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July 21, 2015

Hon. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW, Room 100  
Washington, DC 20024

**VIA OVERNIGHT DELIVERY**

**Re: *Western Washington Railroad, LLC – Operation Exemption – Port of Chehalis***  
**Finance Docket No. 35922**

Dear Ms. Brown:

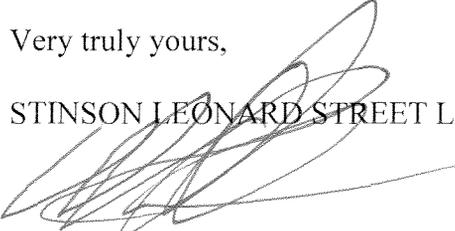
Enclosed for filing in the above-captioned proceeding are an original and ten copies of the Motion for Protective Order of Western Washington Railroad, LLC and redacted copies of the sublicense agreement with Chehalis-Centralia Railroad & Museum. Also enclosed is a sealed envelope containing ten unredacted copies of the agreement.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy of this letter and returning it in the enclosed postage prepaid envelope.

Please contact me if you have any questions. Thank you for your assistance on this matter.

Very truly yours,

STINSON LEONARD STREET LLP



W. Karl Hansen

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35922

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WESTERN WASHINGTON RAILROAD, LLC  
-- OPERATION EXEMPTION --  
PORT OF CHEHALIS

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VERIFIED NOTICE OF EXEMPTION

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MOTION FOR PROTECTIVE ORDER

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WESTERN WASHINGTON RAILROAD, LLC

STINSON LEONARD STREET LLP

W. Karl Hansen

150 South Fifth Street, Suite 2300

Minneapolis, MN 55402

Telephone: (612) 335-7088

Fax: (612) 335-1657

Counsel for Western Washington Railroad, LLC

Date: July 21, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35922

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WESTERN WASHINGTON RAILROAD, LLC  
-- OPERATION EXEMPTION --  
PORT OF CHEHALIS

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VERIFIED NOTICE OF EXEMPTION

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Pursuant to 49 C.F.R. § 1104.14(b), Western Washington Railroad, LLC (“WWR”) moves the Surface Transportation Board to enter a Protective Order. The order is necessary to permit WWR to submit to the Board a document that contains highly sensitive commercial terms and to make that document available to outside counsel for interested parties solely for use in this proceeding.

On July 13, 2015, WWR filed a Verified Notice of Exemption to permit WWR to operate over a rail line owned by the Port of Chehalis pursuant to a sublicense with Chehalis-Centralia Railroad & Museum (“CCRM”), a non-carrier excursion train operator.

Pursuant to the Board's request, WWR is submitting under seal with this Motion ten unredacted copies of the sublicense agreement (“Agreement”) with Chehalis-Centralia Railroad & Museum (“CCRM”). A redacted, public version of the Agreement is attached as Exhibit 2 to this Motion.

The information redacted from the public version of the Agreement is highly confidential, commercially sensitive information the public disclosure of which would be

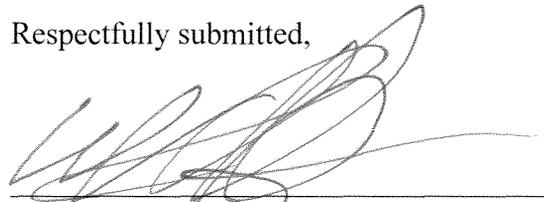
competitively damaging. Consequently, the requested Protective Order is necessary to protect this highly confidential information from public disclosure.

The proposed Protective Order attached as Exhibit 1 is modeled after similar orders that the Board has entered in other recent proceedings.

For the foregoing reasons, WWRR respectfully requests the Board to issue a Protective Order in the form attached to this Motion.

