Port.

LRC will assist the Port in whatever way is appropriate with the Alliance Washington Vision 2050 initiative. We know the success of the Alliance Washington Vision 2050 will change the market forever as the potential to grow a full transportation hub is realized.



EXECUTIVE SUMMARY

**LRC will be a
business recruiter**

**LRC in business at
1171 Building**

**Columbia Basin
College**

◆ LRC intends to be active in recruiting new business along the Port's rail line.

◆ Objective is to seek opportunities for growth of primary income jobs through new business development along the rail line.

◆ LRC will continue to be an active partner in economic development processes in the Tri-Cities.

LRC has in operation a locomotive and heavy equipment repair shop in the 1171 Building in Richland. The shop:

- ◆ Has seven employees
- ◆ Is interviewing applicants for five new positions
- ◆ Has potential to grow to 50 employees
- ◆ Has workload expansion plans
- ◆ Is currently repairing seven locomotives
- ◆ Anticipates work on Burlington Northern Santa Fe locomotives
- ◆ Is working with Union Pacific Railroad, Camas Prairie Railroad and others for more repair and maintenance work

LRC is proud to have been a leader in establishing a Memorandum of Understanding with Columbia Basin College to begin work on a course of education leading to an Associates Degree in Applied Science of Railroad Technology.

The Railroad Operation and Maintenance Technologies curriculum is expected to begin classes at the CBC Pasco campus in the fall of 1998. Students will include people seeking careers in the rail industry and those who are currently employed in the rail industry but who need additional education and certification.

The course of study adds important economic benefits to the Tri-Cities with a new educational base and an opportunity to focus attention on the market by outside railroad companies.



EXECUTIVE SUMMARY

Battelle and LRC working together

LRC will utilize the tracks as a hands-on laboratory for the advanced student programs of the new rail curriculum at Columbia Basin College. This ability provides a unique and important opportunity to give the students actual field experience on roadbed and track repair and the operation of trains.

LRC has established a working and research relationship with Battelle that will pursue several technologies. This effort could generate new technology and opportunities for companies to locate in the Tri-Cities and manufacture and distribute some of the technology.

An exciting prospect for the collaboration between Battelle and LRC is the potential to set future standards for railroad and other transportation industries.

Battelle doing DOD logistics service

Battelle is providing services to LRC on a project regarding Privatization of Department of Defense rail logistics operations which could include Army bases throughout the United States.

HAMMER and LRC

Discussions have begun between LRC and the HAMMER Training and Education center to design a world class training course for international railroad teams practicing on staged modules. The objective will be to establish courses for handling hazardous materials accidents along rail lines. LRC plans to eventually incorporate the HAMMER training program to the curriculum at CBC.

Local Involvement

LRC is an active community partner in economic development processes. Recently we have:

- ◆ Joined the Richland Chamber of Commerce
- ◆ Been a sponsor of the Tri-City Herald Riverfest Event
- ◆ Participated in the Small Business Association Annual Awards Banquet with Randy Peterson the featured speaker



EXECUTIVE SUMMARY

LRC will use professional management to grow business

MANAGEMENT APPROACH

LRC President, Randy Peterson's management style and energy will be reflected in every aspect of managing the Port's 18.2 mile rail line. LRC management philosophy and style will be reflective of our past business success and will demonstrate our commitment to:

- ◆ Provide professional and safe operation of the rail line
- ◆ Assure success of the transfer of Department of Energy rail assets to the Port
- ◆ Grow new business and development along the rail line
- ◆ Provide efficient and effective management of the rail line
- ◆ Provide effective management of the revenue stream of the rail line
- ◆ Provide effective management of the expenses for the rail line
- ◆ Determine best utilization of the equipment and infrastructure of the rail line

Revenue and Profit

LRC will immediately provide the Port with a budget for the rail line. We intend to bring the rail line to a profitable position as quickly as possible.

LRC will provide management services which will include dealing with the users of the rail line. LRC will oversee the management of transport and delivery of rail cargo, collecting and receipting of fees, accounting for revenues and preparing reports for the Port.

Communication

LRC understands that communication with customers, other railroads, stakeholders and others who have contact with the rail line is critical to a successful and safe operation. LRC will:

- ◆ Communicate frequently with current customers of the rail line to assure we fully understand and respond to their needs and requirements. We have a goal to improve on the current rail services to these customers
- ◆ Continue our communication with Lamb Weston and Henningsen Cold Storage



EXECUTIVE SUMMARY

- ◆ Communicate with other railroads, specifically Burlington Northern Santa Fe and the Union Pacific to establish and continue good relationships

- ◆ Communicate with local municipalities, schools, county governments, ports, higher education systems, law enforcement and government agencies concerning our activities on the rail line

- ◆ Communicate with anyone who has contact with the rail line to assure safety, equal treatment and results when dealing with LRC and the Port

- ◆ Communicate with other providers of transportation services such as the trucking industry, cargo container services and operating ports

Utilization of Assets

As the contract manager for the Port rail line, LRC will make an assessment of the rail system infrastructure to determine its value, need and use. A report will be provided to the Port outlining the findings along with our recommendations for best use to maximize the value and income generating potential.

We set high standards

LRC has a company wide policy to keep our environment and surroundings as well maintained as our equipment and facilities. This culture will be made a part of the management process for the Port's 18.2 mile rail line.

Safety is paramount

LRC has an exceptional safety record that we will bring to the operation of the Port rail system. At LRC we reward employees who demonstrate safety consciousness in practice of personal actions and use of equipment and facilities.

Our employees also practice good health measures and are encouraged to stay fit, alert and ready for work every day. We also believe our employees should have fun and we plan family oriented time off activities that are company sponsored.

In addition to the employee safety and health programs, LRC exceeds the industry standards in safety training. Employees will be certified in safety module training including the hazardous materials training at the HAMMER facility.



EXECUTIVE SUMMARY

Rail Crossing Safety

The Department of Energy has set a high standard of safety along the rail line and LRC intends to continue that exceptional record. Great attention to details in accident prevention and public awareness of rail traffic will be provided by LRC. We will use the national program "Operation Lifesaver" as a rail crossing awareness training module for the community.

Environmental awareness

LRC works hard to utilize technology and programs which allow us to have a minimum impact upon the environment. We will be good stewards of the facilities, properties, structures and surrounding environment on behalf of the Port as we manage the rail line and will encourage others to do likewise.

A Winning Team

Teamed with LRC, CBC, HAMMER, Battelle, the Department of Energy and other Tri-Cities entities, the Port will continue to be a major force in the economic diversification of Hanford and the economic growth of the region.

LRC is a well financed, well managed, forward thinking company. From our President, Randy Peterson, to our newest employee, we take pride in our success.

The Port of Benton and LRC will be a "WINNING TEAM"!



EXECUTIVE SUMMARY

COMPANY QUALIFICATIONS

LRC is fully qualified to perform the services and work as outlined in the RFP from the Port. We will manage the rail system for the Port as a business that is much more than equipment and infrastructure. We will bring life and energy to the operation.

Personnel

LRC is a company of highly energized and highly qualified employees who have 10 to 35 years experience in railroad maintenance. Our management and oversight team combines many years of experience in business, management and industry which includes railroad maintenance, operation, management and community and customer relations. Our team works with and develops new, cutting edge rail technology.

Individual profiles of our management and oversight team that will administer and implement the services and work on the project is found in *Appendix A* of this proposal.

In addition to those team members included in this proposal, LRC will utilize additional personnel to perform all required work. LRC may utilize the trained past employees of the Department of Energy rail line and the recently trained graduates of the CBC curriculum as the need arises.

LRC promotes education

LRC promotes the further education of our employees in numerous ways.

- ◆ Scholarships in diesel technology
- ◆ Scholarships in electrical and mechanical engineering
- ◆ Courses through the Railway Educational Bureau
- ◆ Burlington Northern Santa Fe Technical Training Center
- ◆ Experts brought to LRC facilities to provide added training

Financial

LRC has prepared financial information in *Appendix B* of this proposal.



EXECUTIVE SUMMARY

Insurance

LRC will comply with the insurance requirements of the Port. Our insurance information is detailed in *Appendix C* of this proposal.

Other Railroads

LRC is highly experienced in dealing with other railroad companies. Our business depends upon our ability to effectively deal with railroad companies. A list of our customers and associated contacts is found in *Appendix D* of this proposal.

Certifications

LRC employees hold many certifications and have received many awards for exceptional service. A list of some of the important certifications and awards and associations is found in *Appendix E* of this proposal.

Regulation Compliance

LRC will meet and comply with all federal and state regulations that are applicable to this project. We currently comply with CFR 49 regulations and have supplied a list of those parts in *Appendix F* of this proposal.

Capabilities

The requirements of the RFP from the Port are for the most part routine work for the team at LRC. As part of the management contract, LRC will oversee the movement and activity on the rail line and work with customers and transportation companies to assure effective and safe operation of the rail system. LRC is experienced in yard operations, operating and switching of locomotives.

A review of the equipment listed by the Port would lead us to believe that very little additional equipment will be necessary. However, LRC is prepared to provide any additional equipment that may be required for proper operation of the rail line at favorable costs to the Port.



EXECUTIVE SUMMARY

OPERATION AND MAINTENANCE

**Marketing of the rail
line is critical**

LRC understands that one of the most important roles in operating the Port's rail line is to safely manage and market the system to current and potential new users. We will work with the Port and other agencies to generate a full awareness of the potential that exists for business and industrial growth along the rail line.

Our management responsibilities will include:

- ◆ Marketing the rail system
- ◆ Physical movement of trains on the tracks
- ◆ Safe intersection with other traffic
(highway and foot traffic)
- ◆ Environmental impacts
- ◆ Development of the best, safest use of the system
to benefit the community

**Compliance with
standards**

LRC:

- ◆ Complies with the Federal Railroad
Administration policy
- ◆ Conforms to the American Railroad Engineering
Association and the Association of American Rail
roads standards
- ◆ Will use CFR 49 as one of the standards to which
we will operate

**Priority to
current users**

Lamb Weston and Henningsen Cold Storage will get special attention from LRC as we manage the Port's rail line. A plan will be put in place for the expansion of future customers who may need regular rail service as part of their business production. LRC will continue to hold meetings with Lamb Weston and Henningsen Cold Storage to establish timetables and schedules which will meet the convenience of the customers and LRC.

LRC has communicated with potential customers such as Penford Food Ingredients Company who are currently using alternative transportation systems to move their product. By cooperative effort, the potential exists to add local rail to their shipping program. This could be a first step to opening the way to enhance intermodal transportation operations for the Port.



EXECUTIVE SUMMARY

Planning for best use

Soon after LRC assumes the management of the rail line we will provide a plan for the best method of maintaining safety at the crossings and intersections. We intend to work with the three cities to assure we comply with any existing ordinances concerning such things as blocking crossings by trains.

LRC will use the program called "Operation Lifesaver" to educate and raise public awareness of rail traffic. We will work with:

- ◆ The Port of Benton
- ◆ The Department of Energy
- ◆ Washington Public Power Supply System
- ◆ All cities who have not yet used the program,
- ◆ Law enforcement
- ◆ School systems

LRC believes it is essential to reestablish an awareness in the mind of the public of traffic on the Port's rail line.

LRC will provide expert maintenance

As the managing contractor for the Port, LRC will use its expertise and experience to provide all necessary maintenance and service on:

- ◆ Railroad tracks
- ◆ Roadbed
- ◆ Structures
- ◆ Bridges and spurs
- ◆ Railroad track equipment
- ◆ Locomotives
- ◆ Rail cars
- ◆ Crossings and signaling devices at crossings
- ◆ Miscellaneous rail equipment required by the Port



EXECUTIVE SUMMARY

Potential for other trained crew

LRC is one of the nations's leading repair and service companies for locomotive repair and rebuild. We have set a standard for the rest of the industry. Using the existing LRC facility at the 1171 Building, we will provide complete maintenance and repair of:

- ◆ Locomotives
- ◆ Rail cars
- ◆ Track maintenance equipment
- ◆ Other rail equipment as may be necessary

Roadbed maintenance plan

LRC may use some of the trained and skilled work force that is locally available from the former Department of Energy railroad crew employees. LRC will also have the option to hire newly trained and certified railroad technicians graduated from the courses to be taught at Columbia Basin College.

The Port will realize a savings of time and money with LRC's ability to handle all repairs and service of locomotives and track equipment on site at our Richland shop. This on-site maintenance and repair saves transportation costs and reduces downtime on equipment.

Scheduling and good neighbor relationships

The roadbed along the 18.2 mile rail line appears to be in very good condition due to the consistent maintenance by the Department of Energy. LRC has begun to develop a plan for anticipated replacement and repair of railroad ties and track sections based upon industry averages for weather and environment conditions that exist at this site. A rail profile measuring machine will be utilized to measure the current rail profile to establish a base line on the current condition for planning for future maintenance projects.

LRC will attempt to schedule heavy routine repairs and maintenance of track and roadbed during summer months when long days and favorable weather exist. However, necessary repairs will be made immediately.

LRC will use every precaution when performing roadbed and right-of-way maintenance and service to minimize impact on properties adjacent to the track.



EXECUTIVE SUMMARY

Crossing safety and inspections

Safety at crossings is a primary concern for LRC. To assure safe operations LRC will:

- ◆ Maintain the visibility and proper conditions at crossing locations
- ◆ Conduct routine inspections of crossing areas and signals
- ◆ Maintain the standards of CFR 49
- ◆ Prepare reports to the Port on all findings
- ◆ Implement Operation Lifesaver Program

LRC to be partner with Port

LRC will become a partner with the Port to control costs of maintenance and operation while working to find and develop new business and industry along the rail line.



EXECUTIVE SUMMARY

LRC Proposes savings to Port now and for the future

COST

Now: Management of Rail Line

◆ LRC proposes to lease all of the 1171 Building from the Port.

◆ LRC proposes that in trade for the annual lease of the 1171 Building and grounds, LRC will provide maintenance and service of the 18.2 mile rail line including track, roadbed and crossings.

◆ Based on our proposal of trade of lease for maintenance of rail line, LRC proposes insurance premiums for maintenance be a direct pass through cost to the Port.

Future: Management and Operation of Rail Line

◆ At such time that LRC should become the operator of the rail line, LRC proposes revenues derived from operations will be split with the Port.

◆ LRC proposes we will retain 70% of revenues as an operation and maintenance fee.

◆ LRC proposes the Port receive 30% of revenues as the rail line owner.

◆ LRC proposes that when the operation of trains on the rail line becomes a function of LRC and the Port, that insurance for such operation be added and the premium shared.

◆ LRC proposes we pay 70% of the operation insurance annual premiums.

◆ LRC proposes the port will pay 30% of the operation insurance annual premiums.

LRC ready to begin

LRC is ready to begin its role as partner with the Port and move to a positive financial position as quickly as possible. We believe we can reduce the risk for the Port by implementing the process we have proposed for trading lease of the 1171 Building for maintenance of the rail line and sharing future revenues and insurance costs.



UNDERSTANDING OF NEEDS

**Success of
privatization of rail
system a critical
issue.**

LRC understands fully the economic, political and emotional need of the Port to move quickly into a privately operated Port railroad system which will demonstrate to the State of Washington, the Department of Energy, the community, other operating ports and the national transportation industry that privatization of the Department of Energy facilities can be successful.

**Alliance
Washington
Vision 2050**

LRC understands the need to assist the Port in developing a profit based railroad line as quickly as possible. The long range implications are even more critical as the Port begins its progress into the Alliance Washington - Vision 2050 project. LRC knows the importance of having a fully functioning rail system serving the current and future customers. LRC is ready to perform its role in making Vision 2050 a reality.

**Understand the
RFP specific
needs.**

LRC has read and understands the needs of the Port as expressed in the RFP. LRC also understands the additional needs that have been discovered through several months of operation by LRC at the 1171 Building along the railroad line referenced.

LRC understands the Port has the need to contract with a company that can, at a minimum, provide the services and work described in the June 1, 1998 RFP. LRC further understands that the Port would desire to contract with a company that has the vision and foresight to provide leadership and cooperation in developing new opportunities for railroad and rail services growth. LRC is that company.

LRC understands the need to provide the Port with assurance of our ability to perform all of the services called out in the RFP including the operation, maintenance, management and economic development processes.



ECONOMIC DEVELOPMENT A VISION OF GROWTH

**Randy Peterson -
A man of vision and
action**

One of the most critical elements of success in using the rail system to promote new development and growth for the Port and LRC is our President Randolph Peterson.

Six years ago Randy Peterson bought the Livingston Rebuild Center in Livingston, Montana. He made the company an employee owned business and since then has taken the company on a steep upward growth trend.

Randy has used his skills as an entrepreneur, motivator, negotiator and business leader to spread the LRC influence and initiative to several locations including the Tri-Cities and the Port.

Randy and his capable management staff are already heavily involved in the development and promotion of the local economy. In just a few months of business, LRC is getting things done. Some highlights of Randy's and LRC's current activities and partnerships in the Tri-Cities are:

**LRC activities and
development
success
in Tri-Cities**

- ◆ LRC - Supports Port Alliance Washington Vision 2050
- ◆ LRC - Maintenance facility in Richland
- ◆ LRC - Participation in local organizations
- ◆ LRC - Columbia Basin College curriculum
- ◆ LRC - Agreement with Battelle on rail issues currently pursuing :
 - DOD Contracts
 - Diesel Engine Emissions Control
 - A Failure Analysis Model
- ◆ LRC - Works with HAMMER for rail hazardous materials training
- ◆ LRC - Commitment of goal to recruit new business along the rail line

**The privatization
and the success of
rail system share
goals**

LRC understands that one of the most important elements of the rail line management program is the need to utilize the rail facilities as an asset for economic development and job growth. We know the Department of Energy is making the transfer of the rail line, facilities, and equipment to the Port for the purpose of providing opportunities, through privatization of the site, for growth and development related to railroad access.



ECONOMIC DEVELOPMENT A VISION OF GROWTH

Port Vision

LRC is currently operating its own business in Tri-Cities and has entered into active economic development processes. The following are details of our current efforts in promoting growth and development in the local market.

LRC is ready to play an appropriate role in the Port's Alliance Washington Vision 2050 initiative. We will work to expand all railroad potential for the market in any way that we can be effective. The potential for the area to grow as a full transportation hub is boundless and the Port's Vision 2050 is an enormous and ambitious undertaking and its success will change the market forever.

Partnerships and Participation

LRC has become an active partner with the Port and other local entities who have as their focus the generation of new business. LRC is working to find new businesses that might have a need to locate along a railroad as a part of their business strategy. We will play an active role in recruitment of new business and continue to seek opportunities to promote the growth of jobs through new business in the Tri-Cities market.

LRC as a recruiter of business

It is one of LRC's business goals to help establish one new business along the 18.2 mile rail line by the end of 1999. This desire to move in a new employment based business with primary income jobs, is a personal agenda item for LRC President, Randy Peterson.

LRC maintenance facility in Richland

LRC is operating a locomotive and heavy equipment repair shop at the 1171 Building in Richland adjacent to the Port's rail line. Our shop currently has several locomotives under repair and rebuild and we anticipate continued expansion of our workload at this site. Our use of this shop area is demonstrating how private business can successfully utilize Department of Energy facilities to generate new jobs and economic benefit.

LRC has seven employees at the 1171 Building. We are interviewing candidates to fill an additional five new positions. Staff from our Livingston, Montana facility will be brought to Richland as orientation and site training teams.



ECONOMIC DEVELOPMENT A VISION OF GROWTH

LRC - Columbia Basin College Curriculum



Course adds to economic diversity

**LRC will use CBC
class to provide a
hands-on laboratory
for students on rail
roadbed and 1171
Building**

As we grow to meet our potential we will reach up to 50 employees. In our Richland facilities we are repairing locomotives that we own and lease and we will soon have locomotives from the Burlington Northern Santa Fe railroad. Additionally, we are attempting to secure work with the Union Pacific Railroad, Camas Prairie Railroad and other railroad companies.

A Memorandum of Understanding has been signed with Columbia Basin College and work has begun on a course of education leading to an Associates Degree in Applied Science of Railroad Technology. The course, *Railroad Operations and Maintenance Technologies* will begin with classes in the fall of 1998 at Columbia Basin College and the Workforce Training Center in Pasco. Students expecting to enter the rail industry and people who are currently employed by the rail industry but who need additional training and certification will be attending the classes.

This curriculum provides new employment opportunities for the students, and adds a new educational base and standard for the community college and the Tri-Cities in general. This course of study will also open opportunities for attracting attention to the Tri-Cities market by outside railroad companies. We have received favorable responses from railroad companies expressing a sincere interest in the curriculum and education at Columbia Basin College.

LRC is proud to have been the leader in establishing this program and we are eager to see it grow and develop into a world class training curriculum attended by railroad students from all corners of the globe.

LRC will utilize the tracks as a hands-on laboratory for advanced student programs of the new *Railroad Operations and Maintenance Technologies* curriculum at Columbia Basin College. This course of study will provide training and certification for students who are planning careers in the railroad industry from throughout the United States and possibly the world.



ECONOMIC DEVELOPMENT A VISION OF GROWTH

**LRC desires to
lease all of
1171 Building**

The rail line controlled by the Port and managed by LRC will provide a unique and important opportunity to give students actual field experience in roadbed and track repair and the operation of trains. Students will not be used in any customer railcar spotting and switching or product movement work. Students, with a qualified engineer, will be allowed on the rail only during times when there is no other activity.

LRC desires to lease the entire 1171 Building from the Port. A detailed proposal of our expectations and lease arrangements are included in the proposal section titled COST.

LRC - Battelle

LRC has established a working and research relationship with Battelle. Battelle is working with LRC on several technologies. This cooperative effort could provide a potential to generate not only new usable technology, but also opportunities for new companies to locate in the Tri-Cities to manufacture and distribute some of the technology. It is exciting to have Battelle working in a cooperative effort with LRC. Some of the technology being discussed for potential testing and evaluation could set future standards for the railroad and other transportation industries.

**Unique new
technology**

**Battelle doing
DOD logistics
services for LRC**

Battelle is now performing service to LRC regarding privatization of the Department of Defense rail logistics operations. This work could include Army base facilities throughout the United States.

**LRC
&
HAMMER
TRAINING AND EDUCATION CENTER**

LRC has opened discussions for establishing hazardous materials training courses for railroads at the HAMMER facility. This presents the Tri-Cities market with an unequaled opportunity to establish a world class training course for international railroad teams to come to HAMMER and practice response to many staged training modules. The HAMMER manager and his program development staff have initially acknowledged the need for such training and preliminary talks have been held. It is the intention of LRC to eventually tie this training to the curriculum at Columbia Basin College.



ECONOMIC DEVELOPMENT A VISION OF GROWTH

Local Involvement

LRC is ready to play an active role in local economic development processes. We will take a leadership position in those areas we feel would be mutually advantageous to the community, the Port and LRC.

- ◆ LRC has recently joined the Richland Chamber of Commerce.
- ◆ LRC was a sponsor of the Tri-City Herald Riverfest Event.
- ◆ LRC participated in the Small Business Association Annual Awards Banquet with Randy Peterson being featured speaker.

LRC ready to assist Port in development process

LRC has quickly established many economic development links and agreements in the Tri-Cities. We are ready to apply this same energy and vision to the efforts of the Port to expand and develop the potential along the 18.2 mile rail line. We are ready to work with the Port and other agencies to use the rail line to increase the value in marketing opportunities, to attract new businesses, to generate more jobs, and to advance education.

LRC is particularly excited about the opportunity to work with the Port and demonstrate that private-public partnerships can be successful and that the transfer of the 18.2 mile rail line from the Department of Energy to the Port was the right process at the right time.

LRC is an active member of the local community and is ready to immediately start working for the economic benefit of the Port and the Tri-Cities through effective management of the rail line.



MANAGEMENT APPROACH

**LRC will stimulate
growth and
development with
professional
management**

The energy and style of LRC President, Randy Peterson will be reflected in every aspect of our management philosophy for the Port's rail system. Our commitment to professional and safe operation will be reflective of our past business success.

LRC understands that proper management of the 18.2 mile rail line is critical to the success of this transfer of assets from the Department of Energy to the Port. LRC takes very seriously the obligations of management to assure the success of the rail line as it currently exists and to grow it into the potential that the future provides.

LRC will provide expert and efficient management of:

- ◆ The revenue stream generated by the rail line
- ◆ The expenses associated with managing the rail line
- ◆ Communication and service
- ◆ Utilization of the assets
- ◆ Safety, health and environment

Our manager assigned to this project will reside in the Tri-Cities and will be available to the Port for communication, consultation and interaction on a daily basis.

Revenue Management

LRC is prepared to provide the Port with a budget that we will use as manager for the rail line. It will be our intention to bring the rail line to as profitable a position as possible in as short a time as possible.

LRC will provide management services to the Port which will include dealing with users of the 18.2 rail line for the transport and delivery of rail cargo into and out of users facilities. LRC will also oversee the management services for collections and receipting of fees, remitting receipts to the Port and accounting for revenues.



MANAGEMENT APPROACH

Communication with Customers

LRC will be in frequent communication with the current customers of the rail line to assure that we fully understand and respond to their needs and requirements. LRC has had conversations with Lamb Weston and Henningsen Cold Storage concerning their transportation needs, logistics and requirements. LRC has a goal to improve upon rail services to these customers.

Communication with other railroads

LRC will communicate with other railroads, specifically the Burlington Northern Santa Fe and the Union Pacific railroads, to establish good relations and encourage their continued interest in the current and future opportunities of the Port's rail line. LRC will also be working with these railroad companies to secure their repair and rebuild business for the LRC Richland repair shop along the rail line at the 1171 Building.

Communication with Stakeholders

LRC will be a community active organization working with all the local municipalities to establish good relationships. LRC intends to have frequent dialog with schools, county governments, ports, higher education systems, law enforcement and governmental agencies to assure that all interested parties in the development of the 18.2 mile rail line and the railroads in general are well informed about our activities.

Everyone is important

People who have contact with the rail line, whether in a vehicle using a crossing, or as a business desiring rail service, will be treated with equal importance and significance when communicating with LRC as the manager of the Port rail line.

The advantage of LRC having already established a significant presence in the market place will make working with all of the potential stakeholders easier and provide more effective results. We will participate in the daily activities and events that make the Tri-Cities communities successful.



MANAGEMENT APPROACH

**Communication
with
other providers of
transportation
services**

LRC has opened communication with other transportation services such as the trucking industry and cargo container services. It is our intent to establish relationships that will provide opportunities to mix transportation uses to best suit the customer needs.

**Barge companies
and other ports**

LRC has already established dialog with Tidewater Barge Company in an attempt to facilitate the connection of rail to barge traffic. We view this as a beginning for establishing new routes to the world via the seaway systems. LRC has held meetings with the Port of Kennewick and the Port of Pasco to determine their transportation capabilities.



**Utilization
of assets**

One of the initial items of work that LRC intends to perform as manager of the 18.2 mile rail line for the Port is to make an assessment of the rail system infrastructure as to its value, need and use. A report will be provided to the Port outlining our findings along with a recommendation as to the best use of this infrastructure to maximize its value and income generating potential.

**Environment -
We set and
maintain high
standards**

LRC has a company wide policy to keep our environment and surroundings as well maintained as our equipment and facilities. This culture and policy will be applied to the 18.2 mile rail line when LRC is managing the line for the Port. It is important to LRC that we set a standard for keeping the Port's assets in good repair and always ready for maximum utilization. Our employees know and enjoy this culture and we expect it of others who work with us and for us.

Safety

LRC will bring to the facilities at the Port a history of exceptional safety. The employees at LRC are rewarded for safety consciousness and practice. We reward them for safe actions both for personal safety and for equipment and facility safety. In 1997 we paid out \$98,000 in safety bonuses to our employees. This same safety awareness initiative will be part of LRC's management program for the Port.



MANAGEMENT APPROACH

Health

LRC encourages its employees to practice good health measures. We provide excellent health benefits to full time employees. It is important that we have healthy employees who are fit, alert and reporting to work every day. We also believe our employees should have fun and we sponsor family oriented time off activities.

Safety Training

In addition to the employee safety and health programs, LRC exceeds industry standards in safety training. The student curriculum at Columbia Basin College will have a strong safety and environmental element and all of the LRC employees at the Richland facilities and those working on the Port rail line will be certified in safety module training including the hazardous materials training at the HAMMER facility.

Rail crossing safety & DOE exceptional safety record

Safety along the tracks and at crossings is very important and LRC is ready to continue the exceptional safety record of the Department of Energy railroad crew of 50 years with no accidents. Great attention to details in accident prevention and rail awareness by the public will be made a part of the LRC management plan. LRC will use the national program "Operation Lifesaver" as a rail crossing awareness training module in the community.

LRC is environmentally sensitive

LRC is an environmentally conscious company. We have worked hard to utilize technology and programs which allow us to have minimum impact upon the environment. We are using our waste oil in high efficiency burners to heat our Livingston, Montana shops, effectively using a by-product of our repair services.

We walk our talk

LRC will be good stewards of the facilities, properties, structures and surrounding environment on behalf of the Port as we manage the 18.2 mile rail. We will "walk our talk" and encourage others to practice good environmental policy.



MANAGEMENT APPROACH

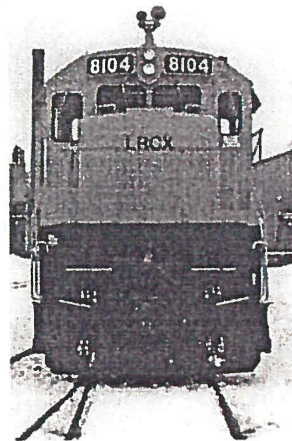
LRC Managing to benefit the Port

LRC is a company which brings more than just technology and text book management style to the Port's rail line. We put life and energy into all of our projects and we maintain a personal commitment to gain the greatest measure of success in everything we do. This is the personal philosophy of LRC President, Randy Peterson and his entire staff.

LRC will take management of the 18.2 mile rail line to expanded dimensions as we use our existing community involvement to promote the use and awareness of the rail's importance to future development. We have begun to build a locally solid reputation and acceptance for making things happen in a positive way and we will be bringing that same spirit and process to the management of the Port's rail system.

By having a manager with established local involvement and business activity, the Port will easily move into a working relationship that has a very short learning curve. We are ready to hit the ground running, so to speak, and can use this efficiency to generate savings in time and money for the Port.

LRC and the Port are ideal partners for managing future trends in rail growth.





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COMPANY QUALIFICATIONS

**LRC has highly
energetic and
qualified
employees**

LRC is a fully qualified company to perform the services and work as outlined in the RFP from the Port.

LRC is a company of highly energized and highly qualified employees who have been empowered to look for success in every facet of their jobs. We believe that good ideas come from everywhere and we listen to what our people are saying.

We will manage the rail system for the Port as a business that is much more than equipment and infrastructure. LRC will give life, personality and energy to the rail system. We believe a business that has life and vitality is more likely to attract new business, new cooperation and generate success.

Personnel

Our management and oversight team combines many years of experience in business, management and industry including disciplines in railroad maintenance, operation, management, and community and customer relations. Our team is a dynamic group of individuals who develop and work with new, cutting edge rail technology. Individual personal profiles of our management team members who will administer and implement the services and work on the project are referenced in *Appendix A*.

Added personnel for special work

In addition to the team members included in this proposal, LRC will utilize additional personnel to perform the required work. LRC may, from time to time, call in other personnel or industry experts and technicians as necessary to perform specific work and to provide consultation and advice to the Port. LRC may utilize the former employees of the Department of Energy rail crew and recently trained graduates of the CBC curriculum as the need arises.

10 to 35 years experience

At the company's headquarter facility in Livingston, Montana, LRC employs a highly skilled work force with in-depth experience in locomotive maintenance, servicing and rebuilding. Most of our employees have 10 to 35 years experience in railroad maintenance.



COMPANY QUALIFICATIONS

LRC promotes and encourages education

In our LRC Richland maintenance facility, a crew of seven people including a shop manager, perform services and repairs on locomotives and track equipment at a location in north Richland called the 1171 Building.