Dated: July 21, 2013

Respectfully submitted,



W. Karl Hansen

STINSON LEONARD STREET LLP

150 South Fifth Street, Suite 2300

Minneapolis, MN 55402

Tel.: (612) 335-7088

Fax: (612) 335-1657

Counsel for Western Washington Railroad, LLC

**Exhibit 1**

## PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including, but not limited to, waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the transaction in STB Finance Docket No. 35922, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35922 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, a discovery request it propounds, a discovery response it produces, a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, a discovery request it propounds, a discovery response it produces, a transcript of a deposition or hearing in which it participates, or a pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data, division of rates, trackage rights compensation levels, or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by

signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

7. Designated Material may not be used for any purposes, including without limitation, any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35922, any related proceedings before the Board, or any judicial review proceedings in connection with STB Finance Docket No. 35922 or with any related proceedings.

8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” *See* 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the

motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with the terms of this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

14. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

16. All parties must file simultaneously a public version of any submission containing Confidential Information it files with the Board.

**EXHIBIT A**

**UNDERTAKING**

**CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, 2015, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35922, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35922, any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Finance Docket No. 35922 or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT B**

**UNDERTAKING**

**HIGHLY CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, am outside [counsel] [consultant] for \_\_\_\_\_, for whom I am acting in this proceeding. I have read the Protective Order served on \_\_\_\_\_, 2015, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35922, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35922, any related proceedings before the Surface Transportation Board (“Board”), or any judicial review proceedings in connection with STB Finance Docket No. 35922 or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Name: \_\_\_\_\_  
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: \_\_\_\_\_

## Exhibit 2

**RIGHT OF WAY SUBLICENSE AGREEMENT**

**DATE:**

6<sup>th</sup> May, 2014

**PARTIES:**

**CCRM:** CHEHALIS-CENTRALIA RAILROAD & MUSEUM  
1945 S. Market Blvd  
Chehalis, WA 98532

**WWR:** WESTERN WASHINGTON RAILROAD LLC  
PO Box 6720  
Aloha, OR 97007  
toby@wwrailroad.com

**RECITALS:**

A. The Port of Chehalis granted CCRM a nonexclusive license to operate CCRM's railroad equipment over the approximately ten and two tenth (10.2) mile section of right of way in Lewis County, Washington owned by The Port of Chehalis and further detailed on Exhibit "A" under the terms and conditions of a Railroad Right-of-Way Use and Track Agreement dated March 25, 2010.

B. WWR desires to use the track for the purpose of moving freight as a common carrier.

**AGREEMENT:**

**Section 1. Grant of Sublicense.** CCRM grants WWR a nonexclusive sublicense to use the following described property on the terms and conditions stated in this Agreement:

Approximately ten and two tenth (10.2) mile section of right of way in Lewis County, Washington further detailed on Exhibit "A", formerly known as the Chehalis Western Railroad and/or Curtis, Milburn and Eastern Railroad. ("Railway")

**Section 2. Occupancy**

**2.1 Original Term.** The term of this Agreement shall commence on execution of this Agreement and continue until March 31, 2015, unless and until earlier terminated as provided herein. Thereafter this Agreement shall automatically be renewed for successive one-year terms commencing April 1 each year unless one party sends notice to the other party in writing, at least 75 days prior to the then prevailing anniversary date.

**2.2 Early termination.** Notwithstanding anything to the contrary, in the event The Port of Chehalis terminates the Railroad Right-of-way use and Track Agreement dated March 25, 2010 between The Port of Chehalis and CCRM, this Agreement shall terminate upon notice by CCRM to

WWR of The Port of Chehalis' termination. Upon termination under this Section, WWR shall have 75 days, rent free to remove all of the WWR's property from the Railway.

**Section 3. CCRM Agreement with The Port of Chehalis.**

**3.1 Right-of-Way Agreement.** CCRM represent and warrants that CCRM is not in default of any of the terms or conditions of the Railroad Right-of-Way Use and Tract Agreement dated March 25, 2010 between CCRM and The Port of Chehalis ("Right-of-Way Agreement").

**3.2 No Assumption.** WWR is not assuming any of CCRM's obligations under the Right-of-Way Agreement. CCRM shall comply with all terms and provisions of the Right-of-Way Agreement and not cause a default under the terms of the Right-of-Way Agreement.

**3.3 Indemnification.** CCRM shall indemnify and defend WWR and WWR's owners, officers, and agents, and employees and agents of the foregoing (collectively the "Protected Parties" with respect to the WWR) from, and reimburse WWR for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related CCRM's breach of the Right-of-Way Agreement.

**Section 4. Use of Railway.**

**4.1 Permitted Use of Railway.** The Railway shall be used for moving freight as a common carrier and moving storage cars.

**4.2 Timing of Use.** The parties acknowledge that in order to avoid additional regulatory burden on either party, temporal separation must be maintained between operations. CCRM shall have priority to use the Railway Friday through Sunday. WWR shall have priority to use the Railway at all other times. Notwithstanding anything to the contrary, in the event a party needs to use the Railway during the other parties priority time the parties agree to use reasonable measures to accommodate such non-priority party's use.

**4.3 Lock Out System.** To keep temporal separation, the parties agree to lock out the other party from use of the Railway while such party is using the Railway.

4.3.1 WWR shall place locks at CCRM's engine servicing facility switch, during WWR's use of the mainline of the Railway to ensure CCRM cannot access the mainline of the Railway during WWR's use.

4.3.2 WWR shall install a derail at milepost 0 so that movement of WWR's equipment on the mainline of the Railway is prevented at all times during while in derail position. CCRM shall place a lock at the derail switch at mile post 0 to ensure WWR cannot access the mainline of the Railway during CCRM's use.

**4.4 Block Register Territory.** Block Register Territory will be established on the main track from mile post 0.0 to mile post 10.2. The Parties will comply with rules and regulations regarding Block Register Territory as defined in General Code of Operating Rules adopted by the

Parties. Each Party shall train their employees on Block Register Territory and ensure compliance thereof.

**4.5 Violation of Timing of Use.** Due to potential for violations of temporal separation, each party shall adopt programs in accordance with the Code of Federal Regulations to address violations of temporal separation.

**4.6 Operating Rules and Qualified Employees.** Each party will establish and maintain its own operating rules and training program for their employees. Neither party will be responsible for operating rules or qualifying employees of the other.

## **Section 5. Usage Payment.**

**5.1 Usage Payment.** WWR shall pay to CCRM the following payments:

5.1.1 The sum of ■■■ per loaded revenue freight car and idler car handled over all or proportion of the Railway.

5.1.2 The sum of ■■■ per storage car, charged each direction, handled over all or portion of the Railway.

**5.2 Quarterly Payments.** WWR shall make payments to CCRM within 10 days from the end of each quarter. Each quarterly payment shall be accompanied with an accounting of all cars handled over the railway during the preceding quarter.

**5.3 Records.** WWR shall keep proper books of account and other records pertaining to the type and number of cars handled over the railway. The books and records shall be kept or made available at a location reasonably accessible to CCRM, who may inspect all such books and records to verify WWR's payments.

**5.4 No Guarantee of Number of Cars Handled.** WWR does not make any guarantees, representations or warranties as to the number of revenue freight cars or storage cars will be hauled over the Railway during the term of this Agreement. CCRM is not relying on any estimation of the number of revenue freight cars and storage cars hauled over the Railway.

**5.5 No Partnership.** CCRM is not by virtue of this section a partner or joint venturer with WWR in connection with the business carried on under this Agreement, and shall have no obligation with respect to WWR's debts or other liabilities, and no interest in WWR's profits.

## **Section 6. Restrictions on Use of the Railway**

**6.1 Restrictions on Use.** In connection with the use of the Railway, WWR shall:

6.1.1 Conform to all applicable laws and regulations of any public authority affecting the Railway and the use including but not limited to the Federal Railroad Administration rules and regulations, and correct at WWR's own expense any failure of compliance created through WWR's fault or by reason of WWR's use, but WWR shall not be required to make any

structural changes to effect such compliance unless such changes are required because of WWR's specific use.

**6.1.2** Refrain from any activity that would make it impossible to insure the Railway against casualty, would increase the insurance rate, unless WWR pays the additional cost of the insurance.