LRC promotes the further education of our employees in numerous ways. We offer scholarships in diesel technology, and electrical and mechanical engineering. Over 20 of LRC's personnel are continuously enrolled in courses through the Railway Educational Bureau. LRC has sent employees to the Burlington Northern Technical Center and has brought in experts for on-site training.

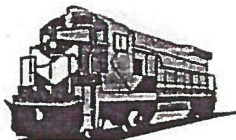
Financial

LRC is a financially sound company. We have prepared financial information that is found in *Appendix B*.

Insurance

LRC has provided information regarding the insurance requirements of the Port in *Appendix C*. LRC has included details of suggested coverage needs for maintenance and repair in the proposal section titled COST.

Other railroads



LRC has spent many years in business dealings with other railroad companies. We have personnel who are members of rail associations and sit on various rail boards. Our business success rests on our ability to effectively deal with other railroads. We have a strong capability to deal with other railroads and a list of the customers and associates we deal with regularly is in *Appendix D*.

Certifications

The management and oversight team of LRC and the employees who work in the repair and maintenance facilities are highly qualified and hold certifications in many areas. A list of some of the important certifications, awards and associations is found in *Appendix E*.

Regulation compliance

LRC will meet and comply with all federal and state regulations that are applicable to this project. We currently comply with CFR Code 49 regulations and have listed those parts in *Appendix F*.



COMPANY QUALIFICATIONS

Capabilities

The requirements called out in the RFP from the Port are in large part routine for the work force and management team at LRC. As the management contractor for the Port, LRC will provide the oversight and management process to supervise every activity for which the Port is responsible. LRC will comply with all federal and state regulations and will use the most highly trained labor and technical staff for all required work.

Movement of trains on tracks

As a part of the management contract, LRC will oversee all movement and activity on the rail line and work with the customers and transportation companies to assure effective, efficient and safe rail transportation. LRC is experienced in yard operations and operating of locomotives.

Equipment of the Port

Added equipment if needed

A review of the equipment list supplied by the Port that will be turned over by the Department of Energy would lead us to believe that very little additional equipment will be necessary. However, in the event that an additional locomotive or other equipment is needed, LRC is prepared to provide such equipment at very favorable costs to the Port.

LRC best qualified for Port needs

LRC has demonstrated its ability to meet the minimum qualifications of certification, operation, experience, equipment, and management skills. We have demonstrated a deep and sincere commitment to become an active partner with the Port in developing the potential of rail in the future of the Tri-Cities market. LRC is currently using the rail system to perform work in the 1171 Building and we see many other opportunities for continued growth of our business and for new industry. Meeting the minimum qualifications of the RFP is important and LRC has done so. But, a more important issue for LRC is that we qualify as the company who will use the Port's rail line to build a new platform for economic development in the 1100 area and beyond. We believe we have done this.



OPERATION AND MAINTENANCE

**Marketing of the
rail system
is most
critical item**

LRC understands that our most important role in the Port's rail system will be to safely manage and market the system to current and potential new users. LRC will work with the Port, and other economic development associations, to generate an awareness of the potential the rail has for business and industrial growth.

LRC views the management of the rail line to include:

- ◆ Marketing of the rail system
- ◆ Coordinating movement of trains on the tracks
- ◆ Safe intersection with other traffic
(such as highway and foot traffic)
- ◆ Environmental impacts
- ◆ Development of the best, safe use of the system for
benefit of the community

LRC will comply with the Federal Railroad Administration policy, and will meet the American Railroad Engineering Association and the Association of American Railroads standards, and will use the federal regulation, CFR 49 as one of the standards to which we will manage the rail line.

**Current users
given priority
for service**

LRC plans to manage the rail line for the convenience of the current customers, Lamb Weston and Henningsen Cold Storage, who are dependent upon the rail line for shipping and receiving products. We will also plan for the future customers who will need rail service as a regular part of their business production.





OPERATION AND MAINTENANCE

**Physical
movement
of rail cars**

LRC will continue to hold meetings with Lamb Weston and Henningsen Cold Storage to cooperatively establish timetables and schedules which can be met to serve the convenience of the customers and LRC. Maximum effort will be made to look ahead and anticipate busier scheduling for traffic on the rail line as future companies begin to locate near and use the rail line.

**Penford Food
Ingredients
Company
as a
potential
shipper**

LRC will also communicate with potential customers such as Penford Food Ingredients Company who are currently using alternative transportation systems to move their product, but who could, with a cooperative effort utilize the proximity of the rail system to include rail in their transportation program. This is the first step in opening the way to enhance intermodal transportation operations for the Tri-Cities.

**Intersection with
other traffic**

LRC has inspected the rail system and has identified the locations for every crossing, bridge, overpass and intersection along the 18.2 mile rail. An assessment by LRC of the interface of crossings and intersections with the rail line will be made to determine how frequently those crossings are used and by what type of traffic.

**LRC will design
plan for the
best use**



Shortly after LRC assumes management of the rail line, we will provide a plan for maintaining safety at the crossings and intersections. LRC will work with the cities of Richland, Pasco and Kennewick to assure compliance with any existing ordinances concerning the blocking of crossings by trains. We will also open discussions on how improvements might be made for crossing use.

**Community
Benefits**

As the manager for the Port, LRC will participate in a program called "Operation Lifesaver" and provide this nationally recognized program to the Port, Department of Energy, Washington Public Power Supply System, all cities who have not yet used it, law enforcement agencies and the school systems. This program has proven invaluable when used in other communities to raise awareness of rail safety at crossings. With the anticipated increase of train traffic along the tracks and through the crossings, LRC believes it is essential to reestablish an awareness of this traffic in the minds of the public.



OPERATION AND MAINTENANCE

**LRC will provide
expert maintenance
of all equipment,
infrastructure,
track and roadbed**

LRC, as manager of the Port's rail line, will use its expertise and experience to provide all necessary maintenance and service on:

- ◆ Railroad tracks
- ◆ Roadbed
- ◆ Structures
- ◆ Bridges and spurs
- ◆ Railroad track equipment
(both that owned by the Port and other track equipment as may be required)
- ◆ Locomotives
(those owned by the Port and others that may be necessary for proper operation)
- ◆ Railcars
(those owned by the Port and others that are required)
- ◆ Crossings and signaling devices at crossings
- ◆ Miscellaneous rail equipment required by the Port.

Equipment

◆ LRC will use our current standards, which exceed railroad industry standards, to schedule and perform the 92 day service and inspection of all locomotives owned by the Port.

◆ LRC is one of the nation's leading repair and service companies for locomotive repair and rebuild. We have set a standard for the rest of the industry.

**LRC 1171 Building
provides
on site
maintenance**

Using the existing LRC facility in the 1171 Building, we can provide complete maintenance and repair of:

- ◆ Locomotives
- ◆ Railcars
- ◆ Track maintenance equipment
- ◆ Other rail equipment as may be necessary



OPERATION AND MAINTENANCE

**LRC 1171 Building
provides
on site
maintenance**

Our technicians and mechanics at the repair shop are highly skilled in repair and maintenance procedures and the availability of other LRC employees from our Livingston, Montana facilities add to our strength and ability to perform complete service and repairs. LRC has invested capital into our maintenance operation at the 1171 Building to increase our capacity for more extensive work procedures.

**Potential for
DOE and CBC
trained crews**

In addition, LRC may use some of the trained and skilled employees locally available from the former Department of Energy railroad crews. LRC also will have the option to hire newly trained and certified railroad technicians graduated from the courses to be taught at Columbia Basin College.

**Advantage to Port
with LRC on site
repair and
maintenance**

There will be a distinct advantage to the Port in savings of time and money with LRC's ability to handle all repairs and service for locomotives and track equipment on site at our Richland shop. Only certain components would need to leave the site to be repaired. This ability to perform maintenance and repairs on site saves transportation costs and reduces down time on equipment owned by the Port.

**Track and
roadbed**

LRC understands that the roadbed and track along the 18.2 mile rail line appears to be in very good condition due to the consistent maintenance by the Department of Energy rail crews. LRC will establish a routine track and roadbed inspection schedule that will keep the roadbed and tracks at their current condition. LRC has already begun to develop a program for anticipating replacement and repair of railroad ties and track sections based upon industry averages for weather and environmental conditions that exist at this site.

**Plan for
maintenance of
roadbed being
formed**

Rail profiling

A special rail profile measurement machine will be utilized to measure the current rail profile of the 18.2 mile rail line in this proposal. This will establish a base line on the current condition of the rail for use in planning future maintenance projects.



OPERATION AND MAINTENANCE

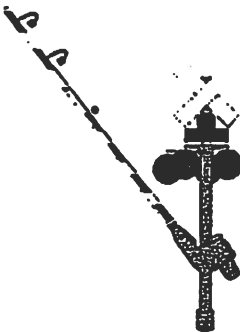
Schedules for best time frames

LRC will schedule much of the routine heavy repairs and maintenance of the track and roadbed area during summer months when favorable weather and daylight conditions exist. However, any repair or service that is determined by the routine inspections as necessary and critical for safety, will be made immediately.

Maintaining a good neighbor relationship

Another sensitive issue for LRC is the relationship, which needs to exist between the Port, LRC and the other stakeholders who might be affected by the increased use of the rail line. When performing roadbed and right-of-way maintenance and service, LRC will use every precaution to be a good neighbor and citizen by working to protect their environment and security. Spraying of weeds along the right-of-way and work on the roadbed and track will be performed with every caution to create minimum impact upon those who may be affected.

Crossings and signaling



Safety at crossings is a primary concern for LRC and every effort will be made to maintain the visibility and proper conditions at all crossing locations.

LRC will conduct routine and regular inspections of the crossing areas and the signals along the 18.2 mile rail system. The inspections of the signaling devices will be made to the standards of CFR 49. All service on signaling devices will be performed by certified personnel.

Routine and regular inspections of all bridges, spans and overpasses will be made and recorded. The inspections will be made to the standards of CFR 49. Certified and qualified maintenance personnel will complete repairs necessary to any bridge, span or overpass at the direction of LRC.



OPERATION AND MAINTENANCE

**LRC - immediate,
efficient, effective**

LRC has demonstrated that we understand how management and maintenance of the 18.2 mile rail line goes far beyond the physical aspects of work. We know that to properly manage and maintain the rail, we will need to focus on marketing, safety, customer and community relations, railroad contacts, transportation development, and education as well as the physical maintenance and repair of the line and equipment. LRC has already begun work on these needs, so our time necessary to prepare for transition of the management and maintenance of the line will be minimal.

LRC is currently in business in the 1171 Building and will save the Port significant time and money by reducing transportation costs and the down time of equipment that needs repairs and maintenance. Additionally, our expertise in the area of maintenance and repair will provide rapid analysis of problems and initiation of repairs.

LRC is ready to work with the Port to establish the best, most efficient and cost effective use of the rail system. We believe we bring to the Port a complete package of:

- ◆ Skilled management
- ◆ Local involvement
- ◆ Quality staff and technical qualifications
- ◆ Efficient on site repair and maintenance
- ◆ Available equipment to fill needs
- ◆ Economic Development

This is a package few companies can match.



Cost

**LRC will become
a partner with
the Port**

LRC understands the need the Port has to reduce their anticipated current and future costs of maintenance and service of the 18.2 mile rail line. LRC is ready to become a partner with the Port to control the costs of maintenance and operation while working to find and develop new business and industry along the rail line.

**LRC proposes to
lease the entire
space of 1171
Building and
grounds**

LRC is offering the Port the following proposal to control costs, fulfill a need the Port has to lease the 1171 Building, and to establish a partnership for the economic benefit of the Port and of LRC.

**LRC proposes to
trade lease
of 1171 Building
and grounds
for Service and
Maintenance
of rail line**

LRC proposes to lease all of the leasable space in the 1171 Building from the Port. The lease will be based upon the rate identified by the Port in its economic analysis and public disclosure report, Proposed Freight Mobility And Industrial Center - Financial Projections - Assumptions, which was presented at the Port of Benton Special Commission Meeting, May 29, 1998. The term of the LRC 1171 Building lease will be 20 years.

LRC proposes that in trade for the annual lease of the 1171 Building and grounds, LRC will provide maintenance and service of the 18.2 mile rail line including track, roadbed and crossings. This offer of lease for service will be established upon the current condition of the rail line and the existing traffic and use by Lamb Weston, Henningsen Cold Storage and LRC.

Excluded from the regular maintenance and service trade agreement will be any structural repairs and service to rail overpasses, bridges, and spans. Also excluded will be repairs due to unusual occurrences and acts of nature.

**LRC willing to
share risks with
Port to assure rail
line availability
for growth and
development**

LRC understands there likely will be expenses we will need to absorb in relation to the work and tasks we have detailed in this proposal to properly maintain and service the current condition of the 18.2 mile rail line of the Port. However, LRC believes so firmly in the future for growth and development along the rail line, we are willing to assume this risk with the Port to assure the proper use and availability of the rail line for new business and industry.



Cost

**LRC proposes
to share all
revenues of
future operation
and growth with
the Port**

October 1, 1998, the time of take over of the management of the rail line, the operation of rail car pick-up, spotting and hauling for the current customers will continue to be performed by Union Pacific Railroad. In the future should LRC become the operator and supplier of such rail line services for current customers or any future customers, LRC proposes revenues derived from operations will be split with the Port. LRC proposes to retain seventy percent (70%) of revenues as an operation and management fee. The Port will receive thirty percent (30%) as the rail line owner. This will allow the Port to benefit from future development of business for the rail system. And it further reduces the financial risk for the Port as owner of the 18.2 mile rail line.

Based on our proposal to trade the lease of the 1171 Building for the maintenance and repair of the 18.2 mile rail line, and realizing LRC will be absorbing added costs associated with this work, we propose the annual premium for insurance be a direct, pass through management cost to the Port.

Since the movement of trains on the rail line to and from current users is now provided by Union Pacific Railroad and such operation is not a part of LRC or the Port's function, we suggest LRC only provide insurance to cover repair, maintenance and safety issues.

At such time in the future when the operation of trains on the rail line becomes a function of LRC and the Port, insurance for such operation will be added with the Port and LRC sharing premium costs for this portion at 70% LRC; 30% Port ratio.

**LRC is the best
company to help
develop rail line**

LRC is excited about the opportunity to be a full partner with the Port in working to develop the potential of the 18.2 mile rail line. We are the company best prepared to work with the Port to advance the rail line to it's full potential.



Cost

**LRC will work with
the Port in best
use of 1163
Building**

LRC is also ready to assist the Port in all other development potential in the 1100 Area. Should the Port gain control of the 1163 Building, LRC suggests that the Port consult with LRC to assure that all future tenants of the 1163 Building be users of rail service. The 1163 Building is situated in such a way that multi-modal use of truck and rail could easily be accomplished. LRC is ready to assist the Port with marketing, recruiting tenants, and other activities that will maximize the revenue potential of this great facility.

**LRC ready
to begin**

LRC is ready to begin its role as partner with the Port in managing, maintaining and servicing the 18.2 mile rail line and get to a positive financial position as quickly as possible. We believe we can minimize the risk for the Port by making the financial maintenance and service of the rail line part of a lease package for the 1171 Building.

EXHIBIT RVP-4

PORT OF BENTON
CONTRACT FOR OPERATION
AND
MAINTENANCE OF RAILROAD
LRC

COWAN WALKER, P.S.

A Professional Service Corporation
ATTORNEYS AT LAW
503 KNIGHT STREET, SUITE A
P.O. BOX 927
RICHLAND, WASHINGTON 99352
TELEPHONE (509) 943-2676
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SHARON M. BROWN
THOMAS A. COWAN
THOMAS J. HEYE
DARYL D. JONSON
LUCINDA J. LUKE
PETER P. MOORE
CHRIS J. NICKOLA
JACQUELINE I. STAM
P. CRAIG WALKER

October 9, 1998

Ben Bennett
Executive Director
Port of Benton
3100 George Washington Way
Richland, WA 99352

Re: Port of Benton-LRC M&O Contract

Dear Ben:

I am delivering to you with this letter the original of the Contract for Operation and Maintenance of the Railroad and an original of the Lease.

You should sign the original O&M Contract and original Lease. These signed documents should then be delivered to LRC for their signature. LRC should return the signed documents to you.

We still need to complete Attachment 4. I do not believe we need to wait until the completion of the inventory to do this. I believe we can take the list of personal property attached to the DOE Indenture and extract the items which are used for railroad maintenance and then add the Hy-liners to the list. You and Roy should be able to do this fairly easily. This would make sure that we have a complete document.

The Lease requires two attachments to complete it. Attachment A will be a map of the 1100 Area showing the portion that will be leased to LRC. Attachment B will be the legal description of the

property being leased to LRC. You may need Rogers Surveying to generate a legal description for the property.

Please let me know if you have any questions or if there is anything additional which you need from me.

Very truly yours,



Thomas A. Cowan

3022.49

PORT OF BENTON
CONTRACT FOR OPERATION
AND MAINTENANCE OF RAILROAD

THIS CONTRACT is made and entered into on the 1 day of October, 1998, by and between the PORT OF BENTON, a municipal corporation of the State of Washington, hereinafter called the "Port", and LIVINGSTON REBUILD CENTER, INC., a Montana corporation, hereinafter called the "LRC".

WHEREAS, the United States of America, acting by and through the Department of Energy is proposing to transfer to the Port a portion of the Hanford Railroad extending from Kennewick, Washington to the 1100 Area in Richland, Washington, consisting of approximately 16 miles of track, as more particularly described in Attachment 1.

WHEREAS, the United States of America, acting by and through the Department of Energy is proposing to transfer to the Port the 1100 Area in Richland, Washington, consisting of approximately 768 acres of land including the buildings and improvements, as more particularly described in Attachment 2.

WHEREAS, the United States of America, acting by and through the Department of Energy, is proposing to transfer to the Port the equipment, materials and personal property.

NOW THEREFORE, in consideration of the mutual promises contained herein, it is hereby agreed between the parties as follows:

1. The United States of America will convey to the Port the Southern Connection of the Hanford Railroad which is approximately 16.2 miles long and runs from the Union Pacific tracks in Kennewick, Washington to the former 1100 Area in Richland, Washington, hereafter referred to as "railroad".

1.1 The railroad is more particularly described in Attachment 1 to this

contract. The railroad includes the right of way, rail bed, ties, tracks, access roads, crossings, crossing signals, spurs, switches, bridges, spans, overpasses, structures, locomotives, railcars, equipment, and all other components associated with the operation of the railroad.

1.2 This contract shall be effective October 1, 1998, but may be rescinded by either party if within ninety days from the effective date of this agreement:

1.2.1 DOE does not convey the railroad to the Port.

1.2.2 The National Surface Transportation Board does not approve the Port for ownership of the railroad.

1.2.3 DOE does not execute the Amendment to Indenture proposed by the Port.

2. The Port hereby contracts with LRC for the maintenance of the railroad in accordance with the terms and conditions of this contract. The railroad shall be maintained in its present condition in accordance with all applicable federal, state and local laws, rules, and regulations, consistent with the tracks present rating as a Class 3 track, including in particular those maintenance standards set forth on Attachment 3. LRC's maintenance of the railroad shall include, but not be limited to the following:

2.1 Within ninety days of the effective date of this contract, LRC will provide the Port with a schedule for the routine inspection of the railroad, including the inspection of any locomotives, railcars or track maintenance equipment.

2.2 LRC will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract, provided that, as part of the consideration for this contract, LRC shall be permitted to use the equipment listed on Attachment 4 for railroad maintenance.

2.2.1 LRC shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if LRC determines that the equipment is no longer needed for maintenance of the railroad, LRC shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

2.2.2 In the event the equipment becomes unavailable for use due to

obsolescence or for any other reason, LRC shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

2.2.3 The equipment shall be used only for the maintenance of the railroad and for economic development purposes in cooperation with municipal corporations or not-for profit organizations. The Port consents to the use of the equipment for an Applied Science of Railroad Technology Course to be operated in conjunction with Columbia Basin College. The equipment may only be used for other purposes or for for-profit purposes (other than the maintenance of the railroad) with the prior approval of the Port and an use agreement between the parties which provides for payment for the use of the equipment.

2.2.4 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad. The Port will consult with LRC prior to the disposition of the equipment.

2.3 LRC will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

2.4 LRC will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations. LRC will promptly report any conditions which require repair or replacement to the Port. LRC is not required to provide the maintenance, repairs or replacements of the bridges, spans and overpasses, but LRC will provide the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. LRC shall not be required to maintain the tracks over the bridges, spans and overpasses if the structures are not maintained to the standards necessary to carry train traffic.

2.5 LRC is not required to provide for repair or replacement of any portion of the railroad which is damaged by a natural disaster, such as flooding or storm damage, an act of war, or an uninsured catastrophic loss.

2.6 Any work which must be done on the railroad which is excluded from the work which is required to be performed by LRC as a part of this contract, will be subject to the public bidding statutes and the Port may contract for this work with any party in accordance with the requirements of the public

works statutes. In the event, the Port requests any services from LRC, which are in excess of the services required by this contract, the Port will compensate LRC in accordance with the terms of a written consulting contract to be entered into between the parties at the time the services are requested.

2.7 To the extent practicable, LRC will schedule the routine maintenance to minimize the impact upon customers and others. Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. LRC shall promptly report any such conditions to the Port.

2.8 LRC will provide periodic maintenance reports to the Port not less frequently than the end of each calendar quarter.

2.9 LRC will not be required to remediate any environmental releases which were not the result of the actions or omissions of LRC.

2.10 LRC may use a rail profile measurement machine to establish a profile of all or a portion of the railroad. If a such a profile is made, LRC will provide a copy of the profile to the Port.

2.11 In consideration of the maintenance services to be provided by LRC, the Port will pay to LRC \$325,000.00 plus the sales tax each year during the term of this agreement. The payment shall be made in equal quarterly installments at the end of each calendar quarter in response to an invoice submitted by LRC to the Port. Within ninety (90) days of the end of the fifth year of the contract term, the parties shall review the compensation payable to LRC under the provisions of this section to determine whether the compensation should be adjusted so the compensation is equal to the rent for the 1171 Building, net of the leasehold excise tax. If the parties do not agree to an adjustment in the compensation, the compensation shall remain at the level provided for in this section, but the Port may consider the amount of compensation in making any decision under Section 5.1 of this contract.

3. The movement of railcars to and from the shippers on the railroad is presently handled by the major rail carriers. In the future it may be economically feasible for the parties to provide for the operation of the railroad. Neither the Port nor LRC is a railroad company. The actual operation of trains on the railroad may require a carrier by rail operations which will be subject to the tax and insurance requirements of the Railroad Retirement Board ("RRB") or the Federal Employers Liability Act ("FELA") other federal acts. The Port agrees that in the event it is desirable for a

carrier by rail operations to perform a portion of the activities under this agreement in order to comply with the provisions of RRB or FELA, then LRC may enter into an agreement with a carrier by rail operations (hereafter "operator") to provide for the operation of the railroad. The operator shall be mutually acceptable to parties and any contract with the operator shall be subject to all of the terms and conditions of this agreement.

3.1 LRC shall provide the direction and interface with the operator on behalf of the Port. LRC shall oversee the operator to determine whether the operator is complying with the contractual terms concerning the operation of the railroad. The operations shall, at a minimum include the following:

3.1.1 Preparation of an annual budget for the operation of the railroad, in a form agreed to by the parties, setting forth the projected revenues from the operation of the railroad and the projected expenses. At least quarterly, LRC or the operating company shall provide the Port with written statements setting forth the actual revenues and expenses for the operation of the railroad.

3.1.2 Negotiation with railroads and carriers regarding connections with the railroad and the transfer of the railcars from the railroad to other carriers; provided, however, that neither LRC nor the operating company shall have any authority to enter into any agreements or arrangements or make any representations which are binding on the Port.

3.1.3 The Port and LRC or the operator, as appropriate, shall establish the tariffs or user fees for the users of the railroad to develop the operating income for the railroad.

3.1.4 Collecting revenues from the users of the railroad and from the rail carriers who receive or send shipments using the railroad. All such revenues shall be subject to the terms of this agreement.

3.1.5 The Port, LRC and the operating company will meet at least annually, prior to the date LRC prepares the annual budget to determine the scope of the operations for the next succeeding year.

3.2 The costs of operating the railroad, including the payments to be made to the operator, shall be deducted from the revenue. The rail equipment described in Attachment 4 may be used for the operation of the railroad, provided that it is still in the ownership and possession of the Port at the time the operations are commenced. The value of the equipment shall be amortized and charged to the cost of operating the railroad in accordance

with generally accepted accounting principals. In consideration of LRC's services in managing the operations and managing the operating contract, seventy percent (70%) of the net revenues from the operations of the railroad remaining after the payment of all costs for operations shall be paid to LRC. The remaining net revenues shall be paid to the Port.

4. Simultaneously with the transfer of the railroad, the United States will transfer to the Port the property adjacent to the north end of the railroad known as the "1100 Area", as more particularly described in Attachment 2, to this agreement. LRC presently leases from the United States a portion of a building known as the 1171 Building, which contains a locomotive repair facility. When title to the 1100 Area is conveyed to the Port, the Port will enter into a lease in the form attached to this contract as Attachment 5. This lease will be for the entire 1171 Building.

4.1 The fair market rental value for the building has been determined to be \$3.50 per square foot per year on a triple net basis. The initial rent for the premises will be \$288,000.00, plus the applicable leasehold tax. LRC will pay the rent to the Port in accordance with the terms of the lease agreement.

4.2 In the event this contract is terminated prior to the termination of the lease, subject to section 4.3, the lease shall continue in full force and effect, provided, however, that LRC shall have the option to reduce the amount of space which it occupies to not less than the amount which it currently occupies under its lease with the United States. LRC shall continue to pay rent after the termination of this agreement. If the space occupied by LRC has been reduced the rent shall be reduced proportionately with the reduction of space.

4.3 In the event this contract is terminated or the property reverts to DOE, LRC shall have the option to substitute its original lease with the United States in place of the lease with the Port effective on the date of termination or reversion.

4.4 Any default under the terms of the lease shall be a default under the terms of this contract as well. In the event a default under the lease remains uncured, and the lease is terminated, the Port, at its sole option, may elect to terminate this contract effective upon the date of the termination of the lease, or any subsequent date selected by the Port.

5. This agreement shall be in effect for twenty years commencing on October 1, 1998 and terminating on September 30, 2018, unless terminated earlier as provided herein.

5.1 The Port may terminate this contract at any time (1) if the United States exercises its right of reversion for the all or any portion of the railroad property or for all or any portion of the 1100 Area, or (2) if the Port, in its sole discretion, elects to terminate the railroad operation and close the railroad, provided, however, that if the Port subsequently elects to recommence operation of the railroad, LRC shall be entitled to reinstate this agreement for up to twenty years from the effective date of this contract.

5.2 Either party may terminate this contract due to a material default or breach of the contract by the other party, which continues after notice of default and an opportunity for cure, and where there is a good faith dispute as to the existence of a default or its materiality, the parties have completed consultation and mediation when consultation and mediation is required by Section 11.

5.3 Upon the occurrence of an event specified in Section 5.1 above, the Port shall provide written notice to LRC and the termination shall be effective upon the date set forth in the notice which shall be at least thirty days after the receipt of the notice by LRC.

6. As part of its response to the Port's request for proposal, LRC proposed significant economic development activities in conjunction with its maintenance and operation of the railroad. The selection of LRC for this contract was made based, in part, upon these economic development activities. In the event the Port determines that LRC has failed to implement an economic development program, this will be a material default under this contract, subject to the provisions of Section 11 of this contract.

6.1 LRC has proposed to implement a training curriculum for students interested in careers within the railroad industry. This program will be implemented in conjunction with Columbia Basin College.

6.2 LRC has proposed to develop and construct high speed locomotives and railcars in the Tri-Cities. This project will be done in conjunction with other entities. LRC may seek a license agreement from the Department of Energy for use of the track to the north of the track which is the subject of this agreement.

6.3 LRC has proposed to work with the HAMMER Training and Educational Facility to establish a rail hazardous materials training course.

6.4 LRC has proposed to recruit a business which is not presently located in the Tri-Cities area to locate along the railroad. This is intended to be an

employment based business with primary income jobs.

6.5 The parties understand that the accomplishment of economic development goals is dependent upon many variable factors which may be beyond the control of the parties. In evaluating whether LRC has achieved the economic development goals, the Port will compare the accomplishments of LRC with the goals set forth in LRC's proposal to the Port and the Port will consider the amount of effort and commitment of resources which LRC has made to accomplish the goals, as well as the actual results. In consultation with the Port, LRC may substitute other goals in place of those in its proposal.

7. LRC will provide insurance coverage as specified by the Port for all of its activities under this contract with limits of \$10,000,000.00 aggregate and \$5,000,000.00 for any one accident with such insurance carriers and such deductibles as are acceptable to the Port. LRC shall name the Port as an additional insured on all such policies and shall provide a certificate of insurance to the Port. The policies shall provide that the carrier may not cancel any policy unless it provides the Port with thirty days written notice of the termination.

7.1 The insurance coverage for LRC's maintenance activities pursuant to this contract shall be paid by the Port.

7.2 At the time LRC or an operator begins operations on the railroad, LRC or an operator will obtain insurance coverage for these operations. The cost of the insurance shall be cost which is paid from the revenues from the operations.

8. LRC, in the performance of the services under this contract, shall be an independent contractor and shall be solely responsible for the performance of the services. The Port shall have no responsibility to pay employee benefits, social security, workers compensation, unemployment insurance, or withholding. LRC shall be responsible for the payment of all employment related benefits for employees.
9. Each party shall hold the other party harmless from all liability, penalties, costs, losses, damages, expense, causes of action, claims, attorney fees or judgments arising from or in any way connected to the party's performance or failure to perform under this Contract. In the event a claim is made against a party for any matters which are covered by this hold harmless agreement, the non-performing party shall defend against any such claim and shall reimburse the other party for any costs or expense, including attorney fees which the other party may incur in defending against the claim. This

hold harmless agreement shall apply to any act or omission, wilful misconduct, or negligence, whether passive or active, on the part of a party. This indemnity shall apply to any claims made by any employee of either party, and to the extent necessary to make this indemnity effective, each party waives the provisions of the Washington State Industrial Insurance Act.

10. LRC shall not assign this contract nor any of its rights or responsibilities under the contract without first obtaining the prior written consent of the Port. LRC may subcontract portions of the work in the ordinary course of performance without the prior consent of the Port, provided, however, such assignment shall not relieve LRC of its responsibilities under the contract. In the event of the sale of LRC or a substantial portion of the assets of LRC, or a change in the control of LRC, the Port may treat this as a prohibited assignment of this contract. This prohibition shall not apply to a transfer of stock to the employees of LRC under the existing LRC Employee Stock Ownership Plan.
11. In the event LRC fails to perform any of the terms or conditions of this agreement, the failure to perform shall constitute a default hereunder. Prior to pursuing its remedies, the Port shall give LRC written notice of the default and LRC shall have ten days from the receipt of the notice in which to cure the default. If the default is such that it can not be cured within ten days, LRC will not be in default if it promptly undertakes to cure the default and diligently pursues the cure thereafter.

11.1 In the event a default creates an imminent threat of injury to persons or damage to property, the Port may require LRC to cure the default immediately, and in the event the default is not promptly cured, the Port may have the default cured and bill LRC for the cost of the cure or the Port may close the railroad to any further operations until the default has been remedied.

11.2 In the case of any default or disagreement which does not create an imminent threat of injury to persons or damage to property, before a party seeks judicial enforcement of any remedy, the party shall request consultation with the other party. The request for consultation shall set forth the matters which are subject to the consultation and the party providing the notification, shall provide the names and titles of its employees or agents who will attend the consultation. The responding party shall have its employees or agents who are most familiar with the matter and who have job titles equivalent to those of the requesting party available for the consultation. The consultation shall take place at the Port offices in Richland, Washington or at such other place agreed to by the parties. The consultation shall take place within ten days of the receipt of the written

request for consultation by the responding party.

11.3 In the event, the parties fail to reach an agreement on any matter subject to consultation, either party may request mediation, but only if the matter in dispute would not be subject to mandatory arbitration if the matter were filed in Superior Court. The party requesting mediation shall deliver a written request for mediation to the other party within seven days of the date of any consultation. The requesting party shall specify the matters for mediation and the responding party may specify in writing any additional matters for mediation within five days of the receipt of the request for mediation.

11.3.1 Within ten days from the delivery of the request for mediation, the parties shall request the appointment of a mediator by a recognized mediation service in the State of Washington such as the Washington Arbitration and Mediation Service or Judicial Arbitration and Mediation Service. Either party may reject one proposed mediator.

11.3.2 The mediation shall take place at the Port offices in Richland, Washington, or at such other place as agreed to by the parties. The mediation shall occur within thirty days from the appointment of the mediator, but not later than forty-five days from the date the request for mediation is delivered to the other party.

11.3.3 The parties shall submit their written statements of position and any documents to the mediator upon the time schedule established by the mediator.

11.3.4 Each party shall pay one-half of the cost of the mediation.

11.4 If the parties are unable to resolve any dispute or disagreement through consultation or mediation, then either party may bring an action in Benton County Superior Court to enforce any of the terms or conditions of the agreement. In any judicial action, any party may invoke any of the rights or remedies available in law or in equity.

11.5 After notice and an opportunity to cure, and consultation and mediation if required by Section 11 of this contract, if a material default or breach of this contract continues, then a party may terminate this contract by giving written notice of termination to the other party.

12. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver,

benefit, privilege, or service voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel, or otherwise.

- 13 Any notices required or permitted to be given under the terms of this contract, shall be directed to the parties at the following addresses, or at such other address as the party may designate in writing prior to the giving of such notice:

PORT OF BENTON
3100 George Washington Way
Richland, WA 99352
Attention: Executive Director

LIVINGSTON REBUILD CENTER, INC.
P.O. Box 992
Livingston, Montana 59047
Attention: Randolph V. Peterson

With a copy to:

Thomas A. Cowan
Cowan Walker, P.S.
P.O. Box 927
Richland, WA 99352

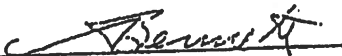
Kenneth D. Tolliver
Wright, Tolliver and Guthals, P.L.
P.O. Box 1977
Billings, Montana 59103

14. The captions and table of contents of the various paragraphs are for the convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this contract or of any part or parts of the contract.
- 15 Subject to the provisions of this contract on assignment, each and every covenant and condition of this contract shall be binding upon and inure to the benefit of the successors, assigns, and transferees of the respective parties.
16. The persons executing and delivering this contract on behalf of the respective parties, each represent and warrant that they are duly authorized to do so and that the execution of this contract is the voluntary act of the person on whose behalf they purport to act.
- 17 All exhibits and addenda to which reference is made in this contract are incorporated in the contract by the reference to them. References to "this contract" include matters incorporated by reference.
18. If any provision of this contract is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.
- 19 Whenever the consent or approval of a party to this contract is required to be given by the terms of this contract to the other party, such consent or approval shall not be unreasonably withheld or delayed.

20. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this contract, the prevailing party shall be entitled to recover reasonable attorney fees as well as court costs. Arbitration is an action or proceeding for the purposes of this provisions.

DATED this 24 day of October, 1998.

PORT OF BENTON

By 
BEN BENNETT
Executive Director

LIVINGSTON REBUILD CENTER, INC.

By 
RANDOLPH V. PETERSON
President
October 10, 1998

EXHIBIT RVP-5

**PORT OF BENTON AND U.S. DEPARTMENT OF ENERGY
RICHLAND OPERATIONS OFFICE
MEMORANDUM OF AGREEMENT**

**PORT OF BENTON and U.S. DEPARTMENT OF ENERGY,
RICHLAND OPERATIONS OFFICE**

MEMORANDUM OF AGREEMENT

**Operation of U.S. Department of Energy (DOE) Railroad from Horn Rapids Road
Terminus to the Energy Northwest, Inc. Leasehold**

Introduction

The U.S. Department of Energy, Richland Operations Office (RL), transferred a portion of the DOE Hanford Railroad, Southern Connection, to the Port of Benton under an Indenture effective October 1, 1998. Energy Northwest, Inc. (Northwest) leases property in the 600 Area approximately six (6) miles directly northeast of the 300 Area boundary of the Hanford Site. A portion of the DOE remaining Railroad, Northern Connection, traverses the 600 Area linking the DOE Railroad, Southern Connection, to the Northwest leasehold. The Port of Benton has consented to maintain that portion of the DOE Railroad for the benefit of Northwest.

Agreement

1. The Port of Benton and RL agree that the Port of Benton shall maintain the approximately six (6)-mile portion of the DOE Railroad from the Southern Connection boundary at Horn Rapids Road and the Northwest leasehold in the 600 Area (the "Railway") as Class 3 track, which is defined and prescribed in Title 49, U.S. Code of Federal Regulations Part 213. This covenant shall be effective for a period of five (5) years, unless renewed by mutual agreement. The Port of Benton accepts the Railway in "as is" condition with no warranties of any nature.
2. All Railway maintenance costs that the Port of Benton incurs shall be at its own expense. As consideration, the Port of Benton is allowed to charge access fees or a tariff for use of the former DOE Railroad, Southern Connection, and the Railway by Northwest. RL and its invitees shall continue to have free access to the Railway. The Port of Benton and its invitees shall make any discretionary use of the Railway consistent with its maintenance and operation as Class 3 track on a not-to-interfere basis with RL and Northwest requirements.

3. The Port of Benton agrees to indemnify and hold harmless RL and its contractors from any claims, costs, or liabilities, including attorney fees, that are caused by the use and occupation of the premises by the Port of Benton and its invitees, including any such claims, costs, or liabilities resulting from the presence or suspected presence of dangerous or hazardous substances in the Railway soil or groundwater underlying the Railway soil released by the Port of Benton or any invitee of the Port of Benton using the Railway; provided, however, that this indemnity and agreement to hold harmless shall not apply to any pre-existing conditions. Dangerous or hazardous substances, for the purpose of this Agreement, include, but are not limited to, petroleum and petroleum derivatives, asbestos, and polychlorinated biphenyls (PCBs). The Railway shall not be used for the treatment, storage, or disposal of any dangerous or hazardous substance.

4. The Port of Benton further agrees that if any material alterations or repairs of the Railway are necessary for Railway maintenance, the Port of Benton shall give at least five (5) business days written notice to the Realty Officer, RL, at the following address:

Realty Officer (A2-45)
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

DATED this 13 day of January 1999.

U.S. Department of Energy,
Richland Operations Office

Port of Benton,
Washington

By: 
Roger A. Jacob, Sr.
Realty Officer

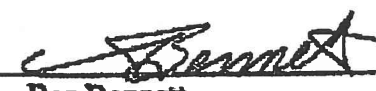
By: 
Ben Bennett
Executive Director

EXHIBIT RVP-6

**DRAFT OF UP CANCELLATION LETTER FROM THE
PORT OF BENTON ATTORNEY TO TRI-CITY
RAILROAD COMPANY**

COWAN WALKER, P.S.

A Professional Service Corporation
ATTORNEYS AT LAW
503 KNIGHT STREET, SUITE A
P.O. BOX 927
RICHLAND, WASHINGTON 99352
TELEPHONE (800) 843-2676
FAX (509) 848-4257

THOMAS A. COWAN
THOMAS J. HEYE
LUCINDA J. LUKE
PETER P. MOORE
CHRIS J. NICKOLA
JACQUELINE I. STAM
P. CRAIG WALKER

DARYL D. JONSON
Of Counsel

FAX COVER PAGE

September 12, 2000

John Haakenson
Tri-City Railroad Company
Fax no. 371-0901

Re: Port of Benton-Tri-City Railroad Co.

Dear John:

Enclosed is a draft of the letter from the Port to TCRC. Please review this and let me know if you have any changes which you wish to make. I am also forwarding a copy of the draft to Scott Keller for his review.

Very truly yours,


Thomas A. Cowan

3022.49

NUMBER OF PAGES (INCLUDING COVER) 2

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify our office by telephone to arrange for the return of the documents. Thank you.

September 12, 2000

John Haakenson, President
Tri-City Railroad Company
P.O. Box 1700
Richland, WA 99352

Re: Port of Benton Railroad

Dear Mr. Haakenson:

I am writing to you on behalf of the Port of Benton with regard to the Contract for Operation and Maintenance of Railroad entered into between the Port and Livingston Rebuild Center, Inc. on October 1, 1998. This contract has now been assigned to Tri-City Railroad Company (TCRC).

The Port received the railroad property from the United States. The Port is currently paying TCRC to maintain the railroad. The contract with TCRC provides that you will develop revenue from the operation of the railroad and a portion of the income from operations will be paid to the Port to off-set the cost of the maintenance.

The Port is aware that Union Pacific Railroad Company continues to use the Port of Benton railroad to service its customers in north Richland, but is not paying compensation for the use of the railroad nor is it providing maintenance of the Port's railroad. Therefore, the Port hereby directs TCRC to give written notice to Union Pacific Railroad terminating its rights to use the Port of Benton track. The termination shall be effective sixty days after the date of the notice.

If you have any questions or if you need any further information, please contact me.

Very truly yours,

Scott D. Keller
Assistant Executive Director

cc: Port Commissioners
Thomas A. Cowan, Attorney at Law

EXHIBIT RVP-7

FINAL UP CANCELLATION LETTER FROM THE
PORT OF BENTON ATTORNEY TO TRI-CITY RAILROAD
COMPANY

September 12, 2000

John Haakenson, President
Tri-City Railroad Company
P. O. Box 1700
Richland, Washington 99352

SUBJECT: Port of Benton Railroad

Dear Mr. Haakenson,

I am writing to you on behalf of the Port of Benton with regard to the Contract for Operation and Maintenance of the Railroad entered into between the Port and Livingston Rebuild Center, Inc. on October 1, 1998. This contract has now been assigned to Tri-City Railroad Company (TCRC).

The Port received the railroad property from the United States. The Port is currently paying TCRC to maintain the railroad. The contract with TCRC provides that you will develop revenue from the operation of the railroad and a portion of the income from operations will be paid to the Port to offset the cost of the maintenance.

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If you have any questions or if you need any further information, please contact me.

Sincerely,



Scott D. Keller
Assistant Executive Director

c: Port Commission and Counsel

EXHIBIT 1 TO RVP DEC

EXHIBIT RVP-8

AMENDMENT NUMBER 2 TO
MEMORANDUM OF AGREEMENT



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

AUG 21 2002

02-CLJ-0025

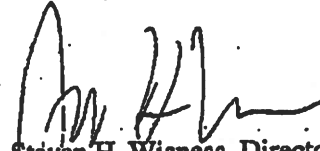
Mr. Scott D. Keller, Executive Director
Port of Benton
3100 George Washington Way
Richland, Washington 99352

Dear Mr. Keller:

**PORT OF BENTON – U.S. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS
OFFICE (RL) AMENDMENT NO. 2 TO MEMORANDUM OF AGREEMENT (MOA)**

RL has signed Amendment No. 2 to the subject MOA. Please see the original signed
subject document enclosed for your files. If you have any questions regarding this letter, please
contact: H. Boyd Hathaway on (509) 376-7340.

Sincerely,



Steven H. Wisness, Director
Closure Division

SSD:STB

Enclosure

**PORT OF BENTON-U.S. DEPARTMENT OF ENERGY
RICHLAND OPERATIONS OFFICE**

**AMENDMENT NO. 2 TO
MEMORANDUM OF AGREEMENT**

The Memorandum of Agreement between the U.S. Department of Energy, Richland Operations Office (DOE) and the Port of Benton, (Port), dated January 13, 1999, which was amended in writing on May 5, 1999, is hereby amended as follows:

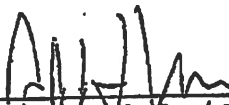
1. The Memorandum of Agreement allows the Port to utilize the DOE Railroad north of Horn Rapids Road to the Energy Northwest Leasehold site north of Richland. This amendment will add the entire DOE railroad north of Horn Rapids Road as well as the proposed lay down area at the Willa Junction and such other designated sites approved by DOE.
2. The portions of the DOE Railroad north of the Energy Northwest site will be used solely for the purpose of supporting DOE operations, unless the parties agree otherwise.
3. The Port, or its designated contractor, shall notify DOE of maintenance and repairs required for the railroad and the parties shall negotiate an agreement for payment of the costs of repair and maintenance. By this agreement, DOE does not obligate itself to fund any particular level of maintenance.
4. DOE shall approve all persons traveling north of the Energy Northwest leasehold for access and badging. All railroad engines, cars and cargo entering or exiting the Hanford Reservation north of the Energy Northwest Leasehold are subject to DOE inspection and approval.
5. The Port, or its designated contractor, will coordinate railroad related activities with DOE. The Port, or its designated contractor, will deal with Energy Northwest, the National Surface Transportation Board and the Federal Railroad Administration. The Port is only obligated to deal with any third party only if the required activities will not subject the Port to liability as a railroad operator under any federal or state laws or regulations.
6. Either party may terminate this MOA in whole or in part upon 90 days written notice to the other party. In the event of such termination, the Port, or it designated contractor, shall cease performing work, except for the work, which it is directed by DOE to continue performing up to the date of termination. Termination will not terminate the obligation to pay for such specific repair and maintenance items which DOE has

expressly agreed to pay in writing and which have been completed by the Port or its designated contractors prior to the date of termination.

7. The Port or its designated contractor shall comply with all applicable laws or regulations relating to the use of the railroad.
8. Each party shall designate a point of contact to deal with matters, which arise under this MOA.

DATED this 21 day of AUGUST, 2002.

UNITED STATES DEPARTMENT OF ENERGY
Richland Operations Office

By: 
Roger A. Jacob, Sr. H. Boyd Hathaway
Realty Officer

PORT OF BENTON

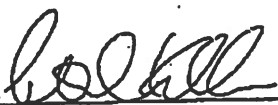
By: 
Scott D. Keller
Executive Director

EXHIBIT RVP-9

2002 RAILROAD LEASE

RAILROAD LEASE
Port of Benton-Tri-City Railroad Company

PARTIES:

LESSOR: PORT OF BENTON, a municipal corporation of the State of Washington, hereafter "Port".

TENANT: TRI-CITY RAILROAD COMPANY, L.L.C., a Washington limited liability company hereafter "Tenant".

RECITALS:

WHEREAS, the Port acquired the Southern Connection of the Hanford Railroad from the United States Department of Energy (hereafter "DOE") to prevent the closure of the railroad and to maintain railroad operations for economic development purposes.

WHEREAS, DOE conveyed the former 1100 Area to the Port to enable the Port to generate revenues to pay the costs of operation and maintenance of the railroad.

WHEREAS, the Port entered into an Operations and Maintenance Agreement with Livingston Rebuild Company dated October 1, 1998 which has been assigned to the Tenant and this agreement requires the Port to pay certain expenses related to the railroad, including insurance premiums, in excess of \$100,000.00 per year and the Port has the responsibility for the inspection, maintenance and replacement of the bridges and overpasses.

WHEREAS, the Port has been required to pay for the replacement of a section of the railroad bridge which was destroyed by fire.

WHEREAS, the Port entered into a Building Lease with Livingston Rebuild Company for the railroad maintenance building in the Port's Manufacturing Mall (formerly DOE's 1100 Area), which Lease has been assigned to the Tenant.

WHEREAS, the parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to the Tenant.

WHEREAS, the Port has been required to respond to an inquiry by the Railroad Retirement Board concerning the Port's liability for pension payments as an railroad operator and the Port wants to avoid classification as a railroad operator.

WHEREAS, the Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities; now therefore it is hereby agreed among the parties as follows:

AGREEMENTS:

1. LEASE. Port hereby leases to Tenant upon the terms, covenants and conditions contained herein, the real and personal property known as the Port of Benton Railroad Southern Connection and the 1171 Building (hereafter the "Property"). The real property is described on Attachment 1.

1.1 The Property consists of approximately 16 miles of railroad trackage and right of way extending from the Richland Connection in Kennewick, Washington to the Port of Benton's Manufacturing Mall in Richland, Washington, and generally bordered by Horn Rapids Road on the north, formerly known as the 1100 Area, including the tracks, bridges, trestles, crossings and maintenance equipment. The equipment and fixtures are more particularly described on Attachment 2 to this Agreement.

1.2 The Tenant has been operating the Port of Benton railroad and has occupied the 1171 Building since October, 1998 and is fully familiar with the Property and agrees to take the Property in its present condition, and subject to the restrictions contained in the Indenture between the United States of America and the Port, the amendments thereto, and the Quit Claim Deed from the United States of America, copies of which has been provided to the Tenant. The Tenant agrees to take the Property in its present condition without warranties. The Tenant is relying upon its own inspections of the Property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease.

1.3 The Port may acquire trackage rights to use additional railroad tracks owned by DOE serving the Hanford Project. To the extent that the Port acquires additional trackage rights from the DOE, the Port will attempt to negotiate an agreement with the Tenant to add the track rights to this agreement, if permitted by the terms of any agreements with the United States and to the extent the terms of the agreement for trackage rights are acceptable to the Tenant. An agreement to add additional track to this agreement, may require the Tenant to pay additional fees to the Port based upon volume of traffic over the tracks. Provided, that the Port may cancel any agreement with the United States for trackage rights without any further obligation to Tenant. Provided, further, in the event the Port terminates its agreement with the United States for trackage rights, the Tenant shall be free to negotiate with the United States for the trackage rights.

1.4 The Port of Benton currently has a Memorandum of Agreement with DOE to use the track north of Horn Rapids Road to the Energy Northwest Generating Station site, which the Port agrees to allow the Tenant to utilize under the terms of this Lease, provided that the Tenant maintains the track as herein required. DOE has proposed a Memorandum of Agreement with the Port of Benton for use of the Hanford Railroad north of the Energy Northwest Generating Station. After the execution of the MOA by the Port and DOE, the Port will permit the Tenant to utilize additional track which is covered by the MOA, provided that the Tenant complies with the terms and conditions of the MOA and subject to the provisions of this Lease.

2. TERM. This lease shall run for a period of ten years commencing on the 1st day of August, 2002 and terminating on the 31st day of March, 2012.

2.1 The Tenant shall have the option to extend this Lease for two additional terms of ten years each after the expiration of the initial term and after the expiration of the first renewal term.

2.2 The option to extend this Lease shall be deemed to have been exercised unless the Tenant shall give the Port written notice of its intent not to exercise an option at least one hundred eighty (180) days prior to termination of the initial term or the expiration of the first renewal term.

2.3 The Tenant may only exercise the right to extend the term of this Lease if the Tenant is not in material default in the performance of the terms of this Lease at the time the Tenant exercises the option or at the time an option is deemed to be exercised under Section 2.2.

2.4 In the event the Tenant elects not to exercise the Lease extension as provided in this Section, then this Lease shall terminate and the Tenant shall have no further rights under the terms of the Lease.

3. RENT. Tenant shall pay rent, in advance on the first day of each month during the term of this lease, in the following amounts:

3.1 During the initial term of the lease, the parties have agreed that the monthly rental for the real property, railroad trackage, right of way and building more particularly described in Attachment 1, shall be \$2,000.00, plus the applicable leasehold tax as hereafter provided.

3.2 In addition to the rent for the real property, the Tenant shall pay \$2,000.00 per month as rent for the railroad maintenance and operation equipment owned by the Port and more particularly described on Attachment 2. The Tenant shall be responsible for the payment of any sales tax which may be payable as a result of the lease of equipment.

3.3 Rent payments shall be made payable to the Port of Benton and shall be paid at the Port offices at 3100 George Washington Way, Richland, Washington, or at such other address as the Port shall direct in writing.

3.4 In addition to the rent provided for herein, the Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold Tax shall be paid with each monthly installment of rent. The current leasehold tax rate is 12.84%.

3.5 Commencing five (5) years from the commencement date of this lease, and on every anniversary thereafter, the minimum rent set forth in sections 3.1 and 3.2 shall be increased in order to reflect the proportionate increase, if any, occurring between the commencement date and such adjustment date in the cost of living as indicated by the Consumer Price Index for Urban Consumers - Western US Average - All Items, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"). Such adjustment shall be accomplished by multiplying the numerator of which shall be the Index level as of the January preceding the date of adjustment, and the denominator of which shall be the Index level as of the January preceding the Lease commencement date. Any adjustment of rent shall become effective immediately. In no event shall the rent be less than that specified in sections 3.1 and 3.2. If the index is discontinued, Landlord shall substitute a similar index of consumer prices.

3.6 Any rent payment not paid within ten days of the date upon which the Tenant receives notice that a payment is past due shall accrue interest on the unpaid rent at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

4. **CONDITION OF PROPERTY.** The Tenant shall take the Property in its present condition, without warranties or representations by the Port except as set forth in this Lease. The Tenant shall be responsible for the maintenance and repair of the railroad maintenance and operation equipment owned by the Port and used by the Tenant pursuant to this Lease. In the event any of the Port equipment becomes inoperable or unusable for any reason the Port shall not be required to provide replacement equipment. If the equipment becomes obsolete or inoperable through no fault of the Tenant, the unusable equipment shall be returned to the Port and the rent shall be adjusted to account for the equipment which is no longer being used by the Tenant. This provision shall not apply to the equipment that becomes inoperable due to the Tenant's failure to properly maintain the equipment.

5. **SECURITY.** The Tenant shall provide a rent security in accordance with RCW 53.08.085 in an amount equal to the rent and Leasehold Tax to be paid during the initial year of this Lease.

6. **TAXES AND ASSESSMENTS.** Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the Property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the Property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided

that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in installments, shall survive the termination or expiration of this Lease.

6.1 Tenant may contest the legal validity or amount of any taxes, assessments or charges which Tenant is responsible for under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the Property from any lien. Port appoints Tenant as Port's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments or charges.

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

7.2.1 If the complaint involves matters which are within the purview of National Surface Transportation Board (NSTB), the Port will, to the extent applicable, utilize the rules of the NSTB to resolve the dispute.

7.2.2 If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

7.2.3 Complaints which can not be referred to the NSTB, shall be resolved pursuant to the terms and conditions of this Lease.

7.3 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

7.4 The Tenant shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the

Port's prior written consent. The Tenant shall continue to provide railroad access to areas currently served by the railroad unless the Port and Tenant mutually agree that such access is no longer practicable.

8. MAINTENANCE OF PROPERTY. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall maintain the Property and all improvements and fixtures then existing thereon in good condition and repair, subject to reasonable wear and tear, and in accordance with all applicable covenants, laws, rules, ordinances, and regulations of governmental agencies applicable to the maintenance and operation of the railroad, provided, however, that the Port shall be responsible for the maintenance of the roof and the exterior walls of the 1171 Building. The Tenant will maintain the equipment described on Attachment 2 in good working condition and repair, ordinary and usual wear and tear excepted.

8.1 Tenant will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad. Tenant will promptly repair any conditions which require repair or replacement in order to comply with applicable rules and regulations. The obligation to maintain the railroad shall include the maintenance, repairs or replacements of the bridges, spans and overpasses and the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. In the event the Port assigns trackage rights to the Tenant pursuant to agreements with DOE, and the Tenant accepts the trackage rights, the Tenant agrees to assume the obligation to maintain the additional track in accordance with the terms and conditions of the agreement which the Port has entered into with DOE.

8.2 Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. Tenant shall promptly report any such conditions to the Port.

8.3 Tenant will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

8.4 Tenant will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract.

8.5 Tenant shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if Tenant determines that the equipment is no longer needed for maintenance of the railroad, Tenant shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

8.6 In the event the equipment becomes unavailable for use due to obsolescence or for any other reason, Tenant shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

8.7 The equipment shall be used only for the maintenance and operation of the railroad and for no other purpose without the prior written consent of the Port and an use agreement which provides for payment for the use of the equipment.

8.8 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad.

9. **CONDITIONS OF CONSTRUCTION.** Before any construction, reconstruction or alteration of the improvements on the Property, except for interior improvements or non-structural modifications is commenced and before any building materials have been delivered to the Property in connection with such construction, reconstruction or alteration by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Port's written waiver of the following condition or conditions:

9.1 Tenant shall deliver to Port, for its approval, one set of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington including, but not limited to, preliminary grading utility connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable Port to make an informed judgment about the design and quality of construction. All improvements shall be constructed within the exterior property lines of the Property provided that required work beyond the Property on utilities, access, and conditional use requirements will not violate this provision. Tenant shall permit Port to use the plans without payment for purposes relevant to and consistent with this Lease.

9.2 The Port shall examine the plans and specifications for the purpose of determining reasonable compliance with the terms and conditions of this Lease, the Protective Covenants and compatibility with the overall design and use. Approval will not be unreasonably withheld. Approval or disapproval shall be communicated to the Tenant, and disapproval shall be accompanied by specification in reasonable detail of the grounds for disapproval; provided that Port's failure to disapprove the initial construction plans within fourteen (14) days or subsequent construction plans within thirty (30) days after delivery to Port shall be considered to be approval.

9.3 Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by the Port, submit them to the appropriate governmental agencies for approval, and deliver to Port one complete set as approved by the governmental agencies.

9.4 Tenant shall notify Port of its intention to commence the initial construction at least fourteen days before commencement of any such work or delivery of any

materials. The notice shall specify the approximate location and nature of the intended improvements. During the course of construction, Port shall have the right to post and maintain on the Property any notices of non-responsibility provided for under the applicable law, and to inspect the Property at all reasonable times.

9.5 Except as specifically provided in this Lease, Port makes no covenant or warranties respecting the condition of the soil or subsoil or any other condition of the Property.

9.6 Once work is begun, Tenant shall, with reasonable diligence, complete all construction of improvements. Construction required at the inception of the Lease shall be completed and ready for use within eighteen (18) months after commencement of construction, provided that the time for completion shall be extended for so long as the Tenant is prevented from completing the construction due to delays beyond the Tenant's control; but failure, regardless of cause, to commence construction within eighteen (18) months from the commencement date of the Lease shall, at Port's election exercised by thirty days written notice, terminate this Lease. All work shall be performed in a workmanlike manner, substantially comply with the plans and specifications required by this Lease, and comply with all applicable governmental permits, laws, ordinances, and regulations.

9.7 Tenant shall pay the cost and expense of all Tenant's improvements constructed on the Property. Tenant shall not permit any mechanic's, or construction liens to attach to the Property. Tenant shall not permit any mechanics', materialmen's, contractors' or subcontractors' lien arising from any work of improvement performed by or for the Tenant to be enforced against the Property, however it may arise. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Port's Property interests are not jeopardized. Tenant shall defend and indemnify Port against all liability and loss of any type arising out of the construction of improvements on the Property by Tenant. Unless caused by the Port, its agents, contractors, and invitees, Tenant shall reimburse Port for all sums paid according to this paragraph, together with the Port's reasonable attorneys' fees and costs plus interest on those sums at the legal rate.

9.8 On completion of the construction of any improvements, additions or alterations, covered by this Section 9, Tenant shall give Port notice of all structural or material changes in plans or specifications made during the course of the work and shall at that time supply Port with drawings accurately reflecting all such changes. Changes which are non-structural or which do not substantially alter the plans and specifications as previously approved by the Port do not constitute a material change.

10. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the Property by Tenant as permitted by this Lease shall be owned by Tenant until termination of this Lease. Upon the termination of this Lease for any reason, any buildings, improvements or trade fixtures installed on the Property shall become the property of the Port. Provided, however, in the event, the Tenant has failed to maintain the Property as required by this Lease, or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Tenant or its successors, such that in any event the value of the improvements is less than the cost of removal,

remediation or renovation to bring the Property into compliance, then the Port may require the Tenant to remove any improvements or trade fixtures installed by the Tenant. The Tenant shall repair, at Tenant's expense, any damage to the Property resulting from such removal.

10.1 The equipment and fixtures on the property which belong to the Port shall remain the property of the Port and the Tenant shall be required to maintain the Port-owned equipment and fixtures during the term of this Agreement. The equipment and fixtures owned by the Port shall be returned to the Port upon the termination of this Agreement, reasonable wear and tear excepted.

11. **ASSIGNMENT AND SUBLETTING.** Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written consent. Each sublease for any portion of the premises in addition to the reference to Section 7 of this lease, shall specifically advise the subtenant that the sublease is subject to the reverter contained in the deed and indenture from the United States to the Port of Benton. No assignment or sublease of the Lease shall relieve the Tenant of its obligations under this Lease.

12. **INSURANCE.** Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form railroad liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, operation, maintenance, occupancy, misuse, or condition of the Property and improvements, with limits of liability of at least \$5,000,000 and with deductibles in such amounts as may be reasonably acceptable to the Port. The Port shall be an additional insured on such policies.

12.1 **RAILROAD PROPERTY INSURANCE.** Throughout the term of the Lease, at Tenant's sole cost and expense, the Tenant shall keep or cause to be kept in force, for the mutual benefit of the Port and the Tenant, property insurance insuring all of the tracks, bridges, trestles, crossing and other improvements, fixtures, equipment and all of the railroad property subject to this lease against loss or damage from any cause, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port.

12.2 **BUILDING PROPERTY INSURANCE.** The Port shall maintain property insurance insuring the improvement known as the 1171 Building described in Attachment 1 against loss or damage from fire, flood, wind, or other natural disasters, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port. The Tenant shall maintain insurance coverage on the Tenant's property, fixtures and equipment located on the premises.

12.3 **PROOF OF COMPLIANCE.** The Tenant shall provide the Port with Certificates of Insurance showing the coverages and deductibles. All property insurance which the Tenant is required to maintain on the Port's property shall name the Port as the owner of the property and shall insure the Port's interest in the property. The Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies required by this

Lease. Tenant shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least ninety (90) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least ninety (90) days prior written notice to Port.

13. INDEMNIFICATION. The Tenant shall indemnify and hold the Port harmless from all liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceedings brought against the Port by any party alleged to have resulted from the Tenant's use, operation, maintenance or occupation of the railroad or any portion of the premises or any of Tenant's activities incidental thereto, or any breach or default in the performance of any of the terms or conditions of the Tenant's obligations under this lease agreement.

14. DEFAULT.

14.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Tenant and a breach of this Lease.

14.1.1 The breach of any of the terms or conditions of the Lease Agreement

14.1.2 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

14.1.3 The appointment of a receiver to take possession of the Property or improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

14.1.4 An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

14.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

14.3 TENANT'S RIGHT TO CURE. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have ten

(10) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

14.4 TIME OF THE ESSENCE. Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

15. PORT'S REMEDIES. If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, subject to the provisions of Section 13, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

15.1 Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

15.2 Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

15.2.1 The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

15.2.2 The loss of rental on the Property accruing until the date when a new tenant has been or with the exercise of reasonable diligence could have been, obtained.

15.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Tenant from any obligations under the Lease. In the event Port re-enters the Property for the purpose of reletting, Port may relet all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any tenant which Port may reasonably consider objectionable.

15.4 In the event Port relets the Property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts.

15.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

15.4.2 The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

15.5 All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any, and the balance shall be remitted to Tenant.

16. WAIVER. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

17. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

18. ACCESS BY PORT. Port, or Port's representatives and agents, shall have access to the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the Property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the Property by Tenant.

19. RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant, and

as long as the information in the memorandum is accurate the other party agrees to sign the memorandum of lease.

20. **HOLDING OVER.** In the event Tenant shall hold over after the expiration or termination of this Lease, or at the expiration of any option term, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the lease except that the rental rate shall be adjusted as provided in Section 3 and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

21. **SECURITY FOR TENANT'S OBLIGATIONS.** In addition to the security provided for in Section 5, in order to secure the prompt, full and complete performance of all of Tenant's obligations under this Lease, including but not limited to, Tenant's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Tenant hereby grants to Port a security interest in and assigns to Port all of Tenant's right, title and interest in and to all rents and profits from the Property, all of the materials stored on the premises, and all permanent improvements constructed thereon, to secure the Tenant's obligations under this Lease. In the event Tenant defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 15.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Tenant's obligations hereunder, including payment to Port of any sums due from Tenant. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease. This security interest will not extend to the Tenant's business receivables other than rents and profits from the property, provided that this exception will not affect the enforcement or collection of any judgment obtained against the Tenant by the Port.