**6.1.3** WWR shall refrain from any use other than railroad operation, that would be reasonably offensive to other operators or owners or users of neighboring Railway or that would tend to create a nuisance or damage the reputation of the Railway.

**6.2 Hazardous Substances.** WWR shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Railway. WWR may use or otherwise handle on the Railway only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in this Agreement. WWR shall comply with all Environmental Laws and exercise the highest degree of care in the use and handling of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used or handled on the Railway. On the expiration or termination of this Agreement, WWR shall remove all Hazardous Substances from the Railway. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, petroleum oil and its fractions.

## **Section 7. Repairs, Maintenance and Inspection.**

**7.1 CCRM Obligations.** CCRM is obligated to perform any repairs, maintenance, replacements on the Railway not caused by the negligence of the WWR. CCRM shall keep the Railway in good repair and passable for trains at all times at FRA Class I or better.

**7.2 WWR's Obligations.** WWR shall only be obligated to perform any repairs, maintenance or replacement on the Railway caused by the negligence or willful misconduct of WWR.

**7.3 Inspection of Railway.** CCRM shall be responsible for performing FRA mandated inspection of the line during weeks when CCRM operates its train on the main track. WWR shall perform such FRA mandated inspections during weeks when CCRM does not operate its train on the main track. WWR shall provide CCRM with a report of such inspection noting all defects upon completion of such inspection.

**7.4 Interference with other parties use of Railway.** In performing any repairs, replacements, or other work performed on or around the Railway, the parties shall perform such work in a manner so as to not unreasonably interfere with the other parties use of the Railway.

**7.5 Derailments.** In the event of a derailment, each party will notify the other party as soon as reasonably possible of such derailment. The party's whose equipment derailed, will use

their best efforts to clear and repair the track within a reasonable time, to a passable condition similar to the condition prior to derailment. Each party shall do such clearing and repair to cause the least interference with the other parties use.

**7.6 Mile Post 10.** Notwithstanding anything to the contrary, WWR shall be responsible for all FRA required inspection and maintenance, so long as the need for such maintenance is not caused by CCRM's negligence, to the crossing signal at mile post 10. WWR shall additionally be responsible for all power used at the crossing signal at mile post 10. CCRM shall quarterly provide WWR a statement detailing the power used at mile post 10 and the cost of such power. WWR shall have 30 days from the date of the statement to pay CCRM for the power use at mile post 10.

## **Section 8. Alterations**

WWR shall make no improvements or alterations on the Railway of any kind unless agreed by the Parties. Permitted alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws.

## **Section 9. Taxes**

**9.1 Property Taxes.** Each party shall pay when due all taxes on any personal property owned by such party.

## **Section 10. Liability and Indemnity**

**10.1 Indemnification by WWR.** WWR shall indemnify and defend CCRM and CCRM's owners, officers, and agents, and employees and agents of the foregoing (collectively the "Protected Parties" with respect to the CCRM) from, and reimburse CCRM for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of WWR on the Railway.

**10.2 Indemnification by CCRM.** CCRM shall indemnify and defend WWR and WWR's owners, officers, and agents, and employees and agents of the foregoing (collectively the "Protected Parties" with respect to the WWR) from, and reimburse WWR for, any cost, claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of CCRM on the Railway.

**10.3 Indemnification of the Port of Chehalis by CCRM.** CCRM shall indemnify and defend the Port of Chehalis, its owners, officers, agents and employees from and reimburse for any cost, claim, loss, or liability suffered directly or from a third party claim arising out of or related to any activity of CCRM on the Railway.

**10.4 Indemnification of the Port of Chehalis by WWR.** WWR shall indemnify and defend the Port of Chehalis, its owners, officers, agents and employees from and reimburse for any cost, claim, loss, or liability suffered directly or from a third party claim arising out of or related to any activity of WWR on the Railway.