22. **HAZARDOUS MATERIALS.** Tenant shall not take or store upon the Property any hazardous or toxic materials, as defined by the law of the State of Washington or by federal law, except in strict compliance with all applicable rules, regulations, ordinances and statutes. Tenant shall comply with the Port's Hazardous Materials Communications Policy, but shall not be subject to the notice requirements thereof in connection with the installation, use, operation, or removal of usual office equipment including, without limitation, computers and photocopiers.

22.1 Tenant shall not permit any contamination of the Property. The Tenant shall immediately remove any contaminants or pollutants and shall promptly restore the Property, subject to any condition existing prior to the commencement of this Lease, which shall be the responsibility of the Port.

22.2 Tenant shall defend Port and hold it harmless from any cost, expense, claim or litigation arising from hazardous or toxic materials on the Property or resulting from the contamination of the Property, caused by the acts or omissions of the Tenant, its subtenants, employees, agents, invitees, or licensees, during the term of this Lease.

22.3 In the event of the termination of this Lease for any reason, the obligation of the Tenant to restore the Property and the obligation to indemnify the Port set forth above, shall survive the termination.

23. GENERAL CONDITIONS.

23.1 NOTICES. Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

Port: Port of Benton
3100 George Washington Way
Richland, Washington 99352

Tenant: Tri-City Railroad Company, L.L.C.
2355 Stevens Drive
P.O. Box 1700
Richland, WA 99352

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U. S. Postal Service that the mailed notice is available for pick up.

23.2 NONMERGER. If both Port's and Tenant's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

23.3 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

23.4 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" includes matters incorporated by reference.

23.5 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned, or

conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

23.6 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission, or fees claimed by any broker or agent in connection with this Lease.

23.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Tenant each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

23.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Tenant shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

23.9 LEASE CERTIFICATION. Upon the request of the Tenant the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: i) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Tenant is current in the payment of the rent and other charges under the terms of the Lease; iv) whether the Port is aware of any default or breach on the part of the Tenant.

23.10 PARTIAL INVALIDITY. If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

23.11 CONSTRUCTION. The parties lease have reviewed this lease and have the opportunity to consult with their respective counsel. The lease shall not be deemed to be drafted by either party and the lease shall not be construed against either party as the drafter.

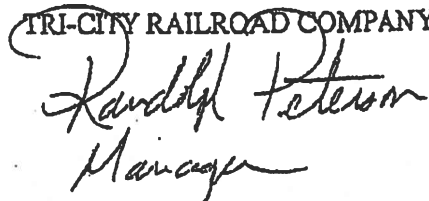
23.12 CONSENT. Whenever the consent or approval of a party to this Lease is required to be given by the terms of this Lease to the other party, such consent or approval shall not be unreasonably withheld or delayed.

DATED this 15th day of August, 2002.

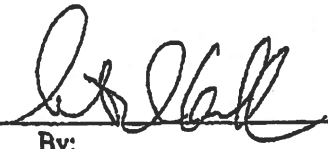
PORT OF BENTON



TRI-CITY RAILROAD COMPANY, L.L.C.



Manager

By: 

By: _____

SCOTT D. KELLER

Executive Director

Title: _____

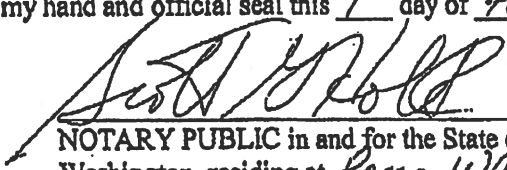
STATE OF WASHINGTON)

) ss.

County of Benton)

On this day, before me personally appeared Scott D. Keller to me known to be the Executive Director of Port of Benton Commission, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN UNDER my hand and official seal this 1st day of August, 2002.


NOTARY PUBLIC in and for the State of
Washington, residing at Pasco, WA

My commission expires: June 25, 2003

STATE OF WASHINGTON)

) ss.

County of Benton)

On this day, before me personally appeared Randolph Peterson to me known to be the Manager of Tri-City Railroad Company, L.L.C., and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER my hand and official seal this 1st day of August, 2002.

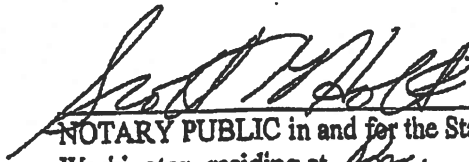

NOTARY PUBLIC in and for the State of
Washington, residing at Asco WA
My commission expires: June 25, 2003

EXHIBIT RVP-10

**HAND DELIVERED LETTER FROM
RANDOLPH PETERSON TO PORT COMMISSION
BNSF RUNNING DIRECT**



PO Box 1700, Richland, WA 99352

509-371-8313

July 23, 2009

The Port of Benton
3100 George Washington Way
Richland, WA 99354
Attn.: Scott Keller, Jane Hagarty, Robert Larson, Roy Keck

Re: Request That Port of Benton Exercise Its Right to Terminate Contracts for
Railroad Service

Dear Scott,

As you are likely aware, BNSF has recently asserted its claimed right to operate directly on the trackage leased by the Port of Benton ("Port") to Tri-City Railroad Company, LLC. ("Tri-City"). Because Tri-City has refused to allow that action, BNSF has filed suit in federal court in Richland seeking an injunction requiring that TCRY allow BNSF to operate directly on the subject trackage.

A hearing on a Temporary Restraining Order was held in the federal court before Judge Shea on July 22, 2009. Although the judge did not enter the requested Restraining Order, he clearly stated that he would rule that BNSF has the right to operate on the Port's rail trackage pursuant to a Contract for Railroad Service dated November 6, 1947, as modified by contracts dated December 7, 1948 and January 24, 1961. Under these contracts with the United States (Atomic Energy Commission), the predecessors of BNSF and UP were granted operating rights on a certain portion of the track now owned by the Port. The judge has scheduled a Preliminary Injunction hearing in this matter for Tuesday, July 28, 2009, at 9:00 am in the federal courthouse in Richland.

If, as appears likely, the Court enters an injunction requiring that TCRY allow BNSF to operate on the trackage it leases from the Port, the consequences to both the Port and to TCRY will be devastating. TCRY will lose effective control over the tracks it has used, operated and maintained since 1998 and which are the subject of the Railroad Lease between TCRY and the Port dated August 1, 2002 ("TCRY Railroad Lease"). As a result, TCRY will suffer staggering business losses, dramatically curtail its business operations and be compelled to lay off

most if not all of its operations staff immediately. If such an order were entered at or after the July 28, 2009 hearing, such layoffs would begin immediately.

TCRY's counsel has reviewed the Contract for Railroad Service with its modifications as well as the related documents and has concluded, for the reasons that follow, that the Port has the right to terminate the Contract for Railroad Service on six months written notice.

By the Indenture dated October 1, 1998, the United States of America, U.S. Department of Energy, conveyed the Hanford 1100 Area, the Hanford Rail Line, Southern Connection and related property to the Port. As part of that Indenture (Par. IX, C), the agreements between the Atomic Energy Commission (and its successors) and the BNSF and UP were assigned to and accepted by the Port. By this Indenture, the Port acquired all the rights previously held by the Commission under the Contract for Railroad Service as supplemented and modified.

The original Contract for Railroad Service (November 6, 1948) provides at paragraph XV that the Commission (now the Port) "may terminate this agreement at any time upon six months advance notice thereof in writing being given" to the railroads.

The Contract for Railroad Service was amended (December 7, 1948) by restating paragraph XV. However, that paragraph as amended retained the right of termination by the Commission (Port) on six months written notice.

The Contract for Railroad Service was amended on January 24, 1961. That amendment specifically stated (Section 11) that "any party may terminate this agreement at any time upon six months' advance notice thereof in writing being given to the other parties."

Therefore, we believe it is beyond dispute that the Port has the right to terminate the ancient agreements with the BNSF and UP. We believe that it is in the best interest of the Port and TCRY that the Port exercise that right of termination immediately in order to prevent irreparable harm to both parties.

Termination of the Contract for Railroad Service is consistent with and necessary to TCRY's full use of the Property leased to it under the TCRY Railroad Lease.

The intent of the Port in entering that Lease is stated in the Recitals as follows: "[T]he Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant [TCRY] and to relieve the Port of the responsibilities for such activities. . ."

Also, the Lease (Par. 7) directs that TCRY "shall use the Property for the operations and maintenance of railroad facilities" and requires that (Par. 7.1) TCRY's "use, operations and maintenance of the tracks" be in compliance with

the "Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the Property."

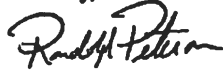
BNSF has made it clear, in its arguments to the federal judge, that it seeks to control operations on the Port's trackage. However, in the 1947 agreement, the government retained the "general control, management and administration of the railway." That control was assigned by the government to the Port and delegated to TCRY under the TCRY Lease. The pending actions of BNSF therefore threaten TCRY's right and duty under its Lease with the Port to control track operations.

Should the Port not terminate the Contract for Railroad Service, the effects can only be described as catastrophic. TCRY will sustain immediate and substantial revenue losses, quickly totaling millions of dollars. Virtually all TCRY employees will need to be laid off, adding to the unemployment rolls.

TCRY believes that because the Port has the ability to prevent these damages consistent with its obligations under the Lease, it has a duty to do so. By doing so, the Port will also take the steps necessary to preserve the value of the substantial investment made by TCRY in the property under the Lease.

In light of these circumstances, I believe it is imperative that the Port exercise its right to terminate the Contract for Railroad Service before the federal court hearing scheduled for July 28 at 9:00 am.

Sincerely,



Randolph V. Peterson
President

EXHIBIT RVP-11

**JULY 27, 2009 LETTER FROM RANDOLPH PETERSON
TO THE PORT BNSF RUNNING DIRECT**



PO Box 1700, Richland, WA 99352

509-371-8313

July 27, 2009

The Port of Benton
3100 George Washington Way
Richland, WA 99354

Attn: Scott Keller, Jane Hagarty, Robert Larson, Roy Keck

Re: Track Rights Agreements Between the Port of Benton and Class 1 Railroads
(BNSF and UP)

Dear Scott:

By letter of July 23, 2009, Tri-City Railroad Company, LLC ("TCRY") requested that the Port of Benton ("Port") terminate the Contract for Railroad Service dated November 6, 1947, as amended December 7, 1948, January 24, 1961 and June 17, 1979, (referred to collectively as the "Contracts"). A copy of that letter is attached. This letter provides more information supporting that request and also proposes an alternative for the Port's consideration.

SUMMARY

In acquiring the Railroad from the United States, the Port agreed to utilize it to create economic and employment opportunities for the community served by the Port. Consistent with that goal, on August 1, 2002, the Port executed a Railroad Lease with TCry under which it leased the railroad trackage and right of way to TCry to assure continued operation of the railroad and to transfer the costs and risks of operating the railroad to TCry. Under that Lease, TCry has substantially advanced the Port's economic development goal by operating and maintaining the railroad, making long term investments in the railroad, and attracting additional business to the community. In addition, the Lease provides a mechanism for Port involvement in control of shipping rates for the benefit of the local economy.

If the Contracts are not terminated, local revenue stream will be adversely affected and approximately ½ of the revenues brought in by TCry, together with substantial revenues brought in by business obtained through TCry's efforts, will be lost to the local economy. In addition, failure to terminate the Contracts threatens TCry's ability to discharge its duty for operation of the Railroad.

These facts dictate that the Port has an obligation to terminate the Contracts or, in the alternative, to assign the Contracts to TCry to facilitate the discharge of its duties under the Lease.

**THE PORT'S OBJECTIVE REGARDING THE RAILROAD – CREATING
LOCAL ECONOMIC AND EMPLOYMENT OPPORTUNITIES**

The Indenture by which the Port obtained the Railroad from the United States on October 1, 1998, specifically provides that "Grantee agrees to use said . . . Railroad to create economic and employment opportunities in the community served by the Port of Benton."

In its letter August 28, 1998, letter forwarding the draft transfer document to the Port, the Department of Energy notes that:

If approved by the POB, this transfer will be the most significant real property conversion in recent times. There are 768 acres with 26 facilities and 16 miles of railroad valued at more than \$5.1 million that will be available to assist in the POB's economic development activities.

Therefore, both the United States and the Port recognized that, consistent with the Port's fundamental charter, in obtaining and operating the Railroad, the Port's goal was to create additional employment opportunities and to foster economic growth in the community.

**THE PORT'S LEASE OF THE RAILROAD TO TCRY HAS DRAMATICALLY
ADVANCED THE OBJECTIVES OF ENHANCEMENT OF EMPLOYMENT AND
ECONOMIC GROWTH**

The Port identified TCRY as uniquely qualified to save the Railroad from extinction and to operate the Railroad and thereby assist the Port in fostering local economic development. The Port's action was based on recognition of TCRY's qualifications and the history of its association with the Railroad. The Railroad Lease resulted from that recognition and the Port's desire to delegate the duties, responsibilities, and risks of running the Railroad to a qualified operator.

The Railroad Lease specifically acknowledges these facts. The Railroad Lease notes:

[T]he Port acquired [the railroad] from the United States Department of Energy . . . to prevent closure of the railroad and to maintain railroad operations for economic development purposes." (Railroad Lease, Recitals, page 1)

The Railroad Lease to TCRY relieved the Port of its obligation to deal with the risk, operation and maintenance of the Railroad. The Railroad Lease acknowledges this as well:

[T]he parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to [TCRY]. . . . The Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities. . . (Railroad Lease, Recitals, pages 1 and 2)

The Railroad Lease transferred to TCRY all of the risks, liabilities, and costs associated with operating the railroad, insulating the Port from the potential negative consequences of Railroad operation while allowing enhancement of employment and economic opportunities through the efforts of TCRY.

The Railroad Lease was an astute business move by the Port.

TCRY has gone beyond discharge of its essential duties by creating significant capital improvements and making substantial investment in the Railroad. As a result, the Port's decision to enter into the Railroad Lease with TCRY has reaped substantial benefits to the Port and greatly advanced its economic and employment enhancement goals.

TCRY HAS MADE SIGNIFICANT CONTRIBUTIONS TO ENABLE THE PORT TO ACHIEVE ITS GOAL OF FOSTERING LOCAL ECONOMIC GROWTH

TCRY has made a substantial investment in the Railroad – including improvements which are owned by TCRY through the projected termination of the Lease in 2032 under the express terms of the Lease. TCRY has also attracted investment by third parties which will also contribute to the local economic development. To date, the direct investment of TCRY and its related companies totals more than \$12,000,000 and the investments by third parties is in the millions. Local economic and employment enhancement has been achieved and more will come.

Two prime examples of these third party investments include the recent Union Pacific rebuild of its connecting line to the Railroad to accommodate unit train traffic and the construction of the Walters unit train transload facility. These investments will result in significant savings to grain shipping customers. The first of these unit trains was successfully brought in and unloaded just this past week.

THE RAILROAD LEASE WITH TCRY ALLOWS THE PORT TO PLAY A ROLE IN INSURING REASONABLE SHIPPING COSTS

The Railroad Lease (Section 7.2) provides a mechanism by which the Port can play a role in mediating claims by local shippers regarding the "rates, tariffs and operations" of TCRY. Those provisions enable the Port to mediate the dispute

locally, referring the matter to the National Surface Transportation Board, or resolve them pursuant to the terms of the Railroad Lease, only if such mediation is unsuccessful.

It is significant that, to TCRY's knowledge, no such complaints have been filed with the Port in the seven years that the Railroad Lease has been in force. However, it is a substantial benefit to the Port that it have the ability to be involved in resolving such disputes at the local level should they arise. Obviously, no such similar mechanism is available with respect to direct shipments by a Class 1 railroad.

IF THE CONTRACTS ARE NOT TERMINATED, THE PORT'S MANDATE OF FOSTERING LOCAL ECONOMIC AND EMPLOYMENT DEVELOPMENT WILL BE SERIOUSLY COMPROMISED

In the July 23, 2009 letter, TCRY sets forth the legal basis upon which the Port can and should terminate the Contracts. If the Contracts are not terminated, the local revenue stream will be negatively affected. Half of the historic revenues to TCRY will be lost to the local economy, along with a substantial portion of the third-party revenues attracted by the efforts of TCRY. Those revenues now being brought to the local economy will instead find their way to the national railroads.

In addition, the adverse impact on TCRY threatens its ability to discharge its duty to operate the railroad – which it is successfully performing to the benefit of the Port.

THE PORT IS NOW FACED WITH ATTEMPTED TAKEOVER BY BNSF UNDER THE CONTRACTS

As noted in TCRY's July 23, 2009 letter, BNSF has filed suit to enforce its claimed rights to operate directly on the Railroad, bypassing TCRY. BNSF has made clear its intention to take control of the Railroad. Its attorneys have argued in the federal court that BNSF should be allowed exclusive use of the track for 12 hours of every day and be empowered to control dispatching and scheduling. If BNSF is successful, the Port will lose the benefits of TCRY's operation of the Railroad as outlined above.

Further, in that suit, BNSF has falsely asserted that TCRY has engaged in "double billing" of freight customers. However, BNSF started its takeover attempt by raising its rates to selected local shippers by "double billing" for TCRY's switching fees effective March 1, 2009. BNSF did this without prior notice to either TCRY or the shippers. Therefore, BNSF, not TCRY, is guilty of "double billing."

**TCRY REQUESTS THAT THE PORT TERMINATE THE CONTRACTS OR
ASSIGN ITS RIGHTS UNDER THOSE CONTRACTS TO TCRY**

As noted above, TCRY's counsel believes that the Contracts can be terminated in their entirety by six months written notice. (See July 23, 2009 letter to the Port) TCRY requested that the Port terminate these Contracts immediately for the reasons stated in the July 23 letter – including the fact that the federal court had scheduled a preliminary injunction hearing for July 28, 2009. The next hearing is now set for July 31, 2009 and the Preliminary Injunction hearing has been reset to August 10, 2009. Nonetheless, this remains a matter of utmost urgency.

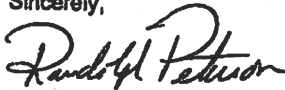
As noted in the July 23 letter, TCRY believes that the Port has the obligation to protect the property which is the subject of the Railroad Lease by terminating these Contracts.

Under Section 13 of the Railroad Lease, TCRY has the duty to indemnify the Port as to any "liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceeding brought against the Port by any party alleged to have resulted the Tenant's use, operation, maintenance or occupation of the railroad." TCRY acknowledges that, in the unlikely event that the Port would become embroiled in legal proceedings as a result of termination of the Contracts, that duty of indemnity would apply, provided that the Port is not itself in breach of any terms of the Railroad Lease.

As an alternative, TCRY requests that the Port assign to it, in its role as operator of the Railroad, all of the Port's rights under the Contracts. If such Contracts are then terminated by TCRY, the Port would not be a party to such termination.

TCRY believes that the Port is obligated to either terminate the Contracts or assign them to TCRY.

Sincerely,



Randolph V. Peterson
President
Tri-City Railroad Company, LLC

**VERIFIED STATEMENT
OF
RYDEL PETERSON**

My name is Rydel Peterson. I am part-owner of Tri-City Railroad Company, LLC (TCRY). TCRY is a family-owned Class III shortline rail carrier subject to the jurisdiction of the Surface Transportation Board (the Board or the STB). I have been actively involved in all of TCRY's railroad activities since its incorporation in 1999, including TCRY's lease of a rail line commonly known as the Southern Connection from the Port of Benton County, Washington (the Port) in August, 2002. As a result, I have personal knowledge of most matters that involve TCRY.

Fair Share Of Maintenance Costs

I have direct knowledge about costs for track and bridge maintenance on the Southern Connection both before and after BNSF and UP began to operate over that rail line to serve shippers directly.

Prior to such direct operation, the cost of maintenance was recovered in the fees that BNSF and UP paid to TCRY for TCRY's transportation between the TCRY-BNSF or TCRY-UP interchange tracks and the shippers facilities. That is made clear in the second paragraph on page 1 a letter from Mr. John J. Miller of UP to Mr. Craig Levie, a consultant to the Port, dated December 16, 2013, copy attached to my Statement as Appendix Rydel-1. Thus, BNSF and UP both paid the cost of maintenance directly in the switching charges paid to TCRY.

When BNSF began to operate over the Southern Connection to serve shippers directly in 2009, BNSF acknowledged in open Court that it is established custom and practice in the

railroad industry that when one carrier uses another carrier's tracks, the user carrier is required to pay its fair share of the maintenance costs that result from such use, usually based on the relative number of cars transported by the user and owning carriers over the line. See Transcript of Proceedings on Motion for Temporary Restraining Order, *BNSF Railway Company v. Tri-City and Olympia Railroad Company*, USDC, ED, Washington No. CV-09-5062-EFS, July 22, 2009 at 4, attached as Appendix Rydel-2.

In accordance with that recognized practice, BNSF offered to the Port to pay its fair share of the maintenance costs associated with its use of the Southern Connection to provide direct service to shippers, with the expectation that the Port would pass payment of those maintenance costs on to TCRY. That is evident in an e-mail message from Mr. Chris Randall of BNSF to Mr. Stuart Dezember of the Port, dated September 21, 2009, copy attached as Appendix Rydel-4.

The Port did not accept that offer. As a result, over the past 10 years, large amounts of maintenance costs have been unfairly borne by TCRY that should have been paid by BNSF, and that would have been paid by BNSF if the Port would have accepted BNSF's offer to pay them.

Essentially the same scenario took place near the end of 2017 when UP began to operate over the Southern Connection to serve shippers directly. During the hearing on preliminary injunction in 2009, UP's representative had confirmed the settled railroad industry custom and practice of a user railroad paying its fair share of maintenance costs caused by its use, Appendix Rydel-3 at 7:

I would agree with that, (i.e., that some sort of compensation has to be paid when others use the tracks of the entity in control of the tracks).

During a telephone conversation on November 15, 2017, Ms. Michelle Martinson of UP stated to Mr. Randolph Peterson of TCRY that UP would pay its fair share of maintenance costs when UP operated over the Southern Connection to serve shippers directly. That statement is confirmed in a letter from Mr. Peterson to Ms. Martinson, dated November 27, 2017, copy attached as Appendix Rydel-5.

Attached to my Statement as Appendix Rydel-6 is a copy of a summary of a telephone conversation on December 20, 2017 between Ms. Martinson of UP and Ms. Anderson of TCRY in which Ms. Martinson stated “she does support. . .reimbursement of a portion of actual (maintenance) expenses” (at 2).

In a letter from David J. Billetdeaux, an attorney for the Port, to Ms. Lisa Anderson of TCRY, dated January 12, 2018, copy attached as Appendix Rydel-7, at page 2, the Port stated in essence that BNSF and UP were not required to pay their fair share of maintenance costs, viz:

Further, Attachments 3 (Keller Letter, 2009) and 4 (Court Transcript) to your last correspondence are both documents that pre-date the final ruling in the Federal case (BNSF Railway Company, et al. v. Tri-City & Olympia Railroad Company LLC, No. CV-09-5062-EFS). The matters that you are speaking of were litigated and a final ruling was reached.

It is not true that the Court decision cited by Mr. Billetdeaux litigated the issue of payment of a fair share of maintenance costs and ruled on that issue on a final basis. *See BNSF Railway Company v. Tri-City & Olympia Railroad Company LLC*, 835 F.Supp.2d 1056 (E.D. Wash., 2011). The Court in that case held only that BNSF could lawfully operate over the Southern Connection. The decision did not resolve any issue regarding an obligation to pay a fair share of maintenance costs.

However, when BNSF and UP learned that the Port had taken the position that they were not legally required to pay a fair share of maintenance costs, they no longer agreed to pay a fair share of the costs. As a result, TCRY has been burdened by payment of all track and bridge maintenance costs without collecting any revenues with which to pay such costs. *The situation is unfair to TCRY in the extreme.*

TCRY's Customized Local Rail Service

TCRY has been an important asset to its customer base, providing customized local rail service to meet their distinct needs. TCRY provides on-call reliable switching service 24 hours per day, seven days per week. TCRY also provides a second switch on its shippers' busy days, and weekend switching service, as needed. That is why TCRY's loyal customers are providing statements in support of TCRY in this proceeding. The big Class I carriers like BNSF and UP are not willing or able to provide those distinct services.

Rebuttal of Port's Allegations

I have been asked to respond as necessary to allegations of fact in the Application. Whether TCRY-Port Lease can be terminated by means of the Port's Notice of Termination dated December 19, 2018 (Application, Ex. A) is a legal issue that does not require a factual response. That issue will be resolved by the Eastern District of Washington Federal Court.

Del Hur Industries, Inc. (Application, Ex. B) has never been located on the Southern Connection. Del Hur has no basis for testifying to events occurring on the Southern Connection.

Central Washington Corn Processors, Inc. (CWCP, Application, Ex. C) has never been located on the Southern Connection. CWCP has no basis for testifying to current conditions on the Southern Connection.

The incidents listed in the UP Statement (Application, Ex. D) are common occurrences on any rail line, especially a rail line like the Southern Connection that intersects with numerous road crossings. UP itself acknowledges that disruptions from the incidents have been “relatively minor”. In the summer and fall of 2017, TCRY upgraded the signals at the crossings listed by UP with funds received from a government grant. (*See VS Hanley*, Appendix 7 of this Statement at 2). Many of the incidents listed by UP were outages while the signals were being upgraded. It should be emphasized that pursuant to Section VIII of the 1947 Agreement and Section 9 of the 1961 Agreement between the predecessors of UP and BNSF on the one hand and the predecessor of the Port on the other, UP and BNSF are permitted to repair any track or bridge defect in the Southern Connection that has not been repaired within a reasonable period of time after notification of the Port, and the Port will then be responsible to pay for the cost of such repairs.

The BNSF Statement (Application, Ex. E) reflects a misunderstanding of the facts when it refers to the Southern Connection “over which Tri-City no longer operates or serves customers” (*id* at 1). TCRY continues to operate and serve customers on the Southern Connection. It is ironic that BNSF complains of lack of sufficient maintenance by TCRY. During the TRO hearing before the Court in 2009 in which allowed the BNSF to obtain an injunction that enabled BNSF to operate direct over the Southern Connection rather than interchange with TCRY, BNSF made the following representation to the Court (Appendix Rydel-2 at 4):

... (W)e would agree that maintenance costs for the tracks would be allocated on a per capita basis, based on the number of cars that are operating over the track.

So, for example, if there were a hundred cars operating on the tracks and BNSF accounted for 60 of those, maintenance cost was a thousand dollars, BNSF would pay \$600 of the maintenance costs associated with those operations.

And those are all recognized railroad procedures. . .

Despite that clear representation in accordance with recognized railroad procedures, BNSF has not paid a dime of maintenance costs in the 10 years since it has operated over the Southern Connection, even though it has derived very substantial net revenues from such associated operations.

At a follow-up Court hearing a few weeks later, BNSF repeated its representation to the Court (Appendix Rydel-3 at 7-8):

We've offered before in the TRO hearing and offer it again that we would expect and anticipate that we would pay our fair share of the maintenance on the tracks, and that's frequently done by just allocating the maintenance charges based on the number of cars handled, that if BNSF is putting 50 percent of the cars, that we would expect and commit to pay 50 percent of the maintenance charges. . .

TCRY submitted invoices to BNSF for BNSF's fair share of maintenance costs. BNSF refused to pay those invoices. TCRY looked to the Port for help in causing BNSF to pay its fair share of maintenance costs. The Port ignored TCRY's request. The situation is unfair in the extreme: BNSF has collected substantial revenues every year for 10 years, but it has not paid a dime of the associated maintenance costs.

During that second hearing, UP's representative stated clearly that TCRY is entitled to compensation when another rail carrier operates over its leased tracks that it is maintaining, viz (Appendix Rydel-3 at 6-7):

...They (TCRY) are entitled to be compensated for the two division ones' (BNSF and UP) use. . .I don't think we can forget about TCRY's rights here as well. It's basically a three railroad facility, and they're entitled to be treated equitably, justly, and fairly.

X X X

...I would agree that (when others seek to use those tracks that some sort of compensation has to be paid). . .

Contrary to the allegation of Port Witness Roy D. Keck at 3, the thrust of the litigation in Thurston County Washington Case No. 16-2-03211-34 is to determine whether or not the Port is violating Washington state law by allowing the BNSF and the UP free use of the Port owned tracks, not to give TCRY a service monopoly.

All track defects identified in an FRA inspection of the rail line between February 27 and March 1, 2018 have been remedied (VS Keck at 4). The single civil violation did not involve a penalty. It, too, has been remedied.

It was the Port, not the FRA, who issued a notice to TCRY on April 9, 2018 of default for failure to maintain track to a Class III standard (VS Keck at 4). TCRY is not legally obligated to maintain to an FRA Class III standard.

There was justification for moving UP cars to the TCRY sidetrack at Richland Junction (VS Keck at 3). Since December, 2018, UP has left cars on tracks that are required to remain clear, and continues to leave cars at the ladder tracks (VS Romero, Appendix 6 at 6).

The delay in replacing ties over the Yakima River bridge has been attributable to the time required to receive the ties, which are an unusual kind. The FRA was notified and authorized the delay (VS Keck at 4-5). With approval from the FRA, TCRY sprayed the existing ties on the

bridge with and industry approved filler, to strengthen them on a temporary basis (VS Hanley, Appendix 7 at 3-4).

The defective ties found in an inspection on May 15, 2018 have been replaced (VS Keck at 5; VS Anderson, Appendix 5 at 9).

TCRY's track inspector is properly certified and highly qualified (VS Keck at 5; Vs Romero, Appendix 6 at 1).

The track defects referred to in the Port's letter of May 24, 2018 have been remedied (VS Keck at 5; VS Anderson, Appendix 5 at 9).

The Port was not harmed by the absence of Port consent to TCRY's toll maintenance fee tariff (VS Keck at 6). The Port has actual knowledge of that tariff and refused to approve it in any event (VS Anderson, Appendix 5 at 7).

The Port was well aware that the toll maintenance fee was designed to realize revenue necessary to be able to pay for maintenance (VS Keck at 6; VS Anderson, Appendix 5 at 7).

Contrary to Mr. Keck's contention at pages 6 and 7, there was ample economic justification for TCRY's Miscellaneous Tariff that the Port wrongly rejected. The BNSF letter cited by Mr. Keck was authored by the same BNSF representative who previously offered on BNSF's behalf to pay BNSF's fair share of maintenance costs in view of BNSF's operation over TCRY's leased track. The 1947 Agreement cited by Mr. Keck was not intended to absolve BNSF and UP of costs on the rail line forever. In related judicial proceedings, a joint representative of BNSF and the Port stated that the no-payment provision for BNSF and UP under that Agreement lasts only for the life of the track materials in the rail line, most of which

were installed in the 1940's or before. In any event, BNSF and UP recognized their obligation to pay for track maintenance notwithstanding the 1947 Agreement inasmuch both paid for track maintenance in the costs for maintenance encompassed in the switching charges paid to TCRY prior to direct operations over the rail line (Appendix Rydel-1).

Designation of the rail line as excepted track did not violate any provision of the TCRY-Port lease (VS Keck at 7). Mr. Keck does not cite any lease provision assertedly violated by that designation.

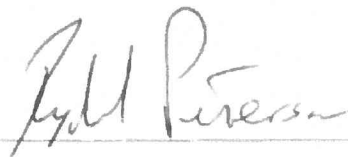
The evidence supplied by Mr. Quentin Hanley of TCRY about the chronology of repairs to the Yakima River Bridge rebuts Mr. Keck's testimony (at 7) that inadequate notice was provided to shippers about outages for repairs (VS Hanley, Appendix 7 at 3-4).

The TCRY-Port lease does not require TCRY to provide the bridge program, permits, and scope of work referred to at page 8 of Mr. Keck's statement. An additional phase of the bridge work was put on hold because of adverse weather conditions, not because of the matters cited by Mr. Keck (VS Hanley, Appendix 7 at 4).

TCRY agrees with the finding of the Port's bridge consultant, HDR Engineering, that remedial work on the Yakima Bridge is satisfactory (VS Keck at 8; VS Hanley, Appendix 7 at 3-4).

AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Signed on April 15, 2019.



RYDEL PETERSON

EXHIBIT RYDEL-1

**DECEMBER 16, 2013 LETTER FROM JOHN MILLER AT
THE UNION PACIFIC RAILROAD TO CRAIG LEVIE A
CONSULTANT TO THE PORT**

UNION PACIFIC RAILROAD COMPANY



John J. Miller
Network & Industrial Development
Tel : (402) 544-4522
Fax : (402) 233-2463

1400 Douglas Street STOP 1350
Omaha, NE 68179-1350

December 16, 2013

Mr. Craig Levie
Tangent Services
4160 SE International Way #206
Portland, OR 97222

Re: Request for Funding to Maintain and Upgrade Port of Benton Owned Trackage

Dear Mr. Levie:

I am writing in response to your email dated November 6, 2013 in which Tangent Services, acting as a consultant to the Port of Benton (POB), sought to open discussions with Union Pacific about an agreement and funding plan to use, maintain and upgrade the POB trackage to FRA Class 3 standard. We have reviewed your request internally and there are several items that should be clarified.

1. UP's predecessor entered into an agreement with the Atomic Energy Commission (AEC) in 1947 to construct a connection to AEC owned track. Said agreement included payments for the construction of both the connecting track and interchange facilities and further provided that after the 25 annual payments have been made, UP "shall continue to have the right to operate over the trackage without further payments. The trackage has been conveyed to the POB and the AEC agreement has been assigned to POB. Thus, UP is not obligated to pay for maintenance or upgrades to the track under the 1947 Agreement.
2. It is our understanding that Tri City Railroad (TCRY) has a long term lease to operate and maintain the POB track. TCRY has confirmed that they are required to maintain the tracks and abide by the original AEC agreement with the Class One railroads. TCRY further stated that they were not aware that POB would be requesting additional funds from UP. TCRY has been a UP handling carrier since 2001 and acts on behalf of UP as our agent to serve the customers on both the POB tracks and the Horn Rapids Spur owned by the City of Richland. UP pays TCRY a handling carrier fee to perform this service. TCRY pays for track maintenance with the revenue received from UP. Therefore, UP has in fact contributed to the track maintenance since 2001 via its payment of the TCRY handling carrier fee.
3. Lastly, UP spent a considerable amount to upgrade its Kalan Industrial Lead, the track that connects to the POB trackage, in order to handle unit trains of grain products. The current UP timetable provides for a speed limit of 20 MPH on the Kalan Industrial Lead. We do not see a benefit in upgrading the POB tracks to 40 MPH when neither the connecting track nor the business supports that requirement.

Based on the previous AEC agreement, and the fact TCRY already maintains the tracks, UP has determined that we are not obligated enter into an agreement to maintain and upgrade the POB owned tracks. Please feel free to call if you have any question.

Very truly yours,

A handwritten signature in cursive script, reading "John J. Miller".

John J. Miller

Manager – Short Line Development

cc: Todd Whitham – UP
Robin Ringwald – UP
Jeff Grinnell – UP
David Hughes - UP
Paul MacDonald – UP
Sandy Christiansen - UP

EXHIBIT RYDEL-2

JULY 22, 2009 TRANSCRIPT OF PROCEEDINGS ON
MOTION FOR TEMPORARY RESTRAINING ORDER,
BNSF RAILWAY COMPANY V. TRI-CITY AND OLYMPIA
RAILROAD COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

BNSF RAILWAY COMPANY,)
)
Plaintiff,)
) No. CV-09-5062-EFS
Versus) July 22, 2009
) Richland, Washington
TRI-CITY & OLYMPIA RAILROAD)
COMPANY,) Pages 1 - 79
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS

MOTION FOR TEMPORARY RESTRAINING ORDER

BEFORE THE HONORABLE EDWARD F. SHEA

1 **APPEARANCES:**

2

3 **For the Plaintiff:** **BRIGGS & MORGAN, P.A.**
4 **BY: TIMOTHY R. THORNTON**
5 **Attorney at Law**
6 **2200 IDS Center**
7 **Minneapolis, MN 55402**

8

9 **For the Defendant:** **MINNICK HAYNER, P.S.**
10 **BY: BRANDON L. JOHNSON**
11 **Attorney at Law**
12 **P. O. Box 1757**
13 **Walla Walla, WA 99362**

14

15

16 **COURT REPORTER:** **Mark A. Snover, RPR, CSR**
17 **P. O. Box 1633**
18 **Spokane, WA 99210-1633**

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1 WEDNESDAY, JULY 22, 2009 - 1:30 p.m.

2 (Whereupon Court reconvened in
3 the courtroom at 1:30 p.m.)

4 THE COURT: Please be seated.

5 THE CLERK: Matter now before the Court is BNSF
6 Railway Company versus Tri-City and Olympia Railroad Company.
7 Case number CV-09-5062-EFS. Time set for motion hearing.
8 Counsel, please state your presence for the record.

9 MR. HESLER: Your Honor, Gregory Hessler of Paine
00:36 10 Hamblen here on behalf of BNSF. Also like to introduce Timothy
11 Thornton of Briggs and Morgan, Minneapolis, Minnesota, who has
12 an application to appear pro hac vice.

13 THE COURT: I think that's been granted, good
14 afternoon, counsel.

15 MR. THORNTON: Thank you.

16 MR. JOHNSON: Good afternoon, Your Honor, Brandon
17 Johnson of Minnick Hayner on behalf of the defendant Tri-city &
18 Olympia Railroad Company. I would like to introduce Paul Petit.
19 Mr. Petit is in-house counsel for Tri-city & Olympia Railroad
00:36 20 Company.

21 THE COURT: Afternoon, counsel.

22 MR. PETIT: Thank you.

23 THE COURT: Well, counsel, I read the materials
24 submitted by BNSF and have become as familiar as I can over the
25 last day with those. And I gave you the current Ninth Circuit

1 they have the track. And no one else can use that track.

2 BNSF accounts for more than half of the volume on the
3 track. Almost 60 percent. So we would propose a 12 and 12 hour
4 split of the block registration times. Using noon as the
5 changeover time.

6 And we would take the first 12 from midnight to noon
7 or the second 12 from 12 to midnight, leave that choice to TCRY,
8 which 12 hours they want.

9 For operations on the tracks, we would comply with, as
02:29 10 we believe it's done today, the General Code of Operating Rules
11 6.28, which has been accepted and subscribe to by most of the
12 major railroads in the United States.

13 And 6.28 in particular is for other than mainline
14 track rules operation procedures. And the most salient part of
15 that is that you need to operate at a speed that allows the
16 train to stop in half the sight distance for any obstruction,
17 any switch, anybody, anything at all.

18 And finally, we would agree that maintenance costs for
19 the tracks would be allocated on a per capita basis, based upon
02:30 20 the number of cars that are operating over the track.

21 So, for example, if there were a hundred cars
22 operating on the tracks and BNSF accounted for 60 of those, and
23 the maintenance cost was a thousand dollars, BNSF would pay \$600
24 of the maintenance costs associated with those operations.

25 And those are all recognized railroad procedures and

1 that's what we would ask the Court for. And I attempted to jot
2 it down, if the Court's interested, and would be willing to try
3 to read my handwriting, I would be happy to provide --

4 THE COURT: That's why we have the Court Reporter.

5 MR. THORNTON: I'm sorry?

6 THE COURT: That's why we have a Court Reporter.

7 MR. THORNTON: Oh, all right.

8 THE COURT: Okay. TCRY?

9 MR. JOHNSON: Your Honor, with all due respect, I
02:31 10 don't believe this adequately takes into account all of the
11 procedure and practical difficulties that will arise.

12 One issue is the scope of track. What exact scope of
13 track is the BN going to be allowed to operate on?

14 TCRY has constructed track, are they allowed to
15 operate there? Are they allowed to operate in TCRY's own yard?

16 TCRY currently operates two shifts all day long. TCRY
17 interchanges Union Pacific traffic.

18 Under the applicable rules and regulations, the BN is
19 not allowed to physically touch a Union Pacific car and vice
02:32 20 versa.

21 TCRY spots cars currently from both major railroads
22 and links them together to get them back to the Richland
23 junction. That obviously won't be happening, but the practical
24 impact is, what do we do with the UP cars that are spotted if
25 they're blocking the BN cars from getting where they think they

1 STATE OF WASHINGTON)

2 : Reporter's Certificate

3 COUNTY OF SPOKANE)

4

5

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8

I, Mark A. Snover, a Registered
Professional Reporter and Official United States District Court
Reporter;

9

DO HEREBY CERTIFY:

10

11

12

That the foregoing transcript
contains a true and accurate transcription of my shorthand notes
of all requested matters held in the foregoing captioned case.

13

14

Further, that the transcript was
prepared by me or under my direction.

15

DATED this 22nd day of July,

16

2009.

17

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19

20

/s/ Mark A. Snover

21

MARK A. SNOVER, RPR, CSR

22

OFFICIAL U. S. COURT REPORTER

23

24

25

EXHIBIT RYDEL-3

AUGUST 11, 2009 TRANSCRIPT OF MOTION FOR
PRELIMINARY INJUNCTION

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

BNSF RAILWAY COMPANY,)
)
Plaintiff,)
)
VS.)
)
TRI-CITY & OLYMPIA RAILROAD)
COMPANY, LLC,)
)
Defendant.)
_____)

NO. CV 09-5062-EFS

Richland, Washington
Tuesday, August 11, 2009

TRANSCRIPT OF MOTION FOR PRELIMINARY INJUNCTION

VOLUME 2

PAGES 233 THROUGH 415

BEFORE THE HONORABLE EDWARD F. SHEA

UNITED STATES DISTRICT COURT JUDGE

REPORTED BY: Stephanie Smithson, RMR
Official Court Reporter
825 Jadwin Avenue, Suite 174
Richland, WA 99352

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

STEPHANIE SMITHSON, RMR

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For Defendant:

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10 North Washington Street
Kennewick, Washington 99336

STEPHANIE SMITHSON, RMR

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1 would cover this whole scenario. Both Union Pacific and BNSF
2 are signatories to the General Code of Operating Rules. They're
3 familiar. They operate under that rule at other locations. I'm
4 not sure track warrants are necessary.

5 **THE COURT:** Tell me this. When you attached the
6 letter from the Port of Benton, which is now Exhibit 29, and you
7 read it, it seemed to me the Court -- that the Port was clearly
8 telling the parties we want you to do this in order to eliminate
9 the necessity for litigation between the parties. Quote, "the
10 Port of Benton hopes this action will eliminate the necessity
11 for litigation between parties, will allow the ongoing operation
12 of the Port railroad in the public interest. I'm forwarding a
13 copy of this to United States Court Judge Edward F. Shea to
14 inform him of the action taken by the Port. Although, the
15 Port's not a party to the pending action, the Port wants to keep
16 the parties and Court informed of the Port's action," end of
17 quote.

18 Now, that's what it did. And then what it said on
19 page 1 is, quote, "In light of the dangers posed by the use of
20 the Port railroad by more than one operator, the commission
21 directs the parties who wish to use the Port railroad to enter
22 into an operations agreement" -- that was the term it used --
23 "covering the use of the Port rail. This operations agreement
24 shall first and foremost protect the safety of the public and
25 the life and health of the workers and prevent damage to

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1 property. The Port wants the agreement to ensure that companies
2 wishing to utilize the Port railroad for shipping purposes
3 receive service promptly and at equitable rates. Current
4 customers of TCRY have informed the Port that service performed
5 by TCRY is responsive and timely, and overall its service is
6 very good -- it's service is very good. The Port wants the
7 level of service to be maintained", end of quote.

8 Now, let me add one other paragraph. "Finally, if
9 the BNSF uses the Port railroad" -- this was written at that
10 point, but as I'm reading UP as well in my mind -- "the
11 operations agreement should detail how BNSF shall reimburse TCRY
12 for the costs of operating and maintaining the Port railroad",
13 end of quote.

14 Why don't you comment on that.

15 **MR. WACKERBARTH:** I would point out that letter was
16 actually addressed to TCRY and BNSF because they were the two
17 parties to the litigation.

18 **THE COURT:** You weren't in at that point.

19 **MR. WACKERBARTH:** That's right, we were not in.
20 Union Pacific was copied as a cc on that letter.

21 **THE COURT:** Clearly, there wouldn't be an agreement
22 unless it was -- unless you were considered.

23 **MR. WACKERBARTH:** That is correct.

24 **THE COURT:** Your company was considered in order to
25 make sure your rights were -- that the treatment was equitable,

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1 just and fair to all the parties, right?

2 MR. WACKERBARTH: That's correct.

3 THE COURT: So talk to me.

4 MR. WACKERBARTH: I do think TCRY as the lessee of
5 these tracks or the leaser of these tracks and the operating
6 railroad they are entitled to be --

7 THE COURT: The lessee.

8 MR. WACKERBARTH: Yes, the lessee. They are entitled
9 to be compensated for the two division ones' use. We have a
10 partnership with TCRY. We have a cooperative marketing
11 agreement. We've had a good working relationship with TCRY.
12 BNSF, obviously, is in a different situation in that regard.
13 But, you know, the testimony about the customers that are
14 served, they're currently being -- I would consider them to be
15 BNSF customers, but they're being served by TCRY, but they're
16 actually railroad customers. At times, Union Pacific has had
17 Lamb Weston as a customers, has been served by TCRY. TCRY is
18 the railroad that these entities deal with. And I don't think
19 we can forget -- BNSF and Union Pacific have stood in front of
20 you arguing about their rights. I don't think we can forget
21 about TCRY's rights here, as well. It's basically a three
22 railroad facility, and they're entitled to be treated equitably,
23 justly and fairly.

24 THE COURT: When you say that, you say you've got a
25 cooperative marketing agreement, that as the owner of -- the

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1 lessee of the tracks, the entity in control of the tracks, that
2 when others seek to use those tracks that some sort of
3 compensation has to be paid.

4 **MR. WACKERBARTH:** I would agree with that.

5 **THE COURT:** That's my sense of it. I wanted to make
6 sure that I'm not overlooking something here that no one's
7 talked about is once BNSF, if they're permitted to use the
8 tracks, the question is what's the compensation, how is
9 compensation worked out.

10 **MR. WACKERBARTH:** Well, I'll leave to Mr. Thornton to
11 address with regard to BNSF, but I seem to recall -- and I don't
12 want to speak on behalf of BNSF, but they agreed in item one to
13 recognize TCRY as the operating railroad. They agreed to --

14 **THE COURT:** I think they said there was some
15 compensation that had to be paid.

16 Okay. Anything else?

17 **MR. WACKERBARTH:** Nothing else from me, your Honor.

18 **THE COURT:** Thanks.

19 Mr. Thornton, before Mr. Petit. Why don't you
20 address that issue for me.

21 **MR. THORNTON:** We've offered before in the TRO
22 hearing and offer it again that we would expect and anticipate
23 that we would pay our fair share of the maintenance on the
24 tracks, and that's frequently done by just allocating the
25 maintenance charges based upon the number of cars handled, that

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1 if BNSF is putting 50 percent of the cars, that we would expect
2 to and commit to pay 50 percent of the maintenance charges with
3 an opportunity to have a right to audit the books to make sure
4 that what we're being charged for is what was really spent out
5 there on the tracks.

6 **THE COURT:** Tell me, where does this come into play
7 in terms of POB directing the parties to confer and your request
8 to this Court for preliminary injunction?

9 **MR. THORNTON:** We've been trying to confer.
10 Mr. Ruby, Mr. Angelos has reached out to --

11 **THE COURT:** I appreciate your point there. But tell
12 me how that plays into an operating agreement plan, as you say.

13 **MR. THORNTON:** We're prepared to enter into a fair,
14 just, equitable operating plan, operating arrangement, operating
15 agreement at any time.

16 **THE COURT:** What do you make of Mr. Wackerbarth's
17 point that POB is actually in charge of resolving disputes
18 between the parties?

19 **MR. THORNTON:** That's what the agreement says. Under
20 the agreements that we have rights under, the Atomic Energy
21 Commission was the referee of any disputes by the user of
22 railroads, and if there's a dispute about the operations plan, I
23 would think the place to go was the Port. But what we see here
24 is stubbornness, obdurance, delay, stalling from TCRY to prevent
25 us from entering into a fair agreement. If it was up to UP and

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1 BNSF, they could come up with an operating agreement and joint
2 facility thing in 24 hours or 48 hours. It's not that
3 complicated. But instead of making the effort that was
4 necessary to negotiate in good faith a fair deal, what we were
5 presented with was a red board. We came to -- we came here as a
6 last resort. There was never any effort by Mr. Peterson to make
7 any kind of accommodation, any kind of accord, any kind of
8 negotiations.

9 **THE COURT:** I understand your point there.

10 Mr. Wackerbarth, one more point for you. I'd like
11 you to come up to the podium.

12 With regard to this joint operating agreement, now
13 that you're in the case, what, if any, role would you envision
14 for UP?

15 **MR. WACKERBARTH:** We'd be signatories to it.
16 We're --

17 **THE COURT:** You already have a marketing agreement.
18 You have your separate business relationship with TCRY.

19 **MR. WACKERBARTH:** That's correct. But that wouldn't
20 be an operating agreement, per se. We'd be a signatory to
21 whatever operating agreement was there. I mean, TCRY does our
22 switching for the most part. We don't go there with our own
23 crews.

24 **THE COURT:** I understand.

25 **MR. WACKERBARTH:** Well, a hundred percent of the

STEPHANIE SMITHSON, RMR

CERTIFICATE OF REPORTER

I, STEPHANIE SMITHSON, Official Reporter for the United States Court, Eastern District of Washington, hereby certify that the foregoing proceedings in CV-09-5062-EFS, BNSF v. TRI-CITY RAILROAD were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

s/ Stephanie Smithson

Stephanie Smithson, RMR

Thursday, August 13, 2009

STEPHANIE SMITHSON, RMR

EXHIBIT RYDEL-4

**SEPTEMBER 21, 2009 EMAIL FROM CHRIS RANDALL
BNSF TO STUART DEZEMBER PORT OF BENTON BNSF
WILLING TO PAY FAIR COMPENSATION**

Stuart Dezember

From: Randall, Chris M [Christopher.Randall@BNSF.com]
Sent: Monday, September 21, 2009 11:48 AM
To: Stuart Dezember
Subject: FW: Email for your review.

Stuart –

It was good to talk with you on Friday.

Pursuant to our discussions, I want to follow up on a couple items.

First, we would appreciate receiving copies of the reports submitted by your consultant, Jerry Pinkepank, with Transport Specialty Group regarding track conditions and a review of the Facilities User Tariff proposed by TCRY. You could send the reports to me at the address shown below.

The second item is track maintenance. As we have indicated, BNSF is willing to pay fair compensation for using track we do not own. Recognizing there may be multiple owners of track north of Richland Junction, we suggest BNSF would make a monthly payment to the Port of Benton which could distribute the funds as appropriate. The payment would be based on the number of loaded cars moved at a rate per carload that represents maintenance. Please let me know if this concept is acceptable and we will make the arrangements necessary to make payments.

Thank you for your assistance in this matter.

This message may be confidential and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender by replying to this message and then delete it from your system.

Chris Randall
Shortline Development
BNSF Railway
2500 Lou Menk Drive
Third Floor
Fort Worth, TX 76131
817-352-6132
817-313-6415 (cell)

EXHIBIT RYDEL-5

NOVEMBER 27, 2017 LETTER FROM
RANDOLPH PETERSON TO MICHELLE MARTINSON
UP PAYING MAINTENANCE COSTS



PROUDLY SERVING OUR COMMUNITY **18**

November 27, 2017

Michelle Martinson, Director Joint Facilities
Union Pacific Railroad
1400 Douglas Street
Omaha, Nebraska

Again, I want to thank you for meeting with Lisa Anderson and I by telephone on, November 15, 2017. I believe that our conversation was both positive and productive. I know you were taking notes as was I and, in addition to my November 23rd letter to you, wanted to follow up on one other item that is most important.

We agree that a portion of the rates paid to TCRY by the UPRR over the seventeen (17) year life of the CMA were in consideration of TCRY's cost to maintain the railroad that was used for UPRR business (see attached UPRR letter of December 2013). I appreciated your commitment on the 15th telephone conference meeting to continue paying TCRY for UPRR's business and, commencing Dec 8th, its direct use of TCRY tracks.

We most likely will be able to agree on the amount going forward but in the event we can't, I offered the idea to you, that UPRR pick up the additional maintenance of the TCRY railroad or even just the track and signals with its existing crews in the area.

My notes from our meeting have us getting together at the end of this month or first week in December to discuss the method and amount.

TCRY must keep safety the top priority as it has a perfect record over the life of the CMA.

Randolph Peterson, President
Tri-City Railroad Company

Cc: J. Berman - UPRR; J. Miller - UPRR; L. Anderson - TCRY



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EXHIBIT RYDEL-6

**DECEMBER 20, 2017 SUMMARY OF TELEPHONE CALL
BETWEEN MICHELLE MARTINSON UP AND
LISA ANDERSON TCRY**

From: Lisa Anderson lisa@tcry.com
Subject: Michelle Martinson - UPRR Update
Date: December 20, 2017 at 1:57 PM
To: Peterson Randolph rvpeterson@me.com, Peterson Rydel rydel@tcry.com, Rhett Peterson rhettwater@me.com

On this date Rhett and I called Michelle Martinson/UPRR, and left a voicemail at approximately 8:00 a.m.

Mid day Michelle returned the call and apologized for the delay as well as construction in her building in the background.

I stated that we were contacting her to discuss any updates on track maintenance assistance from the UP since we last spoke, provided numbers and since a UP track inspector was on site last week.

Michelle said that she needed to have more individuals from UP come on site to perform an inspection and provide feedback. She did not receive feedback on her last email requesting track miles and she used 10 miles but wished we had responded.

I explained that I had responded the following day and also provided a KMZ file she might find useful. I told her I was shocked at the IT issues now with the TCRY domain. UP will not receive emails from mac.com or me.com and now is intermittently receiving tcry.com.

We spent the next several minutes working out delivery of communications. PLEASE NOTE THAT ALL EMAILS TO THE UP SHOULD INCLUDE A CONFIRMATION OF RECEIPT.

While testing emails we discussed the maintenance situation in general. She explained that she had already made it clear her position on BNSF paying a portion. I said I realize that but in reality while there are so many things to work out, TCRY is bearing the cost of the maintenance and specifically regarding the BNSF they have been running direct for free since 2009 so it's not like we can easily pick up the phone and work something out. We have, however, had a strong relationship with the UP for much longer than that and believe that we should be able to work out a plan together, moving forward. It has been two weeks since the change, every day increases our costs and we appreciate however Michelle can help make that happen.

Michelle said that the last time we spoke she left the conversation without a good feeling of where we were at with the slow orders and when it would be complete. Since that time, she has received feedback from operations that they continue to receive slow orders. She wanted to know in greater detail what the problem is, what is being done about it and when it would end. I then joined Rhett on the call.

After cordial greetings Rhett explained the situation was ongoing with the slow order, that there was only one slow order issued, that it may or may not be complete in two weeks. He added that actually in light of no revenue slowing the traffic was the way we would be able to better control damage to the track. He also asked if the track inspector last week provided input and if she had information on a number.

Michelle explained that additional individuals were going to come on site, thought that they had scheduled something with Rhett for next week and when Rhett advised that he had not heard from anyone she said she would look into it because she thought it had been done.

Michelle said that one "rub" she had was that it is TCRY's responsibility ultimately to maintain the track per our agreement with the Port. She does support, however, reimbursement of a portion of actual expenses.

Michelle asked questions about the numbers submitted and thought they were a little "round" and maybe not actual. She said that other roads provided information to her and the information was different. Rhett said we would be happy to provide whatever she needed. I asked for a template or examples of what Michelle needed to receive. Michelle explained that other roads submitted actual numbers, actual cost and actual labor and mileposts/sections worked on into a UP system directly which UP then pulled reports from and paid off of. I explained that this was all new to us but we would be happy to provide it with examples.

Rhett asked if she had worked with any numbers, and Michelle said that using 10 miles of track since she had not received our email the numbers appeared higher than in other areas on the UP system which is why she needs more people to come out and have a look and identify how much maintenance should cost and for what speed of track and then discuss to what level they want the track and then go from there with TCRY.

Michelle also brought up that she needed help understanding why a UP staff person was contacted by an FRA representative, not sure if it was on their own or on behalf of TCRY, commenting positively about the condition of the track but the numbers provided were so large to maintain the track.

We explained that the numbers provided are intended to maintain the cost to the current level, identifying a number which UP will contribute is important because the track can be maintained to different levels and the cost would vary widely. The numbers submitted were based on actual costs for the past two to three years.

Michelle again commented on the slow orders and also mentioned that her feedback from operations was that they saw no one working on the track so is TCRY working on the weekend or during the night or when is the track work being done?

Rhett commented that two individuals were laid off, there were many things going on, TCRY was spread thin but that work is ongoing.

All agreed that in the big picture we are on the same page, moving forward is important and we will get together again the first week in

I'm agreed that in the big picture we are on the same page, moving forward is important and we will get together again the first week in January after the successful completion of more inspections.

Well wishes were shared with all.

29 minutes.

End of call.



Lisa Anderson, Corporate Secretary
Executive Vice President
PO Box 6000, Kennewick, WA 99336
Cell 360.239.9067 | Fax 509.582.4964
TCRY.com

EXHIBIT RYDEL-7

**JANUARY 12, 2018 LETTER FROM
DAVID BILLETDEAUX PORT OF BENTON ATTORNEY
TO LISA ANDERSON TCRY**



January 12, 2018

Tri-City Railroad Company, LLC
c/o Lisa Anderson
P.O. Box 6000
Kennewick, WA 99336

Dear Ms. Anderson:

On December 12, 2017, you supplied the Port with an FRA Inspection Report (Attachment 6 to the correspondence). This report was completed by Paul Gangstad on December 6, 2017 following a walking inspection of a portion of the track. The inclusion of this report appears to be for the purpose of showing that the track has a clean bill of health. As much as the Port would like this to be true, the evidence suggests otherwise.

Our HDR engineers have forwarded the GREX and Holland inspection reports to Mr. Gangstad and we are awaiting his response to this additional information. Hopefully, he will conclude that the track meets the actual Class 3 standard.

I mention Class 3, because Section 8.1 of our Lease (under Maintenance of Property) requires TCRY to maintain the railroad to a Class 3 railroad standard. The FRA inspection quite clearly shows that the inspection was completed using a Class 1 standard, with a top speed of 10 mph [see attached, highlighted]. Under a Class 3 standard, the top speed would be 40 mph, and would involve a more stringent inspection. There would need to be additional track maintenance, including more extensive tie replacement, surfacing, and replacement or repair of other track materials.

The purpose of the more extensive GREX Aurora imaging scans were to get a clear picture of each and every tie along the track. The GREX test indicated that an unacceptable number of the ties have deteriorated, and need replaced. A visual walking inspection is unable to detect that these ties are deteriorated. The Port believes that TCRY has put a semi-permanent slow order of 10 mph in effect because there are so many failed ties and that running at higher speeds would be unsafe.

To date, the Port has not received any correspondence or notice from TCRY that states there is a permanent slow order of 10 mph in effect. However, the Port has received word from both Class I Railroads that they have been told not to exceed 10 mph by TCRY dispatchers. If there is a permanent slow order in effect, the Port should be notified

of the reason why and TCRY should provide a plan to quickly address the issue and bring the track back to a Class 3 standard.

The Honorable Judge Shea's Order Adopting Comprehensive Operating Plan, Entering Judgment, and Closing File (ECF 33) did adopt the Proposed Operating Plan (ECF 336-1) as of February 14, 2012. As you have stated, this Operating Plan grants the Port the authority to deal with "proposed changes" to the Operating Plan that are properly submitted to the Port, or to deal with "a dispute that may arise among the parties concerning the application of the Operating Plan or proposed changes to the Plan, Timetable, System Special Instructions and General Orders, related to rail operations" (ECF 336-1, paragraphs 8-10).

The Port has not any received proposed changes to the operating plan.

Further, Attachments 3 (Keller Letter, 2009) and 4 (Court Transcript) to your last correspondence are both documents that pre-date the final ruling in the Federal Case (BNSF Railway Company, et al. v. Tri-City & Olympia Railroad Company LLC, No. CV-09-5062-EFS). The matters that you are speaking of were litigated and a final ruling was reached.

Finally, as you were made aware through email correspondence, the Port has forwarded your request for a meeting to both BNSF and to Union Pacific Railroads regarding seeking maintenance fees for past work done. To date, we have not heard back from either entity. If we do, you will be immediately notified.

Ongoing Issues and Concerns

The following section is copied and pasted verbatim from multiple previous letters sent from the Port to TCRY, and will continue to be asked until we receive a response:

"Again, the Port needs to know what TCRY's proposed plan is to address the lack of maintenance on the Port's track that has been allowed to ensue by TCRY. The Port is most interested in TCRY's response to the Holland and GREX inspection reports. We appreciate hearing that the most immediate concerns have been corrected. As stated above, the Port still intends to inspect how these problem areas were fixed to make sure they are up to the correct standards.

The Port needs TCRY to provide a plan to map out how and when the ongoing deficiencies of the track will be addressed by TCRY. The reports you have been provided make it clear that out of the 43,437 total ties on the track, 2,443 ties are failed now, with an additional 9,967 at or near failure, and 18,672 to fail within the next seven-year tie cycle. What is TCRY's plan for this? Will ties be replaced section by section, will specific areas be addressed first, etc?"

The Port is willing to help in any way we can, but it is impossible to help if TCRY continues to obfuscate the issues and play games instead of fixing potentially serious safety concerns.

Your recent letters note that safety is TCRY's top priority as demonstrated by your impeccable safety record. The Port is grateful for the safe history and wishes for the track to remain safe. However, when the track was leased to TCRY, it was at a Class 3 standard, and now appears to have been downgraded to a Class 1 or Class 2 standard. That deterioration must be remedied. The track needs to be maintained at a higher standard to continue to be safe and to offer the full benefit of economic development opportunities to this community that a well-maintained track can provide.

To that end, please deliver to the Port an updated track maintenance plan within the next thirty (30) days. If you have any proposed changes to the Operating Plan, the Port would be more than willing to review the proposal and to share your suggestions with BNSF and UP.

Best regards,



DAVID J. BILLETDEAUX
Port Counsel

Enclosure : Excerpt from FRA Inspection

**VERIFIED STATEMENT
OF
LISA C. ANDERSON**

Lisa C. Anderson, being duly sworn, deposes and states as follows:

My name is Lisa C. Anderson, I am the Corporate Secretary and Executive Vice President of Tri-City Railroad Company, LLC. I have been an employee of the Peterson family of entities since December of 2005. Originally hired to be a Bookkeeper/Office Assistant, I currently lead the administrative efforts for all of the companies. My duties have expanded over time to include a variety of areas, a few of which include car accounting, human resources, FRA compliance, document control, cash management, contract oversight, risk management, and marketing. I participated in establishing multiple FRA approved programs including the Drug and Alcohol program and our Conductor certification. I have participated in compliance audits with the FRA as well as state audits with multiple agencies including the Department of Revenue.

Prior to residing in Washington, I held administrative positions in Cody, Wyoming; Baker City, Oregon; Carlin, Nevada and Twin Falls, Idaho. My employment history includes 7 years with a CPA firm as well as working in administration for two governmental entities and a large private industry.

My introduction to the Port of Benton and the dynamics of the relationship began with an extensive utility reconciliation project involving a major subtenant. Bechtel occupied significant interior and exterior space and the reconciliation involved the City of Richland, the Port of Benton, TCRY and Bechtel.

My introduction to the administration efforts of running a railroad began with car hire. In 2005 the railroad had moved 2,519 loads. At the end of the year a transition was under way to implement new industry specific software. A reconciliation of car hire and software implementation ensued. By the end of 2006, the railroad had moved 2,043 cars in Richland and new business had been captured.

In 2007 I assumed the management of railcar accounting and electronic management of railcars. I worked regularly with staff at the Union Pacific Railroad and Burlington Northern Santa Fe Railway due to these efforts. By the end of 2007 we had moved 3,707 loads in Richland.

This same year, tension increased between the Port of Benton and TCRY with TCRY's failed attempt to introduce a bio-diesel manufacturing facility in the Port of Benton manufacturing mall. TCRY pursued this not only to expand the business but also to replace the pending loss of tenant revenue. The Port of Benton had successfully relocated Bechtel's need for interior space away from TCRY onto Port land. The Port then rejected TCRY's bio-diesel concept in any area of space leased by TCRY.

In 2008 TCRY was able to extend the Bechtel relationship with new agreements, but Bechtel ultimately eliminated their indoor space altogether. They did remain in need of outside space and remained a tenant until the end of 2017. Efforts to extend this relationship with the support of the Port were unsuccessful and the Port ultimately sold the land that Bechtel had been subleasing from TCRY to a third party, eliminating any possibility for TCRY to retain this revenue beyond 2017.

Tri-City Railroad is in a unique and ideal position being able to offer dual rail service to customers from both the BNSF and the UPRR. As the business grew to over 4,000 loads in 2008 staff needs increased. The team grew to over 20 people. Our operations crew and support staff provided service 7 days per week. Shippers were the recipient of major benefits as they would profit from the competitive rates of two class ones yet receive the perks of working with a short line.

This year was another milestone for TCRY in that the company was successful in gaining approval from the City of Richland for the purchase of 33 acres of land with a City required Rail Management Plan. This purchase would become the new home of a mini loop track, which TCRY hoped would open many doors for the company by increasing traffic to include unit trains. These efforts were unrelated to TCRY's relationship with the Port of Benton and were owned by an affiliated company.

By the end of 2009 over \$1,000,000 had been invested into the project and this contributed to more growth resulting in 4,324 loads by the end of 2009.

The accomplishments of 2009 with the loop track would be shadowed by a change in relationship with the BNSF. In 2009 the BNSF attempted to change the formula with which TCRY invoices were paid. After TCRY refused to accept the new terms dictated by the BN and discussions produced no equitable resolution, the relationship ended. The BNSF would no longer interchange with TCRY and would serve its customers directly. TCRY's revenue dropped over \$2 million and TCRY rail traffic was reduced by over 2,000 carloads. In 2010 TCRY moved 2,377 cars.

The railroad was forced to undergo layoffs and the work force was reduced to a core group of essential staff needed to keep the railroad operating and commence the rebuild process.

In response to the BNSF decision, TCRY proposed to the Port of Benton a Facilities User Tariff which the Port did not approve. A copy of that Tariff is attached as Appendix LCA-1. We learned years later through PRR's that, when faced with this proposal, Scott Keller, Executive Director for the Port of Benton wrote to Port staff he was not in favor of approving any TCRY tariffs. A copy of Mr. Keller's message to that effect is attached as Appendix LCA-2.

In 2010, four years into a ground lease with TCRY, (the same ground that Bechtel subleased) the Port of Benton decided to impose an increase in TCRY's security deposit of 8,000 %. TCRY determined the only best option was to offer to the Port to increase rent payments by \$100,000 per year. The Port collected over \$600,000 in additional rents from TCRY from this time through the end of the lease in 2017.

Throughout this period, TCRY remained determined. We were on a rebuilding path.

In 2011, the City of Richland negotiated an agreement with the Union Pacific and the BNSF which included the elimination of interchanging with TCRY at Richland Junction. As an accommodation to the Union Pacific, although not a requirement, TCRY began to interchange cars in downtown Kennewick. This added an additional cost of operating to TCRY.

Although reduced in size, Tri-City Railroad continued to offer the same service and benefits to its remaining customers as the local agent and handling carrier for the Union

Pacific Railroad. However, TCRY had not overcome the loss of the BNSF traffic and by 2012 TCRY struggled with 1,999 carloads.

In the fall of 2012, business discussions with Union Pacific Railroad revealed that the UP was attempting to gain the market share of local potato business by negotiating with Lamb Weston for service to a soon to be built mega warehouse. As the handling carrier for the UP, TCRY agreed to reduce handling carrier fees to help UP lock in the new business. The UP was successful but overall TCRY again took a hit and experienced a 20% reduction in UP revenue the following year.

By July of 2015, the first cars were brought in to the new Preferred Freezer mega warehouse facility (Lamb Weston vendor) by TCRY. TCRY had cultivated such a good business relationship with Preferred Freezer that in 2016 it secured an exclusive rail management and track use agreement at the new facility. By the end of the first year of operation at PFS, this customer had become TCRY's largest and TCRY business grew to 3,646 loads by the end 2016.

Likewise, traffic at the City of Richland loop track was in full swing and BNSF traffic on the line was dramatically increasing. Although BNSF had not moved more than 367 loads in any of the prior three years, the opening of the loop track saw BNSF business climb to almost 4,000 loads in 2016 and would exceed that the following year with 4,343 loads.

The TCRY mainline track was getting hammered and it was doing everything it had to, to keep it in FRA compliance and meet the lease requirements. TCRY had fostered

good relationships with FRA staff and inspections were occurring on a regular basis. Defects were addressed as identified and no fines or penalties were received by TCRY. TCRY Growth continued with new opportunities and customers and throughout this time, Tri-City Railroad remained a top performer in the industry receiving high monthly scores on the industry scorecard produced by Railinc which then allowed TCRY's ongoing participation in the UP's revenue supplement program for top performers. For further feedback on our efforts TCRY electronically solicited customers for comment via annual customer service surveys in 2014, 2015 and 2016. Feedback remained positive and TCRY remained confident. Unsolicited feedback was also received in subsequent years. 27 separate communications are attached as Appendix LCA-3.

In November of 2017 TCRY was on track to break another rail car record when the UP issued a 30-day termination notice to TCRY. This marked the end of a 17-year relationship, eliminated over 4,200 cars, and \$2 million in annual revenue. TCRY was forced to undergo another reduction of force with its employees.

TCRY was left with no revenue from any user of the railroad to help with sharing the cost of maintenance yet the track continued to get hammered. Upon being cancelled by UP, TCRY initially pursued discussion with the UP regarding cost sharing for track maintenance and apprised the Port of those discussions. TCRY then requested support from the Port to be able to engage the BNSF in similar discussions. Three months passed while TCRY waited for Port support. A meeting was conducted by the Port on March 30, 2018. Participants included the Port, BNSF, UP and TCRY. The meeting did not result in the sharing of track maintenance by users.

TCRY then attempted to obtain revenue with new tariffs. The Port maintains that all tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States. TCRY generated a Maintenance Toll Fee including a cost of \$75 and \$95 (based on gross weight on rail) per car to be assessed to the City of Richland for each car traveling to or from the Port of Benton railroad to the City of Richland Horn Rapids rail spur as the beneficiary of the maintained trackage. A copy of that Toll Fee is attached as Appendix LCA-4. Port approval was not received. TCRY then generated a Miscellaneous Tariff Supplement 1 which included a track maintenance charge of \$95 per car for each rail car which enters the TCRY trackage at Richland junction. A copy of that Tariff Supplement is attached as Appendix LCA-5. Port approval was not received.

In addition to the track maintenance, there are other issues resulting from class 1 actions which have increased the cost to TCRY. 1.) Additional rail traffic is being brought on to TCRY tracks which is not destined for any customer on the line. 2.) The tracks are being used to store cars for days at a time which are destined for no location on the TCRY trackage. 3.) Certain cars are stored on TCRY tracks at locations which are designated to remain clear at all times for all users. 4.). Crews are unhooking partial trains to spot cars at locations which are not conducive to long trains. These cars are left at the trigger point of crossings which activate for extended periods of time with no train present. The railroad is contacted by community members or law enforcement agencies and TCRY personnel are called out to assist. The above examples have increased both the operating and maintenance cost to TCRY.

For nearly 10 years the BNSF has used the track at no cost while not paying its share of the cost to maintain the track. This is contrary to what they said 10 years ago in court and what I have observed in response to public records requests since then, yet TCRY invoices remain unpaid. TCRY has been unable to obtain the Port's support for TCRY to collect track maintenance funds from the BNSF. Since December of 2017 the UP has used the track at no cost while not paying its share of the cost to maintain the track. This is contrary to what I was told by the UP in 2017 yet again, TCRY invoices go unpaid. Over \$500,000 was spent by TCRY last year to maintain the track. The BN moved over 4,500 cars and the UP moved over 3,500 cars. Yet TCRY paid for 100% of the cost to maintain the track and moved 119 cars.

The Port maintains that it should receive cost information from TCRY. TCRY provided cost information to the Port in 2013. This information encompassed an eight-year period. Three years of actual costs and a five-year forecast. The Port was not satisfied with this information and continues to request financial information such as company tax returns as well as operations documents, none of which are called for in the Railroad Lease. In PRR responses TCRY learned that even the Port was aware of this but continues to ask. These requests were repeated in meetings conducted between TCRY and the Port as well as email and correspondence.

TCRY was put in an unusual situation with the Port in 2016 when TCRY provided its standard insurance requirements to the Port for its vendors accessing the right of way. The Port showed no support by choosing to rely on TCRY's insurance coverage stating, "There is no need to reduce the funds available for a project by requiring redundant insurance coverage when TCRY is already required to provide the insurance. To the

extent necessary, the Port will require insurance coverage from its contractors to cover the contractor's operations." The Port then selectively chose who to require insurance from and who to grant authorization to access the premises. This is counterproductive to working together and I believe is over reaching. It is standard railroad protocol to require vendors to meet certain insurance requirements before proceeding on site.

In recent correspondence the Port refers to the FRA issuing fines/penalties to TCRY. I retain control over the payables and have issued no payments to the FRA, nor am I aware of any outstanding balance due to the FRA for any reason.

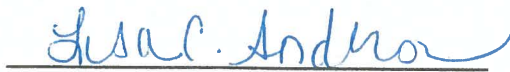
TCRY currently provides ongoing rail service as a common carrier with charges assessed via rule 11. This year marks the 20th anniversary of Tri-City Railroad. Our team of three full time employees and half a dozen part time employees will continue to serve eight customers while exploring new opportunities as they are received from UPDS and others. We will continue rebuilding our business for the remainder of the life of the Railroad Lease, at least another thirteen years.

With respect to the track maintenance accusations, not only has TCRY fulfilled its maintenance obligations outlined in the lease and in compliance with regulatory oversight from the FRA/UTC, last year TCRY successfully completed upgrades to four rail crossings with grant funding received from the Washington Department of Transportation. TCRY's efforts resulted in \$650,000 in improvements to the railroad.

Since January 1, 2019, TCRY has been approached with eight new traffic opportunities. Information is attached as Appendix LCA-6.

AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Executed on April 14th, 2019.

A handwritten signature in blue ink, reading "Lisa C. Anderson", is written over a horizontal line.

LISA C. ANDERSON

EXHIBITS

LCA-1

Facilities User Agreement

LCA-2

E-mail from Scott Keller

LCA-3

Customer Feedback

LCA-4

Maintenance Toll Fee

LCA-5

Miscellaneous Charges Supplement 1

LCA-6

New Opportunities

EXHIBIT LCA-1

FACILITIES USER AGREEMENT

TRI-CITY & OLYMPIA RAILROAD CO.

FACILITIES USER TARIFF

“TCRY” shall mean Tri City & Olympia Railroad Company.

ISSUED: August 20, 2009

EFFECTIVE: September 10, 2009

ISSUED BY

**Randolph Peterson, General Manager
Tri-City & Olympia Railroad Co.
2579 Stevens Drive
Richland, WA 99354**

FACILITIES USER TARIFF

User Defined - A person or entity using any TCRY Facilities as defined below.

TCRY Facilities Defined – All equipment, buildings, real property, trackage and adjacent areas owned, leased or operated by TCRY and made available to a User.

Facilities Use Charges Defined – Those charges established by this tariff or subject to any agreement with User arising from the use of TCRY Facilities by or for the benefit of any User.

Reservation of Agreement Rights - TCRY reserves the right to enter into agreement(s) with any User concerning rates and services which would otherwise be established by this tariff, provided such agreements are in compliance with existing local, state and national laws and regulations. In the absence of such an agreement with a User, the terms of this tariff shall apply.

Use of Facilities Deemed Acceptance of Tariff - Use of TCRY Facilities shall be deemed an acceptance of this tariff along with all specified terms and conditions contained herein. It is the responsibility of the User to be aware of and familiar with the physical characteristics of TCRY Facilities.

Damage and Replacement - Users will be responsible for and charged for the replacement or repair of any TCRY Facilities which are damaged or destroyed during the User's occupancy. Damage identified during or after departure will be deemed to have occurred during the User's occupancy unless TCRY is notified by the User, in writing prior to being granted occupancy, of any pre-existing damage to that TCRY Facility.

Performance of Services on TCRY Facilities - TCRY reserves the right to perform all services and furnish all equipment, supplies and material in connection with the operation of the TCRY Facilities. No User or other person, firm or corporation shall be allowed to perform any services on or at the TCRY Facilities without written permission from TCRY. Those permitted to perform services shall apply, as well as adhere to, this tariff and any additions, revisions, or supplements.

User's Requests and Complaints - Any party may initiate inquiries or complaints on matters relating to rates, charges, rules and regulations contained in this tariff by filing a fully documented statement with the TCRY General Manager, P.O. Box 1700, Richland, Washington 99352.

Point or Place-of-Rest Defined - That portion of the TCRY Facilities designated by TCRY for placement of railcars in connection with User's utilization of the TCRY Facilities.

Right to Exclude Explosives, Nuclear Materials, Hazardous and Inflammable Commodities - At TCRY's sole option, subject to federal, state and city regulations, advance special arrangements may be made to process explosive, nuclear materials, hazardous or inflammable commodities or materials at TCRY Facilities. In the absence of such special arrangements, such commodities and materials are not allowed on or at TCRY Facilities.

Right to Refuse Cargo - TCRY reserves the right (without responsibility for demurrage, other charges, loss or damage) to refuse to accept, receive, or unload cargo. In addition, TCRY can refuse to allow Users to: (a) load or offload cargo, for which previous arrangements for space, receipt, unloading or handling have not been made

FACILITIES USER TARIFF

with TCRY by the User; (b) load or offload cargo deemed extremely offensive, perishable or hazardous; and (c) load or offload cargo not in packages or containers suitable for ordinary handling incidental to its transportation.

Right to Remove, Repack or Recondition, Repile and Transfer Cargo - At TCRY's option, cargo remaining at any TCRY Facility after expiration of User's right to occupancy may be piled or repiled to make space; transferred to other locations within TCRY Facilities; or relocated to public or private warehouses at the expense of, and with risk of loss or damage accruing to, the User. At TCRY's sole discretion, cargo considered hazardous, offensive, or by its nature liable to damage other cargo, may be removed from any TCRY Facility and all costs of such removal, including costs of containment, government fines or assessments, labor and equipment requirements, will be charged to the User.

Right to Sell Cargo - TCRY may sell at public or private sale, any cargo with respect to which the User fails or refuses to pay Facilities Use Charges. The proceeds of the sale are to be applied first to the cost and expense of sale and thereafter to the charges. Cargo of a perishable nature or of a nature liable to damage other cargo or property, may be sold at public or private sale without advertising.

Right to Withhold Delivery - TCRY reserves the right to withhold delivery or release of any cargo until all accrued Facility Use Charges with respect thereto have been paid in full.

Manifests - Upon TCRY's request, Users are required to furnish to TCRY complete copies of manifests showing cargo descriptions, names of consignees and/or consignors, and the weights or measurements of all cargo loaded or discharged at any TCRY Facilities. TCRY must receive such information within 10 days of its request.

Compliance with Safety Precautions - Users shall exercise care in the performance of their operations in order to prevent injury to or death of any person, and damage to, destruction to or loss of property. Users shall take all necessary safety precautions and comply with recognized safety practices, procedures and regulations.

Reporting of Incidents - In the event of a safety or security incident, the situation should be handled using the appropriate emergency response protocol including those specified in TCRY General Orders. First and foremost, seek assistance from the appropriate sources (911, TCRY, etc.) and mitigate the damages to the extent possible. All persons having knowledge of the incident must then immediately provide a description of the event to TCRY in writing, by submitting an Incident Report. This form may be obtained from the TCRY office. Any incident which occurs on or at a TCRY Facility involving injury, death, damage to property, theft or pilferage, oil or contaminate spills, personal loss, fire, suspicious activity, breach of security or any other similar incident must be reported.

ALL DIRECT AND INDIRECT COSTS INCURRED BY A USER IN CONNECTION WITH UTILIZING ANY TCRY FACILITY SHALL BE PAID BY THE USER.

The User acknowledges responsibility for damage arising out of its occupancy and shall hold TCRY harmless from and indemnify TCRY with respect to all damage, liability, settlements, loss, costs, and expenses incurred in connection with use of the TCRY Facilities and with respect to any action, suit, or claim resulting or allegedly resulting from such use, except for such damage, liability, settlements, loss, costs, and expenses resulting solely from TCRY's negligence, or that of TCRY's employees or agents.

Terms of Payment - Use of TCRY Facilities and services provided by TCRY are conditioned upon satisfactory assurance to TCRY that all charges will be paid when due. Charges are due and payable as they accrue or on completion of service or use. TCRY may require payment in advance.

FACILITIES USER TARIFF

Payment Terms Are Cash – Users may, prior to the use of facilities or receiving services, request extended payment terms. Such terms will apply only if that request is approved by TCRY, which shall have the sole option to approve or deny such request. To qualify for extended payment terms, a User must have established credit worthiness or have posted adequate security acceptable to TCRY. Any pending or alleged claims against TCRY will not be allowed as an offset against outstanding invoices or accrued charges.

Delinquent Invoices - Invoices issued by TCRY are due and payable upon presentation. A delinquency charge of eighteen percent (18%) per annum or, if less, the maximum rate of interest allowed by law, shall accrue on all invoices from the date of presentation until paid. The delinquency charge on the overdue amounts shall be subject to periodic change in the sole discretion of TCRY. TCRY's failure to impose a delinquency charge shall not be a waiver of TCRY's other rights and remedies for such delinquent payment, nor of TCRY's right to later charge and collect for such delinquency. Acceptance of any delinquency charge by TCRY shall in no event prevent TCRY from exercising any of the other rights and remedies granted under this tariff or by law.

Insurance – Each User shall obtain and maintain insurance in the type applicable to cover bodily injury and property damage arising out of the presence of such User (including User's employees, agents and representatives) at or on TCRY Facilities. The following insurance coverages are mandatory:

Workers' Compensation Insurance as required under Federal and State statutes for all User's employees performing its work.

Employer's Liability insurance in an amount not less than \$1,000,000.

Commercial General Liability, Protection and Indemnity, User's Legal Liability, sudden and accidental Pollution Liability, and any other insurance required by state or federal law, as applicable, with separate limits of \$5,000,000 for each coverage. Coverage should include liability assumed under contract, broad form property damage covering property in the insured's care, custody, and control. This insurance shall cover claims for bodily injury, personal injury, death or property damage occurring on or at TCRY Facilities.

All Users shall submit to TCRY certificate(s) of insurance as evidence of the required coverage prior to utilization of the TCRY Facilities. Such insurance shall name TCRY as an additional insured with respect to use of TCRY Facilities and shall provide that TCRY is to be given 30 days' written notice prior to cancellation. Such insurance shall be primary, and shall not seek contribution from any insurance or self-insurance carried by TCRY.

Indemnification; Reimbursement for Damage - Every User shall defend (using legal counsel acceptable to TCRY), indemnify, and hold harmless TCRY from and against, and reimburse TCRY for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against or incurred by TCRY and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from TCRY's negligence or willful misconduct: (a) any act, omission or negligence of the User; (b) any use, occupation, management or control of the TCRY Facility by the User, whether or not due to the User's own act or omission and whether or not occurring on or at the TCRY Facility; (c) any breach, violation or nonperformance of the regulations, rules and terms of this tariff; or (d) any damage caused by the User on or to a TCRY Facility. For the purpose of this paragraph, "User" means and includes both User and User's respective partners, joint venturers, officers, directors, agents, employees, invitees and/or contractors.

FACILITIES USER TARIFF

Himalaya Clause - It is hereby expressly agreed between TCRY and each User that as a condition and in consideration of being allowed to utilize any TCRY Facilities, TCRY, as well as any and all its employees, servants, agents and/or independent contractors used or employed in connection with the performance of any of the User's obligations under any Bill(s) of Lading shall be treated as and shall be express beneficiaries of those Bill(s) of Lading. As such, TCRY shall have the benefit of all rights, defenses, exemptions from or limitations on liability and immunities of whatsoever nature to which the User is or may be entitled under the provision of any Bill of Lading or by law so that TCRY shall not, under any circumstance, be under any liability in either contract or tort greater than that of the User(s) themselves.

Limits of Liability - No provision contained in this tariff shall limit or relieve TCRY from liability for its own negligence nor require any User to indemnify or hold harmless TCRY from liability for TCRY's own negligence.

Demurrage Railroad Cars - TCRY assumes no responsibility for railroad car demurrage.

Responsibility for Loss, Damage and Delay of Merchandise and Cargo - TCRY shall not be responsible for any loss, damage or delay of merchandise, cargo or railcars which may arise from any cause beyond its direct authority and control.

Further, TCRY, shall not be liable for any loss which results from animals, insects, rodents or vermin; nor from decay, deterioration, evaporation, shrinkage or loss of quantity, quality or value from inherent vice of product; nor from fire, frost, leakage or discharge from fire protective sprinklers, oxidation or rusting; nor from civil disorder, insurrection, riot, strike, slowdown or labor stoppage whether or not agents or employees of TCRY are involved; nor for delay caused by shortage of qualified labor; nor for damage resulting from wind, flood, or similar factors; nor for loss caused by Acts of God.

Responsibility as Warehouseman - Except as limited by specific provisions herein, liability for loss, damage or delay to cargo or merchandise while in the care, custody or control of TCRY at any time shall be that of a warehouseman only.

Valuation of Merchandise for Claims Purpose - Any claims against TCRY shall be based upon the actual cost of the merchandise plus freight and insurance, if paid. Claims for partial loss of or damage to merchandise shall be prorated based upon the weight of the lost or damaged portion versus the entire shipment.

Loss or Damage Claims - Notice of claim against TCRY for loss of or damage to cargo or merchandise, including but not limited to indemnity claims, must be filed with TCRY, in writing, within 30 days of the occurrence of the alleged loss of or damage to cargo or merchandise. Such notice shall specify the nature of the claims, comply with all applicable laws and regulations and provide all information available. Any suit asserting claims based on loss of or damage to cargo or merchandise must be commenced within one year of the occurrence of such damage or loss.

Recovery of Overcharge Claims- Claims for recovery of overcharges must be filed in writing with TCRY within thirty (30) days following the date of the invoice containing the alleged overcharge.

Security Service - When, due to Rules and Regulations of Federal, State or local authorities, TCRY is requested to provide special security service in connection with cargo at or moving through TCRY Facilities, TCRY shall assess the cost of such security service to the User.

FACILITIES USER TARIFF

When special security service is requested by the User in connection with cargo being handled at the TCRY Facility, TCRY shall assess the cost of such security service to the User requesting the service.

Municipality Security and/or TCRY Contract Security shall be charged at cost plus 15%.

Excepting service contracts, the minimum security fee shall be \$1,500.00 per 24-hour period.

Military or Department of Energy cargo, due to the nature of its purpose and content, may be subject to increased levels of security and as a result additional security charges may be imposed. Charges will be assessed only for actual costs incurred by TCRY for services related to the safeguarding and movement of military and/or Department of Energy cargo to and from TCRY Facilities.

Car-Placement-Period - Refers to any 24-hour period or portion thereof in which a railcar is placed at a TCRY Facility. The car-placement-period shall commence when the first placement is made to a placement point and shall continue until such railcar is completely removed from any TCRY Facility. No deductions will be allowed for Saturdays, Sundays, or holidays or because of weather or other conditions.

Car-Placement-Point – Specific railcar placement locations will be assigned to Users at the sole discretion of TCRY. Preferential use of placement points is available to Users through contractual arrangements with TCRY and takes precedence over all other placement point assignments.

Users Required To Obtain Car-Placement-Point Assignments - No User will be permitted access to a TCRY Facility without a prior car-placement-point being assigned by TCRY. Applications for car-placement-point assignments must be made as far in advance of the arrival of the railcar as possible and must specify arrival and departure dates and the nature and quantity of the cargo to be loaded or discharged. The application form for car-placement-point assignment can be obtained from the TCRY office.

Users Required To Vacate Car-Placement-Points - TCRY reserves the right to order a User to shift its position at a car-placement-point, to change car-placement-points or to vacate a car-placement-point when or to the extent that:

- 1) Cars are not actually engaged in loading or discharging cargo.
- 2) User has occupied a car-placement-point beyond the time limitation stated in the assignment.
- 3) A User holding an agreement granting the preferential use of that car-placement-point at that time presents itself at the car-placement-point.

Any User refusing or failing to shift or change its car-placement-point at the request of TCRY may be shifted or moved by TCRY by means of a locomotive or otherwise, with all expenses incurred accruing to the account of such User and all risk of damage or loss inuring to such User.

Car-Placement-Point Charges - The charge for each railcar placement at a car-placement-point for each car-placement-period is \$283.00 for car placements at Station 205 area; \$438.00 for car placements at Station 300 area; \$494.00 for car placements at Station 400 area.

TCRY STATIONS

Station Number	Stations
	Union Pacific

FACILITIES USER TARIFF

Station Number	Stations
200	Richland Jct.
201	Steptoe
205	City Dock
209	Airport
210	Lamb
211	ConAgra
212	Saint
300	TCRY Yard
310	Horn Rapids
350	Hanford
400	City Spur

Labor Rules and Labor Rates –

Specific Labor and Equipment Rates - When services are performed by TCRY or its agent for which no specific tariff rates are applicable, the labor charges for such services shall be billed on an hourly basis using the labor rates in this section. Equipment rates will be as stated in this section.

Dead Time - Billable dead time occurs when TCRY is required to furnish labor for a specific service and such service is completed before the expiration of the minimum time allowed under labor's working agreements. The labor charges for such services shall be billed on an hourly basis using the labor rates in this section.

Standby Time - Billable standby time occurs when TCRY is required to order labor for a specific service at a stated time and, through no fault of TCRY, the service cannot begin or the service in progress is delayed. The labor charges for such services shall be billed on an hourly basis using the labor rates in this section.

Travel Time - When TCRY labor is ordered from outside the area at User's request, extra costs such as travel and subsistence shall be charged to the User requesting such labor. In addition, the actual out-of-pocket cost of travel time will be assessed to that User.

Labor Classifications and Hour \$\$ Rates

Classification	1st Shift	2nd Shift	Overtime	3rd Shift	3rd Shift O/T
Engineer	107	123	184	134	188
Conductor	90	104	156	113	158
Trackman	75	86	129	94	132
Operator	95	109	164	119	167
Mechanic	85	98	147	106	151

FACILITIES USER TARIFF

Classification	1st Shift	2nd Shift	Overtime	3rd Shift	3rd Shift O/T
Electrician	85	98	147	106	151
Welder	85	98	147	106	151
Labor	67	77	116	84	119
Warehouseman	77	89	134	96	136
Foreman	123	141	212	154	216
Superintendent	152	175	263	190	266
Clerk	65	78	117	81	118

Warehouse Space – Utilization of indoor, temperature-controlled space can be requested by contacting TCRY. Availability will be at the sole discretion of TCRY. Rates vary and will be provided upon request. Contact TCRY for details regarding availability.

Facility storage is the service of providing warehouse or other terminal facilities for the storing of in-transit cargo at TCRY when arrangements are agreed upon prior to arrival of cargo at TCRY.

Responsibility for Storage Charges - Storage charges shall be assessed against the User of record for cargo in storage on the first day of the month for which the storage charges accrue.

Cargo that becomes subject to storage charges during the first fifteen (15) days of a month shall be assessed a full month's storage charge for that month. Cargo subject to storage charges on or after the 16th day of a month shall, shall be assessed a half month's storage for that month. Cargo remaining in storage on the first day of each succeeding calendar month shall be assessed the applicable monthly storage rate for such months.

Storage Space - Storage space in open or covered areas may be reserved provided, in the opinion of TCRY, space is open and available at an appropriate TCRY Facility. Available space can be reserved for periods of thirty (30) calendar days or longer.

No cancellation of space rental agreements entered into under these rules will be permitted on less than fifteen (15) calendar days' notice. A full month's charge will be made for the month in which the agreement is cancelled or the area vacated.

TCRY reserves the right to have cargo which has been stored on or at a TCRY Facility for twelve (12) months or longer removed from the TCRY Facility. If the User fails to remove the related cargo within thirty (30) calendar days after notification requesting its removal, TCRY may remove it with all costs associated therewith (and any subsequent storage costs) borne by the User.

Monthly Storage Charges - Storage charges shall be billed monthly based upon the actual space used on the first working day of the month expressed in square feet or in short tons stored as shown on the table below.

FACILITIES USER TARIFF

Storage Description	Operation	Rate
Space Rental - First and 2nd month	Open	\$2.47 / Short Ton
Space Rental - Third through 11th month	Open	\$3.95 / Short Ton
Space Rental - 12 months and over	Open	\$4.85 / Short Ton
Space Rental - First and 2nd month	Covered	\$0.69 / Sq Ft per Month
Space Rental - Third through 11th month	Covered	\$1.07 / Sq Ft per Month
Space Rental - 12 months and over	Covered	\$3.83 / Sq Ft per Month

Materials - Materials consumed by TCRY in providing services to a User shall be charged to User at TCRY's cost plus a 15% handling fee.

Equipment Hourly \$\$ Rates

Equipment Description	Hourly Rate
Locomotive	365
Flat Car	41
Ballast Car	75
Motorcar / Welder	75
Mechanic Truck	25
Electrical Truck	28
Foreman Truck	19
Track Gang Truck	22
Tie Inserter	80
Tie Nipper	70
Tie Crane	70
Speed Swing	125
Tamper	174
Ballast Regulator	170
Spike Puller	70
Rail Driller	59

FACILITIES USER TARIFF

Equipment Description	Hourly Rate
Rail Saw	36
Switch Point Grinder	33
Backhoe	115
Motor Grader	110
Forklift	61
30-45 kw Generator	40
Bridge Crane 45-T	300

END

EXHIBIT LCA-2

EMAIL FROM SCOTT KELLER

From: Scott Keller
Sent: Sunday, November 01, 2009 3:39 PM
To: Tom Cowan; Kelly Thompson; Stuart Dezember; Matthew Branson
Subject: RE: Phone call from Kathy, Lee Kerr's office

It is my recommendation that we discuss this issue in Executive Session (if we can) and get the C's comments.

I know of one that is going to recommend NO TARIFF at all. Zero, Zilch, Nada... TCRY has enough "lease credits" as in the building lease rate and the income from Bechtel that they deserve nothing extra from others for maintaining the track, if that what the tariff is suppose to support. The agreement was to maintain the track for the Port. I'm thinking he may be leaning in the right direction.

We will discuss our intentions in the morning.

See Ya.

SK

No. 2:17-CV-191-TOR

R - 0194172

EXHIBIT LCA-3

CUSTOMER FEEDBACK

From: Rydel Work rydel@tcry.com
Subject: Fwd: TCRY Meeting Notes - October 30, 2012
Date: November 22, 2017 at 1:45 PM
To: rvpeter@me.com, Lisa Anderson lisa@tcry.com, Rhett Peterson rhettwater@me.com



Sent from my iPad

Begin forwarded message:

From: "John J. Miller" <JJMILLER@UP.COM>
Date: November 1, 2012 at 11:33:33 AM MDT
To: rvpeter@mac.com, rydel@tcry.com, rhettwater@mac.com, "Chad W. Storlie" <CWSTORLI@UP.COM>, "David L. Welch" <DLWELCH@UP.COM>, "Bill R. Eilbracht" <BREILBRA@up.com>, gsturm@up.com, "Jeff Grinnell" <JGRINNEL@up.com>, "Nicholas J. Langel" <NJLANGEL@UP.COM>, "Leslie A. Pritkin" <LAPRITKI@UP.COM>, "Christian O. Rowe" <COROWE@UP.COM>
Cc: bgmaher@up.com, "Todd A. Whitham" <TAWHITHA@up.com>, "Robin R. Ringwald" <RRRINGWALD@up.com>
Subject: TCRY Meeting Notes - October 30, 2012

A meeting / conference call was held with the Tri City Railroad on October 30 to discuss service and rates to the existing Lamb Weston and Henningsen Cold Storage facilities and the new proposed Lamb Weston distribution facility. Attendees from the TCRY were Randolph Peterson, Rydel Peterson, and Rhett Peterson. UP participants were Chad Storlie, Bill Eilbracht, David Welch, Nick Langel, Leslie Pritkin, George Sturm, Jeff Grinnell, Todd Whitham, Christian Rowe, Robin Ringwald, and myself. Listed below are the key points and takeaways from that meeting.

Current service level and operations.

TCRY operates under a long term lease on trackage owned by the Port of Benton and switches Lamb Weston (approx. 8 AM) and interchanges with UP five days per week, Monday thru Friday, at Kennewick, WA. UP delivers to TCRY six days per week. While the interchange agreement calls for a Richland interchange TCRY interchanges in Kennewick for operating convenience at the request of UP. From an operating standpoint everything has been running smoothly. TCRY provides additional switching for Lamb Weston on an as needed basis per their request. TCRY estimates that extra switches are requested about three times per week. This would include weekends or after hours as TCRY does have additional personnel who are qualified locomotive engineers. TCRY has an arrangement with Lamb Weston to hold loaded oil cars in their Richland Yard and will deliver them upon request. TCRY does not charge for track space but does receive an additional switch charge for performing this service. Lamb Weston is appreciative of the service provided by TCRY and UP has received reports acknowledging this fact.

TCRY value proposition with regard to Lamb Weston business

The primary purpose of the meeting was to review the service and rate package that TCRY can provide in order for UP to continue to compete for the existing Lamb Weston business and successfully secure the additional projected 5000 carloads from the new distribution facility.

TCRY reviewed how their current service has evolved over the last ten years to its current situation. Specifically, this included the investment in a loop track and working with UP to receive unit trains of grain products. BNSF asserted its rights under the agreements which led BNSF suing TCRY June 2009 in Federal court. This court case has been adjudicated and BNSF currently serves Lamb Weston directly. BNSF currently switches Lamb two days per week. The combination of TCRY superior service, UP equipment, and UP rates has resulted in UP gaining almost all of the existing Lamb Weston fry and oil business. Under the lawsuit BNSF has to provide TCRY car information to use the track. Thus, TCRY was able to provide the attached summary of UP/BNSF car counts to show how UP has successfully taken the Lamb business.

TCRY provided a map denoting the Lamb Weston plants that are served exclusively by either UP or BNSF and jointly by both carriers. The strategy offered by TCRY was that they would be able to provide the capacity and service the new facility. TCRY has 21,000 feet of track available in their Richland Yard that is only accessible to them and by extension the UP. In addition, TCRY has the loop tracks available to hold cars. BNSF would be limited to any tracks Lamb Weston would put in at the new

facility and would not be able to stage their equipment. Randy Peterson suggested that UP could include this benefit in their to Lamb so they could save in infrastructure costs at the plant. BNSF could not service the new facility as well as TCRY which is a short distance from their yard. TCRY said that UP should leverage the TCRY's ability to stage and spot Lamb Weston so as not to allow BNSF to gain track capacity in the area. UP would then have the advantage to garner the new business.

Review of TCRY current rate structure and rate proposal for both ongoing and new business

We reviewed the current TCRY rate structure and stated that we would need to adjust the rates for both existing and new business. Christian Rowe shared that there is a sizable rate difference between Richland and UP served plants at Boardman and Hermiston. These would have to be accounted for in our rate proposal to Lamb. TCRY understood that in order to get the business there would need to be an adjustment in the rates. TCRY did request that any adjustment be kept separate for existing business and the new 5000 car opportunity. Nick Langel stated that UP was acquiring 225 72' refrigerated cars in 2013, partially to be used in fry business. UP would need to request additional cars on an annual basis to replace the current fleet. It is UP's desire to simplify rates to accommodate all car types. UP did share that we have conducted our internal review of what it would cost UP to serve the existing facility. UP did agree that we could not duplicate the level of service provided by TCRY and that we appreciated this service.

UP has to provide a proposal to Lamb Weston fairly soon. As a follow-up to this meeting UP agreed to review its data and provide a proposed rate to TCRY to handle the existing business. We acknowledge that we would need to review the rates on the new business once it becomes cleared that the new facility would be built. UP agree to provide this proposed rate to TCRY within 48 hours.

1 attachment

(See attached file: 20121101121246433.pdf)

John Miller
Manager - Short Line Development
Union Pacific Railroad

Off: 402-544-4522
Cell: 402-214-7835

★★

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★★



20121101121246433.pdf

f

Submission Date 2014-12-17 15:55:17

Company Name Bio-Gro Inc.

Your Name Wade Baker

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	☒	-	-	-
Timely movement of cars from origin to destination?	-	☒	-	-
Timely response to pricing requests from either TCRY or UP?	-	☒	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2014-12-17 11:58:14

Company Name Con-Agra Foods Lamb-Weston

Your Name Morie Ratuiste

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	-	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Less

Do you anticipate any changes in the quantity of cars you will ship by rail next year? No

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments Surely appreciate the open communication and timely spotting of needed oil cars and releasing them.

Submission Date 2014-12-17 10:23:38

Company Name Delta Ridge Holdings

Your Name Brian Jones

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	✓	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Less

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments Keep up the good work

Submission Date 2014-12-17 12:38:54

Company Name Hemmingsen Cold Storage

Your Name Virginia Fjeld

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✔	-	-	-
Timely movement of cars from origin to destination?	✔	-	-	-
Timely response to pricing requests from either TCRY or UP?	✔	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Exactly number planned

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments Love TCRY - excellent group of people to work with :)

Submission Date 2014-12-17 13:29:46

Company Name Seneca Foods

Your Name Melissa Lindley

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	-	✓	-	-
Timely movement of cars from origin to destination?	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Exactly number planned

Do you anticipate any changes in the quantity of cars you will ship by rail next year? No

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2014-12-19 18:08:23

Company Name Henningsen

Your Name Bill Friend

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	✓	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Less

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments with Lamb weston pulling out of our warehouse in July 2015 we are not sure how many rails we will be doing from then on. we are currently looking for more rail business.

Submission Date 2014-12-26 12:46:44

Company Name Parr Lumber

Your Name Roger Tom

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2015-12-21 13:14:09

Company Name Bio Gro Inc.

Your Name

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads? 35-45

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2015-12-21 13:29:47

Company Name Henningsen Cold Storage Co.

Your Name Bob Lawyer

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	✓	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads? Unknown

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments The changes are due to the Lamb Weston business moving to the new PFS facility. We are working on new business but nothing concrete to report at this time.

Submission Date 2015-12-21 14:00:36

Company Name Henningsen Cold Storage

Your Name Bill Friend

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	✓	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Less

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads? 250 carloads

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments we receive double switches from you many times and your crew came in on the weekend and spotted cars this spring when we were very busy. we really appreciate the great service that you have provided for us this year. Thank you, Bill Friend Warehouse manager HCS

Submission Date 2015-12-21 14:52:24

Company Name Savage/Gnw Transport

Your Name John Maxwell

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? No

What is your estimate for 2017 UPRR/TCRY carloads? 30

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2015-12-28 07:26:16

Company Name Agro Gypsum

Your Name Ted Schrock

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	Very Satisfied	Satisfied	Somewhat Satisfied	Not Satisfied
TCRY response to car movement requests?	✓	-	-	-
Timely movement of cars from origin to destination?	✓	-	-	-
Timely response to pricing requests from either TCry or UP?	✓	-	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads?

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments Tri-City Railroad Company has been great to work with this far. Looking forward to working with everyone in 2016!

From: Morie.Ratuiste@conagra.com
Subject: RE: LAMB-WESTON OIL SWITCH REQUEST. 12-05-2016.
Date: December 6, 2016 at 8:30 AM
To: Lisa Anderson lisa@tcry.com
Cc: Jing.Wang@conagra.com, Bryan.Hall@conagra.com



THANK YOU Lisa. Responding to our request in timely manner is ever critical during cold weather as it takes more 4-8 hours to completely thaw out the palm oil in order to pump it out of the railcar. In run through Sunday we may have to request spot on Sunday, Bryan & Jing will work the logistic and let you know.

Please extend my gratitude to the whole crew,
Morie

From: Lisa Anderson [mailto:lisa@tcry.com]
Sent: Monday, December 05, 2016 3:02 PM
To: Wang, Jing (Lamb Weston)
Cc: Maria Carranza; Hall, Bryan (Lamb Weston); Tran, Hong (Lamb Weston); Carson, Shannon (Lamb Weston); Nihill, Nate (Lamb Weston); Nooy, Brian (Lamb Weston); Ratuiste, Morie (Lamb Weston); Rice, Tim (Lamb Weston); Ripplinger, Toby (Lamb Weston)
Subject: Re: LAMB-WESTON OIL SWITCH REQUEST. 12-05-2016.

Good afternoon Jing~

The TCRY crew responded as requested ASAP with a locomotive to provide rail service.

Upon arrival the BNSF was in process of performing the request.

Please advise.



Lisa Anderson, Corporate Secretary
Executive Vice President
PO Box 1700, Richland, WA 99352
Cell 360.239.9067 | Fax 509.582.4964
TCRY.com

On Dec 5, 2016, at 1:36 PM, Jing Wang (ConAgra Foods)
<Jing.Wang@conagra.com> wrote:

<LAMB-WESTON OIL SWITCH REQUEST .xism>

From: Morie.Ratuiste@conagra.com

Subject: BN Cars

Date: December 7, 2016 at 4:32 PM

To: Maria Carranza (Maria@francis-mustoe.com) Maria@francis-mustoe.com, Shannon.Carson@conagra.com

Cc: Lisa Anderson (lisaanderson11@me.com) lisaanderson11@me.com



Just noticed that lately we have been getting a lot of cars via BN. What's driving that? Car shortage? Price?

Locally we are getting better service with UP cars through TCRY, therefore we prefer UP than BN.

We can store our cars at TCRY for several days and just pay a spotting cost of \$175/car. BN charges \$75 per car per day. We are currently using the Henningson Cold Storage's rail spur to store some of the BN cars to avoid BN daily charges but once full it creates unnecessary re-handling cost. So the most cost effective is to spot a car directly from the short line (TCRY or BN).

Again, overall, we prefer UP cars.

Morie

Submission Date 2016-12-19 15:32:00

Company Name Parr Lumber

Your Name Roger Tom

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	1	2	3	4	5	N/A
TCRY response to car movement requests?	-	-	-	✓	-	-
Feedback on system cars available from UP?	-	-	-	✓	-	-
Notification of cars ordered and status en route?	-	-	-	✓	-	-
Notification of arrival and status of cars at TCRY?	-	-	-	✓	-	-
Timely movement of cars from origin to destination?	-	-	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	-	-	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? More

Do you anticipate any changes in the quantity of cars you will ship by rail next year? No

What is your estimate for 2017 UPRR/TCRY carloads? 14

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2016-12-20 11:19:04

Company Name Bio-Gro, Inc

Your Name

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	1	2	3	4	5	N/A
TCRY response to car movement requests?	-	-	-	-	✓	-
Feedback on system cars available from UP?	-	-	-	✓	-	-
Notification of cars ordered and status en route?	-	-	✓	-	-	-
Notification of arrival and status of cars at TCRY?	-	-	-	-	✓	-
Timely movement of cars from origin to destination?	-	-	-	✓	-	-
Timely response to pricing requests from either TCRY or UP?	-	-	-	-	-	✓

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Exactly number planned

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads?

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments

Submission Date 2016-12-20 07:49:58

Company Name Henningsen Cold Storage

Your Name Bill Friend

How would you rate your experience shipping by rail? (1 being lowest, 5 being highest)

	1	2	3	4	5	N/A
TCRY response to car movement requests?	-	-	-	-	✓	-
Feedback on system cars available from UP?	-	-	-	✓	-	-
Notification of cars ordered and status en route?	-	-	-	✓	-	-
Notification of arrival and status of cars at TCRY?	-	-	-	✓	-	-
Timely movement of cars from origin to destination?	-	-	✓	-	-	-
Timely response to pricing requests from either TCRY or UP?	-	-	-	✓	-	-

Did you ship more, less or exactly the number of cars planned at the beginning of the year? Less

Do you anticipate any changes in the quantity of cars you will ship by rail next year? Yes

What is your estimate for 2017 UPRR/TCRY carloads? 100

Are there other services we can provide that would enhance your ability to ship by rail?

Additional Comments TCRY does a great job at spotting and pulling the rail cars as requested. it would be nice if UP and BN gave the same customer service. THANK YOU

From: Morie.Ratuiste@conagra.com
Subject: THANKS!
Date: January 10, 2017 at 3:13 PM
To: Lisa Anderson lisa@tcry.com



Hi Lisa,

Got your voice mail and I just called you back. I've been working from home since yesterday due to this severe winter weather. Hopefully I'll be able make to the office tomorrow. I want to **THANK YOU** and your team for responding to our need especially during this time of inclement weather.

Appreciatively,
Morie

From: Bill Friend bill.friend@henningsen.com
Subject: HCS Rails
Date: October 6, 2017 at 5:32 PM
To: service@tcry.com
Cc: Virginia Fjeld virginia.fjeld@henningsen.com



Hi Guys,

It is great to be working with you again on the Lamb Weston rail program.

The week starting with October 9th Monday we will need 4 cars each day Monday through Friday spotted in doors #1, #3, #5 and door #7.

We are loading a total of 20 cars for the week.

Please have these spotted sometime between 8am and 10am.

Thank you.

Bill Friend | Henningsen Cold Storage Co.
Warehouse Manager/Richland

2025 Saint Street Richland, WA 99354

Phone: 509.578.2002 | Mobile: 509.551.1744

Email: bill.friend@henningsen.com

Web: www.henningsen.com

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From: Jill J. Lee JLee@carbonates.com
Subject: RE: Service Issue #30141 - Web Response for SHPX454575
Date: May 6, 2018 at 7:01 PM
To: TCRY Customer Service service@tcry.com



You guys are awesome!!!

Thank you!!

From: TCRY Customer Service [service@tcry.com]
Sent: Sunday, May 06, 2018 2:13 PM
To: Jill J. Lee
Subject: Re: Service Issue #30141 - Web Response for SHPX454575

Jill,

We received SHPX 454575, SHPX 454571 and SHPX 454569 today. The crew has been informed to place the cars as soon as possible so they can be offloaded Monday morning. I will send an email letting you know once they are placed.

Thank you,

[TCRY]<http://tcry.com>
TCRY Customer Service<mailto:service@tcry.com>
Service@TCRY.com<mailto:service@tcry.com>, TCRY.com<http://tcry.com>
PO Box 1700, Richland, WA 99352
Office 509.371.8313<tel:+1-509-371-8313> | Fax 509.582.4964<tel:+1-509-582-4964>

On May 6, 2018, at 11:52 AM, Jill J. Lee <JLee@carbonates.com<mailto:JLee@carbonates.com>> wrote:

I can't tell exactly where this car is, it says Richland.

Will this car be available for offloading 1st thing Monday morning?

Thanks!
Jill

From: TCRY Customer Service [service@tcry.com<mailto:service@tcry.com>]
Sent: Friday, May 04, 2018 11:58 AM
To: upcustomernotifications@up.com<mailto:upcustomernotifications@up.com>
Cc: LISAANDERSON@TCRY.COM<mailto:LISAANDERSON@TCRY.COM>; Jill J. Lee
Subject: Re: Service Issue #30141 - Web Response for SHPX454575

Good afternoon,

Does this mean that you are trying to get the scheduling fixed so that this car will arrive sooner? Customer has been expecting this car since 4/25.

[TCRY]<http://tcry.com>
TCRY Customer Service<mailto:service@tcry.com>
Service@TCRY.com<mailto:Service@TCRY.com><mailto:service@tcry.com>, TCRY.com<http://TCRY.com><http://tcry.com>
PO Box 6000, Kennewick, WA 99336
Office 509.371.8313<tel:+1-509-371-8313> | Fax 509.582.4964<tel:+1-509-582-4964>

On May 4, 2018, at 10:21 AM, upcustomernotifications- Please Do Not Reply <upcustomernotifications-p-id-174395646-1@up.com<mailto:upcustomernotifications-p-id-174395646-1@up.com>> wrote:

[http://www.uprr.com/graphics/up_shield_email.gif]

Greetings Lisa,

Service Issue #30141 for Equipment ID SHPX454575 has been updated with following response from our service department

Our team is currently working on the equipment to get it up and running again. We are working to get this corrected.

We found an error in our car scheduling logic; car is on plan to set out at Wallula today; and should then move Monday Wallula to Hedges; and Tuesday Hedges to Richland/TCRY. We are working to get this corrected.

For further assistance with this issue please respond back to UP's NCSC's Regional Team<<https://c02.my.uprr.com/wpr/secure/WprWetPull.jas?equipld=SHPX454575&log=30141>>

Thank You

NCSC Regional Team

Union Pacific Railroad

For non service related issues, please contact the NCSC or ICSC at the following numbers Union Pacific National Customer Service Center at 800-272-8777 or the International Customer Service Center at 800-877-0531.

Union Pacific has developed an app that allows users to create, view or respond to a service issue directly from your mobile device. The app is available for free download from the App Store and Google Play. To download, simply access the App Store or Google Play and search for MyUPRR or click this MyUPRR link<https://www.up.com/customers/my_links/mobile/index.htm?campaign=service_issue_notification_email> for more information. If you have any questions about our new MyUPRR app, please contact our eBusiness Team at 1-800-872-1045.

[https://c02.my.uprr.com/ebz_shmt_mgmt/mobile/myuprr_mobile_app_release.gif]
<https://www.up.com/customers/my_links/mobile/index.htm?campaign=service_issue_notification_email>

This message was generated from an automated email service. Please do not reply to this E-mail.

From: Invmgr costlesscarpet.com invmgr@costlesscarpet.com @
Subject: Re: Follow Up Email
Date: March 12, 2019 at 8:12 AM
To: TCRY Customer Service service@tcry.com



Please see attachment.

Thank you,

Liz Lucke
Cost Less Carpet

On March 7, 2019 at 1:21 PM TCRY Customer Service <service@tcry.com> wrote:

Good morning,

This message is in follow up to your conversation with Rhett Peterson yesterday.

If you are able to provide a letter or email speaking to your experience working with Tri-City Railroad it would be greatly appreciated.

We would encourage you to include the following:

1. When did you begin your business relationship with Tri-City Railroad?
2. What was the nature of the relationship?
3. What was the duration of the relationship?
4. If no longer doing business with TCRY, why did it come to an end?
5. How did we perform?
6. Were you a satisfied customer?
7. Given the opportunity would you do business with TCRY again?
8. Any additional thoughts or feelings regarding your experience with us.

Your response may be returned to the email address of this message.

Thank you very much for your time and consideration of our request.

<<http://tcry.com/>>

TCRY Customer Service <<mailto:service@tcry.com>>

Service@TCRY.com <<mailto:service@tcry.com>>, TCRY.com <<http://tcry.com/>>

PO Box 6000, Kennewick, WA 99336

Office 509.371.8313 <<tel:+1-509-371-8313>> | Fax 509.582.4964 <<tel:+1-509-582-4964>>



Tri-City Rail
Road.odt

From: Janet Walker JWalker@akrailroad.com
Subject: RE: Follow Up Email
Date: March 20, 2019 at 1:52 PM
To: service@tcry.com, rhett@tcry.com
Cc: Rocky Smith RSmith@akrailroad.com



Please see responses below.

From: Casey C. Miller
Sent: Wednesday, March 20, 2019 11:48 AM
To: Rocky Smith; Korey Richins; Janet Walker
Subject: Fwd: Follow Up Email

Rhett, asked if we could provide a letter of satisfaction following the outline attached.

Thank You

Casey Miller/ Project Manager
A&K Railroad Materials Inc. (801-680-8242)

Begin forwarded message:

From: TCRY Customer Service <service@tcry.com>
Date: March 20, 2019 at 10:45:23 AM PDT
To: "Casey C. Miller" <CCMiller@akrailroad.com>
Cc: TCRY Customer Service <service@tcry.com>, Rhett Peterson
<rhett@tcry.com>
Subject: Follow Up Email

Good morning,

This message is in follow up to your conversation with Rhett Peterson today.

If you are able to provide a letter or email speaking to your experience working with Tri-City Railroad it would be greatly appreciated.

We would encourage you to include the following: Please see responses below

1. When did you begin your business relationship with Tri-City Railroad? Job 1670
2. What was the nature of the relationship? Railroad shipping and land lease
3. What was the duration of the relationship? ongoing
4. If no longer doing business with TCRY, why did it come to an end?
5. How did we perform? Always excellent

6. Were you a satisfied customer? Totally
7. Given the opportunity would you do business with TCRY again? Yes
8. Any additional thoughts or feelings regarding your experience with us.
These people have been great to work with, very accommodating and always accessible.

Your response may be returned to the email address of this message.

Thank you very much for your time and consideration of our request.



TCRY Customer Service

Service@TCRY.com TCRY.com

PO Box 6000, Kennewick, WA 99336

Office 509.371.8313 | Fax 509.582.4964



COLUMBIA RIVER CARBONATES

300 North Pekin Road
Woodland, Washington 98674
Phone: 360-225-6505

3/22/2019

To who it may concern,

Columbia River Carbonates began a business relationship with Tri-City Railroad Company on the 12th day of April, 2017, which is ongoing. The services performed consist of rail car storage and transloading from rail car to truck of limestone and gypsum. On an annualized basis TCRY transloads in the range of 30 to 40 rail cars for CRC. This service is critical to for CRC to participate in the growing organic crops marketplace in the Columbia Basin. The services that were agreed upon have been performed satisfactorily.

Feel free to contact us with any questions.

Best Regards,
Jason A. Imes

Jason A. Imes

Manager – Agronomist



A&K Railroad Materials, Inc.

P.O. Box 3076 | Salt Lake City, Utah 84130 | P 801.974.5484 | F 801.973.7393 | www.akrailroad.com

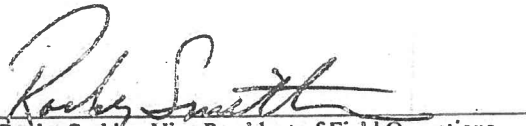
March 22, 2019

RE: Tri-City Railroad Company

To whom it may concern:

We have done business with Tri-City Railroad since 2010 to present.
We have leased property from Tri-City and used it to store and ship railroad materials.

They have been excellent to work with and always accommodating and helpful.
We are very satisfied and would be happy to do business with the again.


Rocky Smith – Vice President of Field Operations
A&K Railroad Materials, Inc.

Always Moving Forward



March 25, 2019

To: Tri-City Railroad

From: Calbag Resources

Re: Customer Satisfaction Letter

I wanted to take a moment and personally thank you for your support and service while my firm completed the Hanford Nuclear Reactor Demolition and scrap metal effort in Richland Washington. In the 14 months my crews were on the project often said to myself but probably not shared with you was the stellar service and flexibility you showed while moving my many scrap cars to scrap mills located in numerous states. Specifically, your assistance with the ordering of scrap rail road cars, spotting and pulling full scrap rail cars was meaningful help to my field crews. In my many years of providing demolition, scrap and asset disposal services throughout the country I have always struggled trying to navigate the Rail Industry quirks to which you solved in just moments for the Hanford Project.

While the project has been completed if I were ever to perform addition work at the Hanford site I would bring you onto my project team to perform transportation and logistics services in a moment.

Sincerely,

Cliff Boyd
Director of Asset Recovery
US Operations Group
Calbag Resources LLC.

EXHIBIT LCA-4

MAINTENANCE TOLL FEE

TRI-CITY RAILROAD COMPANY, LLC

MAINTENANCE TOLL FEE

This Maintenance Toll Fee is applicable on intrastate and interstate traffic, except where expressly provided to the contrary in connection with particular items.

MAINTENANCE TOLL FEE – HORN RAPIDS INDUSTRIAL PARK

ISSUED: JUNE 5, 2018

EFFECTIVE: JUNE 25, 2018

ISSUED BY

**Lisa Anderson, Executive Vice President
Tri-City Railroad Company, LLC
10 North Washington Street
Kennewick, WA 99336**

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

In 2002 the Tri City Railroad Company (TCRY) entered into a long term Railroad Lease with the Port of Benton. For the following 15 years TCRY performed track maintenance using revenues derived, in part, from operating on the tracks as the Union Pacific Railroad handling carrier.

On December 8th, 2017 the Union Pacific Railroad began direct operations on the railroad track and ceased using TCRY as its handling carrier. This change eliminated revenues received from Union Pacific Railroad, part of which were used to fund track maintenance.

TCRY receives no financial compensation or funding subsidy from the track owner, the Port of Benton.

The City of Richland owns the Horn Rapids Industrial Park. The City of Richland owns the tracks within the Horn Rapids Industrial Park that connect to the tracks outside the park that are maintained by TCRY.

The City of Richland owned Horn Rapids Industrial Park has, does and will continue to benefit from railcars traveling safely over the tracks maintained by TCRY bound for or bound from the Horn Rapids Industrial Park.

For the past six months since December 8, 2017, TCRY has evaluated various options to replace the revenues no longer provided by the Union Pacific Railroad to TCRY for track maintenance.

The Maintenance Toll Fee is a reasonable cost to benefit assessment.

The Maintenance Toll Fee applies to all railcars traveling on the Port of Benton own tracks maintained by TCRY to and from the City of Richland Horn Rapids Industrial Park.

The Maintenance Toll Fee is assessed by TCRY to the City of Richland, the owner of the Horn Rapids Industrial Park.

Fees charged are in accordance with maximum gross weight on rail rating of each railcar as follows:

263,000 lbs.	\$ 75 per round trip
286,000 lbs.	\$ 95 per round trip

The Maintenance Toll Fee will provide a continuous revenue stream to TCRY thereby ensuring the financial resources necessary to optimally maintain the railroad tracks which in turn ensures safe and efficient flow of rail traffic traveling to and from the City of Richland Horn Rapids Industrial Park.

Maintenance Toll Fees are invoiced weekly and due upon receipt of TCRY invoice.

-END-

EXHIBIT LCA-5

MISCELLANEOUS CHARGES SUPPLEMENT 1



MISCELLANEOUS CHARGES

Supplement 1

Dated August 28, 2018 Effective September 18, 2018

GENERAL APPLICATION

- A. TCRY shall mean TRI-CITY RAILROAD COMPANY, LLC
- B. TCRY trackage shall mean approximately sixteen (16) miles of trackage extending from the RICHLAND CONNECTION in Kennewick, Washington to the Port of Benton's MANUFACTURING MALL in Richland, Washington and generally bordered by Horn Rapids Road on the North, formerly known as the 1100 Area.
- C. All cars are subject to this Supplement 1 and to the MISCELLANEOUS CHARGES Tariff effective July 11, 2015
- D. Contact for TCRY is: TCRY attention Tariff Department, PO Box 6000, Kennewick, WA 99336, telephone 509-371-8313 or 360-239-9067.
- E. TCRY Rules, Tariffs and Accessorial Charges apply when cars are on the TCRY.
- F. The responsible party is the entity subject to this Supplement 1 to the Miscellaneous Charges Tariff.

7. Item 1. Storage Restrictions in TCRY tariff "Miscellaneous Charges" effective July 11, 2015 is deleted in its entirety and replaced with:

1. Railcar Storage

Railcar storage is available on TCRY for cars of any ownership when track space is available in the sole judgment of TCRY. Contact TCRY for track availability. Storage of railcars requires a written Agreement between TCRY and the responsible party for payment of storage charges.

8. Item 2. Intra-Plant & Intra-Line Switching in TCRY Miscellaneous Tariff effective July 11, 2015 is deleted in its entirety and replaced with:

2. Switch Charge

The switch charge of Six Hundred Dollars (\$600.00) per car per switch will be charged for switching of cars. TCRY reserves the right to switch any car while that car is on approximately sixteen (16) miles of TCRY trackage extending from the RICHLAND CONNECTION in Kennewick, Washington to the Port of Benton's MANUFACTURING MALL in Richland, Washington and generally bordered by Horn Rapids Road on the North, formerly known as the 1100 Area. A Fuel Surcharge is in addition to the Switch Charge and added to the Switch Charge. The Fuel Surcharge is calculated in accordance with the current "United States Department of Energy on Highway Diesel Fuel Price U.S. Average plus surcharge".

9. Item 5. UP Circular 16-E Governing Rules in TCRY Miscellaneous Tariff effective July 11, 2015 is deleted in its entirety and replaced with:

5. Railroad Maintenance Charge

A track maintenance charge of Ninety-Five Dollars (\$95.00) per car will be charged by TCRY on all cars that enter the TCRY at RICHLAND CONNECTION in Kennewick, Washington.

This charge will be collected by and accrue solely to the TCRY. This charge will be in addition to all other applicable charges.

10. Payment of Charges

The responsible party must pay TCRY in accordance with the payment terms identified on the TCRY invoice.

Cars on the TCRY system line shall be deemed acceptance of responsibility for payment of all charges accruing on the cars. Such payment shall be in U.S. money and cannot be reduced to offset claims, damages to property, or for any other reasons.

LATE FEES & FINANCE CHARGES: The TCRY will assess a Five (5%) Late Fee plus a finance charge of 1.5% per month (18% per annum) on all unpaid bills that are past due. If TCRY, at its sole discretion, uses a collection agency or attorneys to collect delinquent bills for freight or other charges and TCRY is successful in collecting such charges, the responsible party shall reimburse TCRY for its reasonable collection costs, including reasonable collection agency fees and reasonable attorneys' fees.

END

EXHIBIT LCA-6

NEW OPPORTUNITIES



Bid Details Page

Current User: cdy@up
Logout

Name: Lisa Anderson

Company Name: TRU CITY RAILROAD

EM ID: 42322

Bid Post Date: 01/14/19

Bid Expiration Date: 02/12/19

Marketing Manager: Meghan Black

Status: New

Vendor Name: TRU CITY RAILROAD COMPANY LLC

Rate Effective Date: 01/01/19

Rate Expiration Date: 12/31/19

Unit Description	Package Type	Palletized	STCC	Product Description	Special Handling
Length	48.00 inches	Units per Rail Car	0	80001 Palletized Gear	
Width	48.00 inches	Volume	247 Rail Cars Per Year		
Height	48.00 inches	Business Operation	On-Growing		
Required handling equipment	Forklift				
Weight per Pallet	2500.00 Pounds				
Weight per Car	130000.00 Pounds				

Rate Request	Messages(s)	Comments(s)							
Name: No Destination: Truncated Rate Request: Accessorial/Volume Added Services									
Service Location	Rail Car	Truck Type	Trucks Per Car	Rate(USD)	UCM	Rate Type	Qty	Comments	Action
Richtland, Washington RICHLAND, WA JUS	Bonow		0	0.00	Per Car	Opportunity Specific	1		

Rate Type
 Remarks: By selecting generic rate you give Loup permission to use this tariff rate on other opportunities of the same product specification and services required
 Opportunity Specific: This rate is only valid for this specific opportunity and will not be used for other customers or commodities
 Special Conditions (applicable to all services)

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From: JEFF GOLIAN jgolian@comcast.net
Subject: Re: Fwd: Opportunity
Date: February 1, 2019 at 1:21 PM
To: Lisa Anderson lisaanderson@tcry.com



Lisa,

I have submitted counter proposal to the Commtrex offer.

This, along with two other offers (Trinity / CIT) should yield TCRY the car storage business Randy has asked me to seek.

Another company, Marathon, has put our offer on hold until they determine need.

I will advise any further developments as they become known.

Jeff Golian - 303 903-0484

On January 31, 2019 at 4:57 PM Lisa Anderson <lisaanderson@tcry.com> wrote:

Good afternoon Jeff,

I am checking in on below.

Not sure if you received a separate notification directly from Commtrex but I would be most interested in any update you have to share.

Thank you.

Lisa Anderson
Executive Vice President
Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067

Begin forwarded message:

From: Lisa Anderson <lisaanderson@tcry.com>
Subject: Opportunity
Date: January 28, 2019 at 1:33:44 PM PST
To: Golian Jeff <jeff@tcry.com>

Good afternoon,

See link below and let me know if you are part of this opportunity or if this is new news.

<https://exchange.commtrex.com/listing/storage/1493?offerReqld=352>

Thank you Jeff.

Lisa Anderson
Executive Vice President
Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067



LOUP Bid Details Page

 Current User: v110457
 Logout

Name: Lisa Anderson

Company Name: TRI CITY RAILROAD

Bid ID: 44090

Bid Post Date: 02/15/19

Bid Expiration Date: 03/17/19

Marketing Manager: Brad Hooker

Status: Expired

Vendor Name: TRI CITY RAILROAD COMPANY LLC

Rate Effective Date: 02/15/19

Rate Expiration Date: 02/15/20

Package Type	Bulk	STCC	Product Description	Special Handling
Units per Rail Car	0	3229924	Cullet	Auger for the crushed glass, Need load 1,000T / month
Volume	1000 Tons Per Month			
Business Duration	3-6 months			

You can not submit bid as Rate is already sent to Customer

Rate Request	Message(s)	Document(s)							
Hazmat: No Origin Transload Rate Request: Accommodated/Value Added Services									
Service Location	Rail Car	Truck Type	Trucks Per Car	Rate(USD)	UOM	Rate Type	Qty	Comments	Action
Richland, Washington, RICHLAND, WA, US	Covered Hopper (Gravity Dump)		0		Per Car	Opportunity Specific	1		

Rate Type
 Generic: By selecting generic rate you give Loup permission to use this tariff rate on other opportunities of the same product specification and services required
 Opportunity Specific: This rate is only valid for this specific opportunity and will not be used for other customers or commodities
 Special Conditions (applicable to all services)

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From: Lisa Anderson lisaanderson@tcry.com
Subject: Opportunity
Date: March 7, 2019 at 8:15 AM
To: Randolph Peterson rvpeter@me.com, Rydel Peterson rydel@rvpiegal.com, Rhett Peterson rhett@tcry.com, Jose Romero Jose@tcry.com
Cc: Quentin Hanley quentin@tcry.com, Jamie Robison jamie@tcry.com

Gentlemen,

We have been contacted by Paul Brooks with Silvaris Corporation (2068053081 - paulb@silvaris.com). He is interested in bringing in 10 cars to start with. His needs include having produce offloaded and stored for pick up by trucks. The first car would arrive in 3-4 weeks with additional inbound cars staggered thereafter for approximately 30 days. At this time the purpose is for a special project. He would like to obtain a cost from us.

The details are as follows:

Quantity: 10 cars to start
Type of car: Box car
Commodity: Allen ties - STCC unknown at the time
Dimensions: 42" wide x 40" high by 8.5 ft long on 2x4 runners
Storage: outside will meet their needs
Duration of storage: a few days but less than a week
Trucking: currently to be arranged by Silvaris

Paul is currently pursuing which Class I to use.

Please advise your thoughts and thank you.

Lisa Anderson
Executive Vice President
Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067

From: Lisa Anderson lisaanderson@tcry.com
Subject: Opportunity
Date: March 12, 2019 at 3:50 PM
To: Randolph Peterson rvpeter@me.com, Rydel Peterson rydel@rvplegal.com, Rhett Peterson rhettwater@me.com,
Romero Jose Jose@tcry.com
Cc: Quentin Hanley quentin@tcry.com, Jamie Robison jamie@tcry.com

Folks,

We have been contacted by John Eakin with Environmental Technologies or EnviroTech (5097280998 - john@ETIdairy.com).

He would like to bring in 1 to 1.5 railcars per month.

His company currently stores the product in Grandview and trucks to the end users from there. He would like to receive cars at our facility and negotiate storage into the agreement as they have private cars and could offload right here and deliver to their customers.

This company primarily serves owners of cows.

The commodity is formaldehyde which is used in a foot bath formula for the livestock.

The details are as follows:

Quantity: 1 to 1.5 cars per month

Type of car: tanker

Commodity: formaldehyde - STCC unknown

Hazmat: Yes - placard 3406

Carrier: UP

Please advise your thoughts and thank you.



Lisa Anderson, Corporate Secretary
Executive Vice President
PO Box 6000, Kennewick, WA 99336
Cell 360.239.9067 | Fax 509.582.4964
TCRY.com

From: Lisa Anderson lisaanderson@tcry.com

Subject: Opportunity

Date: March 26, 2019 at 2:41 PM

To: Randolph Peterson rvpeter@me.com, Rydel Peterson rydel@rvplegal.com, Rhett Peterson rhetwater@me.com

Gentlemen,

On March 20th I was contacted by Sam Hines with King of Freight (3165305490 - shines@kingoffreight.com). He is interested in bringing in trucks/heavy equipment on flatcars.

The origin in Wichita, KS and the destination is here in Richland.

Due to a bad connection we were unable to finish our conversation and he was to contact me when he was in a better location.

Today we spoke again and he renewed his interest in working with TCRY to discuss the project at greater length.

He asked if we had the ability, resources and space to for him to negotiate transloading of freight.

I said that based on need, we have customers who perform their own transloading or we could also perform that service.

He said that sounded just like what he was looking for and asked for my email.

I sent him a test and will stand by for more detail to be provided.

At that time I will circulate for discussion.

Thank you.



Lisa Anderson, Corporate Secretary
Executive Vice President
PO Box 6000, Kennewick, WA 99336
Cell 360.239.9067 | Fax 509.582.4964
TCRY.com



LOUP Bid Details Page

Current User: xj1462

Logout

Name: Lisa Anderson

Company Name: TRI CITY RAILROAD

Bid ID: 44842

Bid Post Date: 03/26/19

Bid Expiration Date: 04/25/19

Marketing Manager: Meghan McMain

Status: New

Vendor Name: TRI CITY RAILROAD COMPANY LLC

Rate Effective Date: 04/01/19

Rate Expiration Date: 03/31/20

Package Type	Bulk	STCC	Product Description	Special Handling	Storage
Units per Rail Car	0	2818142	Bulk DEF		Storage Type: Track Storage
Volume	101200 Net Tons Per Month				Storage Space: 0.0
Business Duration	12+ months				Stackability: 0.0

Rate Request									
Destination Transload Rate Request									
Hazmat: No Destination Transload Rate Request Destination Storage Rate Request Accessorial/Value Added Services									
Service Location	Rail Car	Truck Type	Trucks Per Car	Rate(USD)	UOH	Rate Type	Qty	Comments	Action
Richland, Washington, RICHLAND, WA, US	Tankcar (Bottom Discharge)		0	0.00	Per Car	Opportunity S	0		

Rate Type
 Generic: By selecting generic rate you give Loup permission to use this tariff rate on other opportunities of the same product specification and services required
 Opportunity Specific: This rate is only valid for this specific opportunity and will not be used for other customers or commodities
 Special Conditions (applicable to all services)



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From: Lisa Anderson <lisaanderson@tcry.com>
Sent: Friday, April 12, 2019 2:24 PM
To: DeBower, Tony [REDACTED]
Subject: [EXTERNAL] - Tyson Railcars at Richland

Tony,

In follow up to our conversation this week, TCRY is able to accommodate your request to store equipment on our line.

There will be a charge of [REDACTED], which covers both the inbound and outbound switch.

There will be a daily fee of [REDACTED].

All equipment shall be empty non-hazmat railcars.

If possible, 48 hour notice is requested to us on the outbound switch request.

Cars shall be provided on a first in first out basis by car type when requested.

Payment terms shall be net 15 unless otherwise discussed.

Your confirmation of acceptance by responding to this email is most appreciated.

Thank you for reaching out to TCRY - we look forward to working with Tyson again.

Lisa Anderson
Executive Vice President
Corporate Secretary
Tri-City Railroad Company, LLC
(360) 239-9067

This email and any files transmitted with it are confidential and intended solely for the use of the addressee. If you are not the intended addressee, then you have received this email in error and any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. Please notify us immediately of your unintended receipt by reply and then delete this email and your reply. Tyson Foods, Inc. and its subsidiaries and affiliates will not be held liable to any person resulting from the unintended or unauthorized use of any information contained in this email or as a result of any additions or deletions of information originally contained in this email.

From: "DeBower, Tony" [REDACTED]
Subject: RE: Tyson Railcars at Richland
Date: April 12, 2019 at 2:30:43 PM PDT
To: Lisa Anderson <lisaanderson@tcry.com>

Lisa,

Thank you for taking the time to talk and work with us this week. We are happy to be working with you again on our rail strategies. Below is some contact information that you will likely need from Tyson.

Corporate:

Randy Strait – SR Director Transportation: [REDACTED]
Tony DeBower - Senior Manager Transportation: [REDACTED]

Audit/Rating

Nicole Twiford – Manager Bulk Commodity Pricing: [REDACTED]
Chloe Minor - SR Supervisor Transportation: [REDACTED]
Amanda Sindelar – Distribution Administrator – [REDACTED]

Operations

Jennifer Skoglund – General Manager Trans: [REDACTED]
[REDACTED]

Terry Steele – Transportation Specialist Rail: [REDACTED]
5:30 am – 1300 monitors Inbound equipment and reporting

Susan Martinez – Transportation Associate Rail: [REDACTED]
0800-1700 monitors Outbound Cars, Export Car billing, billing errors, cars repairs, reporting and misc. rail functions

Nicky Nhen – Associate Transportation: [REDACTED]
0800-1700 Assists with billing functions

When billing us, please send the invoices to [REDACTED] accounting. This will go to the Audit and Rating team for processing.
If there are operational issues, [REDACTED] and it will go out to the whole operations team.

If you have any questions, please let us know.

Thank you,

Tony DeBower M.S., Sr Manager Transportation
Rail Service Transportation [REDACTED]

VERIFIED STATEMENT

OF

JOSE ROMERO

My name is Jose Romero, I am the Operations Manager of Tri-City Railroad. I have been employed by the Peterson entities for a total of approximately ten years.

In between my employment, I worked for five years for Watco Companies as the Operations Manager managing a short line operation at Wallula, WA who services Boise Cascade. We interchanged with the UP and BNSF. My duties included overall responsibility for safety, crews, maintenance of way, locomotives, daily operations, financial reporting and weekly projections.

In my current role, I am responsible for the entire operation. This includes safety, dispatching and scheduling, transloading, track/signals/bridges, locomotive and equipment maintenance, purchasing, training, FRA compliance and building maintenance. I actively participate in the completion of this work depending on manpower and need.

Bridge Work

As part of running the operations side of the railroad, I work with the TCRY bridge engineer, Ken Kirschling of Railstar Engineering. I update him on the bridges and then annually he performs a bridge inspection. Ken also updates our bridge management plan and then I conduct an annual meeting with the crew to share new information with them.

In November of 2017 Railstar Engineering performed the annual bridge inspection.

In May of 2018 inspectors Bruce Roper and Mike Pirato conducted a bridge inspection which included the Yakima River Bridge. The inspection results identified defective bridge ties. A post inspection meeting was held to discuss the results. I worked with the railroad office on purchasing materials and learned that the ties would have to be special ordered and delivery would take weeks. I contacted

Bruce and obtained approval to use filler on the ties for a temporary solution while we waited for the order to be delivered and the ties could be installed. I also began to inspect the bridge daily for change in condition.

On June 15th we received in writing, Bruce's conditions that needed to be met in order to keep the bridge open. The second condition required that speed over the bridge remain no more than 10 mph.

I made sure the employees received updated training on fall protection and bridge safety during the planning phase of the tie installation project. On August 27th the ties were received. I scheduled the first maintenance window and notified the class 1's. Due to backlash from the Port the dates were cancelled. It was determined the ties would be installed in separate maintenance windows so that the bridge would not be out of service for too many consecutive days.

On November 7th Railstar Engineering performed the annual bridge inspection.

After working with the Class 1's to find out what days were least disruptive to their schedule, the first maintenance window was scheduled for the first week in December and six ties were installed. Later in December Bruce Roper contacted me. It had been 6 months since his inspection, and he requested that the TCRY bridge engineer and I participate in an inspection of the Yakima River Bridge. Mr. Roper wanted the TCRY engineer to provide his feedback on the condition of the bridge. This inspection took place on December 20th. At the end of the inspection a meeting was held at the railroad office. Due to the amount of deterioration observed on this date vs during the annual bridge inspection, Ken Kirschling did not feel comfortable with the bridge remaining in service after this day unless a commitment was made to install 30 new ties within 30 days. If no commitment was made, Ken was going to shut the bridge down. TCRY considered this number of ties a capital project and the group contacted the Port of Benton for a financial commitment. The Port agreed to pay for the capital project because they did not want the bridge to be closed. I worked closely with Ken Kirschling on this project. The second weekend

in January we installed 22 ties on the Yakima River Bridge. The third maintenance window was cancelled due to weather. It has not been rescheduled.

To this day, we continue to inspect the bridge daily except for Saturdays as there are no trains on this day. The tie defect received of May 15, 2018 has been addressed. More ties, however, are scheduled for installation.

Track Work

In 2018 TCRY was planning signal upgrade projects and the tie installation project in addition to routine maintenance requirements. The Port implemented a maintenance window of 1:00 – 6:00 p.m. daily. This reduced the amount of track maintenance we were able to perform. This was also the warmest part of the day.

I have had to reduce my crew size due to lack of funding. With the number of employees I have remaining, I need them all to work on the same projects at times and with reduced hours we are limited in what we can get done.

In order to help control the damage to the track being caused by the level of train traffic TCRY reduced the entire track to excepted track on September 10, 2018.

The track is in compliance and we will continue to maintain it to FRA compliance as we have for years.

Five years ago, we had one FRA inspection per year for track, one FRA inspection for signals and one FRA inspection for crossings. Currently, inspections are four to five times per year for signals and three to four times per year for the track. I have come to know many inspectors and am able to contact them as a resource when questions come up. I have never received a violation for any inspection performed. Any defects identified in an inspection have all been addressed. If a defect had been serious, the FRA would have issued a violation. Defects are standard issue in a railroad.

Since the Class 1's started coming in direct we have had to do a lot more work on the track. The increased traffic has really affected the track. We have also had to do more crossing gate repairs due to the traffic of Class 1's. More unit trains coming through means more stops at crossings and more crossing repairs and more crossing incidents.

When the City of Richland loop track opened, BNSF traffic increased. Track maintenance and repair increased; frog welding and switch point welding increased. Signal incidents increased. Call outs increased. The unit train traffic is hard on the track. Sometimes there are two unit trains per month.

Horn Rapids Rail Spur

Since the beginning of Preferred Freezer in 2015, everything worked fine operationally. In 2015 I had 5 employees working just to service the Freezer. We also had customers at our mini loop track which were being serviced regularly.

The City of Richland moved the location of the entrance to the spur. The city lead sign was taken out of the ground which had been there for years and replaced in another spot. When that happened, new track was built going into the new City of Richland loop track and I believe the City wanted to be in the City Lead not outside of the City Lead.

In 2017 when we were cancelled by the UP, we could no longer move trains from the yard onto the City lead. We had to relocate customers from our loop track to the rip track at the yard. I feel we lost customers as a result of this change. Some of my guys were laid off.

Current Conditions

This year I had to lay off more guys when our contract with Preferred Freezer was cancelled. I now have one full time employee and three part time employees. We still perform train service daily as needed and take care to address all track maintenance.

When the media reports showed that the Port of Benton was trying to evict us it was hard to maintain employee morale. The Port of Benton posted notices on buildings and at crossing bungalows. This instilled fear in my guys that they would lose their jobs.

Employee staff was reduced through lay offs but I also lost employees who found other jobs because they were afraid of getting laid off if they stayed.

On the Yakima Bridge project, it was hard to keep the employees focused on the work when Port representatives kept showing up and wanting to oversee our work. Cameras were even installed which I believe were put there to watch us. The Port paid staff to stand at the bridge during the project yet they were not involved in the project.

Upon completion of the tie installation, although conducted with our bridge engineer, the Port paid their own engineer to complete a separate inspection.

The Port has paid for Holland Truck and GREX to inspect the track with xray machines twice. This information is quite expensive and TCRY does not have a budget for it. The xray machines are able to capture more detailed information regarding condition than an individual is able to capture in an inspection. Although the information is very helpful to the railroad, I don't believe the Port conducted these inspections to be helpful to TCRY.

There are times when the Port has inspectors on site performing additional inspections on top of TCRY inspections and have even disputed FRA inspection results and confronted FRA inspectors for performing an inspection without Port permission. In my experience FRA inspectors do not ask for permission to conduct inspections. There is a reason for this.

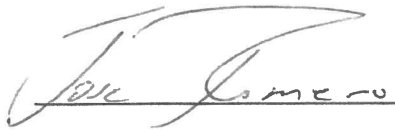
Since both Class 1's have been running direct, I have had a hard time getting them to follow TCRY procedures even after talking with them and emailing them and contacting their supervisor. For

example, I have a speed gun and have clocked them speeding four times. The BN said they would slow down and they have. The UP says their locomotive speedometer was not working and they will try to keep the limit. I have also talked to them about blocked crossing and blocked tracks. I have tried to address this with them directly and also turn it in to my office so they can address it through their correspondence. We have an interchange track which is to remain clear. We have other tracks that are to remain clear for the passing of trains for all users. The UP has left cars on tracks since last December. They continue to leave cars at the ladder track to this day. They just say they have no place to put them. The BNSF takes their cars back to their own yard. Everyone should follow the same rules. I put a lock at the Richland junction track to avoid cars being stored there by the UP. The lock was cut off and I was told by the UP conductor that he was told to cut it off. When dispatch is called, car numbers are not always reported. When requested, this information is refused. At times, they fail to contact dispatch at all to check out. This makes extra work for TCRY to try to manage users who refuse to follow the rules that are in place for everyone.

This is a well done job. I stand behind our work. I would operate a train on this track, bridges and crossings if on a train crew. This work is done by the book. We do things the same way we have always done them but now we do it with less people and with TCRY paying for everything.

AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Signed on April 3, 2019.


JOSE ROMERO

**VERIFIED STATEMENT
OF
QUENTIN HANLEY**

My name is Quentin Hanley. I have worked for Tri-City Railroad Company, LLC. since June of 2017. I am responsible for working with Jose Romero to make sure the operations needs are communicated and met. This includes but is not limited to ordering supplies for track maintenance such as railroad ties, spikes, locomotive needs, and various crossing parts as well as obtaining quotes and organizing special services for track maintenance projects. I communicate customer needs to the crew and handle the day to day Car Movement tasks such as the inbound and outbound transportation of customer cars and recording all rail activity on the TCRY line that is reported by our crew. Also, after an FRA inspection I create a summarized checklist of items that need to be addressed to help keep track maintenance needs organized.

Customer Relations

Daily car movement tasks are some of my biggest responsibilities. Working with the customers and crew to ensure that operations are moving smoothly has always been very important. Customer needs would come in on a daily basis with Preferred Freezer Services needing two switches nearly every day. We made ourselves available at every hour of the day to meet our customer's needs. In December of 2017 the Union Pacific began to run direct and dropped TCRY as their handling carrier. Simultaneously TCRY was no longer allowed on the City Lead which blocked us off from our largest customer as well as cut us off from our loop track, but we continued to serve our customers to the best of our ability. After a few months the UP slowly started co-operating less and less with TCRY, often not including all our customers cars on their

418's and having to contact them multiple times to get them to do so. I personally was having to call them nearly every night to inbound cars. Eventually they refused to send 418's for us to inbound cars and getting them to take the cars that our customers were ready to outbound became a struggle. The UP would leave the cars sitting at the ladder on the TCRY line for days or even weeks after being notified of the outbounds. Each time the UP would be contacted multiple times in an attempt to get the cars moving. This was upsetting to our customers and caused them great delays in their products transportation. The UP claimed that this was due to TCRY not correctly releasing the cars but the UP still refuses to interchange cars with TCRY. PFS was no longer receiving the regular services that we provided them, and their service became completely dependent on the UP showing up or not. At this point the UP has completely taken over servicing PFS and we have been blocked out.

Grant Crossing Upgrades

Over the summer of 2017 I was introduced to a grant project that had been in the works for some time that was to fund the upgrade of the crossings on our line. The upgrade included a more modern bungalow with new wiring and electronics, a better pre-emption system and all lighting was upgraded to the more visible LEDs. The existing bungalows were prone to overheating in the summer heat which could cause the crossings to not function properly, the new bungalows were designed to keep them from overheating. The ordering process began in early 2018 and we were able to begin installing the upgrades in the summer of 2018 after everything had been received and assembled. The upgrades required that the crossing be taken out of service until work was completed. The Class 1s were notified before each crossing was taken out of service and all work took approximately one week to complete at each location with the exception of the

Airport crossing which had a gate arm that needed to be relocated to compensate for the upgrades that were being done to the Richland Airport and took approximately two weeks.

This explains most of the service interruptions listed by Mr. Jeremy M. Berman of Union Pacific in Exhibit B of the Port's Application.

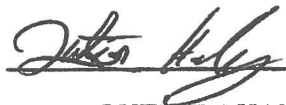
Yakima River Bridge

On May 15, 2018 Bruce Roper with the FRA started his inspection of the Yakima River Bridge. It was determined that a number of the ties were in very poor condition and needed to be replaced. As a large portion of the deteriorated ties fell within a 39-foot segment of track it was noted as an FRA violation, which gave us 30 days to remedy. I began the process of identifying a vendor to provide the correct size of bridge ties for our bridge and it was determined that the ties would need to be specially ordered for the correct cut which would take the mills longer than normal to complete the job. I placed the purchase order for 60 new custom cut ties on May 30, 2018 which was more than the number of ties noted as defective. Bruce Roper was notified that we wouldn't be able to address the defect in the allowed 30 days and we asked him for an extension. Bruce Roper agreed so long as he was kept updated on the progress of the bridge, TCRY agreed to inspect the bridge daily for changes in condition and, at the suggestion of Jose Romero, all the defective ties were to be treated with a filler to strengthen them until they could be replaced. I provided regular updates to Bruce from May of 2018 to January of 2019. Once it was determined that our crew would replace the ties themselves, instead of hiring an outside company, we enrolled them in a fall protection and bridge workers safety course. Due to a backlog of orders and the mill being shut down for maintenance we did not receive the new bridge ties until August 27, 2018. TCRY notified the UP, and BN that the Yakima River Bridge

would need to be taken out of service for a few days to replace the ties. In order to replace the ties, segments of rail would need to be released and the line would be unpassable until the work was completed. This was met with backlash from the UP, BN and the Port of Benton. TCRY cancelled the work on the bridge until a workable solution was identified. In December 2018 TCRY was allowed a three day window to start the work that would give little delay to the other carriers. A safety meeting was held before work started each day and a job briefing for that day's goals was given. To keep from overcrowding on the bridge we had a limited number of crew members on the bridge at any given time. The port sent representatives out each day to observe our work, for safety we did not allow them out on the bridge. Immediately after we finished our first work window the Port scheduled an inspection with their own contractors. At the end of December Bruce Roper and Ken Kirschling came out to inspect our work on the bridge. They determined that if a sufficient number of ties were not installed by the end of January the Yakima River Bridge would need to be shut down until work was complete. After a discussion with the Port another work window was set for the next set of ties. Despite freezing temperatures, we were able to install 20+ more ties. After that our third window was cancelled due to bad weather conditions and to date, we have not scheduled our next work window.

AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Signed on April 3, 2019.


QUENTIN HANLEY

**VERIFIED STATEMENT
OF
JAMIE ROBISON**

Jamie Robison, being duly sworn, deposes and states as follow:

My name is Jamie Robison and I have been an employee with Tri-City Railroad for 3 years. During that time my job duties have included organizing and cataloging documents, accounts receivable and payable, project management, and other various administrative duties.

In my three years at Tri-City Railroad I have attended several meetings with the Port of Benton including monthly Commission Meetings and Railroad Meetings where representatives from the Class 1's have been present. In many of these meetings items of concern have been addressed such as the blocking of crossings, payments for track maintenance and track maintenance windows. An issue that always seems to arise at these meetings, whether they be Commission Meetings, which are open to the community, or private meetings with the Class 1's, is track maintenance. The ability for Tri-City Railroad to perform track maintenance has been hindered by both Class 1's and the Port. Maintenance windows are being enforced and there is an overall lack of support and payment from the Port of Benton and both Class 1 Railroads. Common complaints we receive are that we are performing too much maintenance, but also not enough maintenance is being done. Other topics of concern that have been discussed at these meetings have been items of interest uncovered from Requests for Public Record. I have been requesting documents from the Port and other entities since March

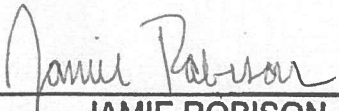
of 2017. Documents like the Southern Connection Options List and e-mails with plans to default Tri-City Railroad have come from those requests. When the Southern Connection Options List was produced some of the options listed were concerning, so a breakfast meeting was scheduled to discuss the items listed. The meeting was less than productive as the Port did not feel it needed to share its thoughts on the future of the Railroad. In later letters and correspondence TCRY was informed that correspondence surrounding the Options List was simply a "professional courtesy" with no real intention of speaking to the items on the List. The only way TCRY has been able to get clear information on the future of the Railroad has been to request it ourselves via the Public Records system. In the past it has taken the Port as long as 19 months to produce documents or presentations for a 3-month time span and a minimum of 6 weeks to receive a week's worth of e-mails.

Another one of my job duties has been invoicing. Track maintenance invoices have been regularly sent to the UP and BN and typically receive no response. If a response is received regarding the invoice it usually states, they are not responsible for the charges. At one-point TCRY sent invoices to our customers to charge for the cars being received only to find that even though we were no longer being paid by the UP they had not reduced the charges to the customers who now had to pay separately for our services as well. Other invoices sent to the Class 1's have included invoices for not following the Operating Plan that is set in place. Multiple times the UP specifically has blocked crossings with extra cars while they switch other cars elsewhere on the line. This has caused accidents and wasted the time of our own staff and local law enforcement.

When an accident occurs on the line or at a crossing it is the responsibility of TCRY to get the issue corrected as quickly as possible.

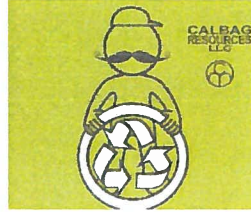
AFFIRMATION

In accordance with 28 U.S.C. § 1746(2), I hereby verify under penalty of perjury that the foregoing statement is true and correct. Signed on April 5, 2019.



JAMIE ROBISON

Appendix 9



March 25, 2019

To: Tri-City Railroad

From: Calbag Resources

Re: Customer Satisfaction Letter

I wanted to take a moment and personally thank you for your support and service while my firm completed the Hanford Nuclear Reactor Demolition and scrap metal effort in Richland Washington. In the 14 months my crews were on the project often said to myself but probably not shared with you was the stellar service and flexibility you showed while moving my many scrap cars to scrap mills located in numerous states. Specifically, your assistance with the ordering of scrap rail road cars, spotting and pulling full scrap rail cars was meaningful help to my field crews. In my many years of providing demolition, scrap and asset disposal services throughout the country I have always struggled trying to navigate the Rail Industry quirks to which you solved in just moments for the Hanford Project.

While the project has been completed if I were ever to perform addition work at the Hanford site I would bring you onto my project team to perform transportation and logistics services in a moment.

Sincerely,

Cliff Boyd
Director of Asset Recovery
US Operations Group
Calbag Resources LLC.



COLUMBIA RIVER CARBONATES

300 North Pekin Road
Woodland, Washington 98674
Phone: 360-225-6505

3/22/2019

To who it may concern,

Columbia River Carbonates began a business relationship with Tri-City Railroad Company on the 12th day of April, 2017, which is ongoing. The services performed consist of rail car storage and transloading from rail car to truck of limestone and gypsum. On an annualized basis TCRY transloads in the range of 30 to 40 rail cars for CRC. This service is critical to for CRC to participate in the growing organic crops marketplace in the Columbia Basin. The services that were agreed upon have been performed satisfactorily.

Feel free to contact us with any questions.

Best Regards,
Jason A. Imes

Jason A. Imes

Manager – Agronomist

Cost Less Carpet
1928 Fowler Street
Richland, Washington 99352
509-579-4035

To Whom It May Concern:

Cost Less Carpet has worked with the Tri-City Railroad for the past 15 years. Tri-City Railroad has assisted our company with the unloading of products for our business from the rail cars. They have done an excellent job!! When we have had issues, they have been very helpful. We hope to continue working with the Tri-City Railroad in the future.

Thank you,

Liz Lucke

Cost Less Carpet
Distribution Center
1928 Fowler Street
Richland, Washington 99352

509-579-4035



A&K Railroad Materials, Inc.

P.O. Box 9076 | Salt Lake City, Utah 84130 | P 801.974.5484 | F 801.973.7393 | www.akrailroad.com

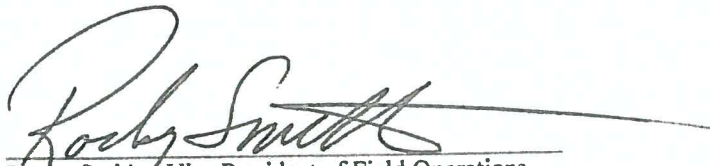
March 22, 2019

RE: Tri-City Railroad Company

To whom it may concern:

We have done business with Tri-City Railroad since 2010 to present.
We have leased property from Tri-City and used it to store and ship railroad materials.

They have been excellent to work with and always accommodating and helpful.
We are very satisfied and would be happy to do business with them again.


Rocky Smith - Vice President of Field Operations
A&K Railroad Materials, Inc.

Good Afternoon Lisa,

Bio-Gro, Inc has worked with Tri-City Railroad for many years now. I began working for Bio-Gro in November 2015 and were working with TCRY at that point. TCRY services Bio-Gro as a rail spur, moving and releasing railcars for us as we load and unload them with our liquid fertilizer products and inbound ingredient products. We store product in the railcars during the winter, when we need insulated tanks to store product in.

Tri City Railroad has always provided top notch customer service to Bio-Gro. Many times, our issues come from Union Pacific errors. TCRY has always taken the task of solving the issue and providing us with answers.

Overall, Bio-Gro, Inc. is incredibly pleased with the long-standing relationship that has been nurtured over the years. We appreciate all that TCRY has helped us accomplish as a growing local business.

Sincerely,

Katie Medel

Katie Medel

Product Registrations and Compliance

Bio-Gro, Inc.

(509) 894-4110

Jason Girus
GNW
April 12, 2019 at 3:38 PM
Lisa Anderson

Appendix 14

Good Day,

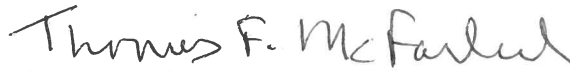
I wanted to take the time to express the importance of the role that Tri-City Rail Road plays in our business at Great Northwest Transport. Our business is hauling and delivering fire retardant in support of wildland fire support to air tanker bases and heliport bases throughout the Northwest, including Montana, British Columbia, Alberta and Alaska. Where Tri City Rail Road is key to our success is in the expediency of how they spot railcars off line so we can unload 24 hours a day. There are other locations we can unload, but none are as responsive as Tri City Rail Road has been for Great Northwest Transport. During wildland fire season every minute counts and this is why we value our relationship with them and look forward to many more years of partnership.

Regards,
Jason Girus
General Manager
Great Northwest Transport, LLC
251 Commercial Ave
Pasco,WA 99301
Office: (509) 545-4400
Cell: (509) 492-1948
Fax: (509) 542-2235

Serving our customers' needs, today and tomorrow since 1958!

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2019, I served the foregoing Reply In Opposition To Application For Adverse Discontinuance by e-mail on John D, Heffner, Esq. at *john.heffner@clarkhillstrasburger.com*, and Sloane S. Carlough, Esq. at *scarlough@clarkhill.com*, by first-class, U.S. mail, postage prepaid at 1025 Connecticut Avenue, N.W., Suite 717, Washington, D.C. 20036-4104.



Thomas F. McFarland