**10.5 Liability Insurance.** Each party shall procure and thereafter during the term of the Agreement shall continue to carry the following insurance at each party's own cost: railroad general liability insurance in a responsible company with limits of not less than [REDACTED] single incident and [REDACTED] aggregate. Such insurance shall cover all risks arising directly or indirectly out of each parties activities on or any condition on the Railway. Certificates evidencing such insurance and bearing endorsements requiring ten (10) days' written notice to either party before any change or cancellation shall be furnished to each party as soon as reasonably practical following execution of this Agreement.

## **Section 11. Default**

The following shall be events of default by WWR:

**11.1 Default in Payment.** Failure of WWR to pay any rent or other charge within thirty (30) days after it is due.

**11.2 Default in Other Covenants.** Failure of WWR to comply with any term or condition or fulfill any obligation of the Agreement (other than the payment of rent or other charges) within thirty (30) days after written notice by CCRM specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if WWR begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

The following shall be events of default by CCRM:

**11.3 Breach of Right-of-Way Agreement.** Failure of CCRM to comply with the terms and conditions of the Right of Way Agreement.

**11.4 Default in Other Covenants.** Failure of CCRM to comply with any term or condition or fulfill any obligation of the Agreement (other than the payment of rent or other charges) within thirty (30) days after written notice by WWR specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if CCRM begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

## **Section 12. Remedies on Default**

**12.1 Termination.** In the event of a default the Agreement may be terminated at the option of the non-defaulting party by written notice. WWR shall have 75 days, rent free, from the date of such notice to remove any persons or property on the Railway. In the event WWR fails to remove any persons or property, CCRM may do so and may charge WWR for CCRM's out of pocket expenses relating to the removal of WWR's property.

### **Section 13. Surrender at Expiration**

**13.1 Condition of Railway.** On expiration of the Agreement term or earlier termination on account of default or termination of the Right-of-Way Agreement, WWR shall have 75 days, rent free, from the date of termination to surrender the Railway and remove any persons or property in control by WWR on the Railway. In the event WWR fails to remove any persons or property, CCRM may do so and may charge WWR for CCRM's out of pocket expenses relating to the removal of WWR's property.

### **Section 14. Miscellaneous**

**14.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Agreement except for the failure to pay the rent so accepted when due and shall not affect CCRM's remedies for failure to perform such other obligations.

**14.2 Attorney Fees.** If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**14.3 Notices.** Any notice required or permitted under this Agreement shall be given when actually delivered, emailed with confirmation of receipt or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this Agreement or to such other address as may be specified from time to time by either of the parties in writing.

**14.4 Assignment/Succession.** WWR shall not assign, sublease, or transfer any of its rights under this Agreement, without the consent of CCRM and the Port of Chehalis. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**14.5 Time of Essence.** Time is of the essence of the performance of each party's obligations under this Agreement.

**14.6 Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws, and the parties agrees that any action brought relative to enforcement of this Agreement shall be initiated in the Superior Court of Lewis County, and shall not be removed to a federal court, except as to claims over which the Superior Court of Lewis County has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington, at Tacoma.

**14.7 Complete Agreement.** This Agreement and the Exhibits, if any, constitute the entire Agreement of the parties and supersede all prior representations or Agreements.

EXECUTED this 6<sup>th</sup> day of May, 2014.

**CCRM:**  
CHEHALIS-CENTRALIA  
RAILROAD & MUSEUM

Bill Thompson  
By:  
Its: President

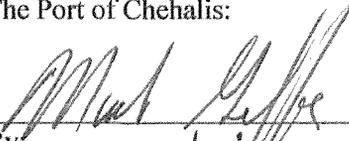
**WWR:**  
WESTERN WASHINGTON RAILROAD LLC

Toby Van Altvorst  
By: Toby Van Altvorst  
Its: Manager

THE PORT OF CHEHALIS CONSENT

In accordance with the requirements of Section 4 of the Right-of-Way Agreement, The Port of Chehalis consents to this Right of Way Sublicense Agreement with, and subject to, the terms, conditions and covenants of this Assignment, including but not limited to Western Washington Railroad LLC's right to use the Railway for moving freight as a common carrier.

The Port of Chehalis:

  
By: \_\_\_\_\_  
Its: President

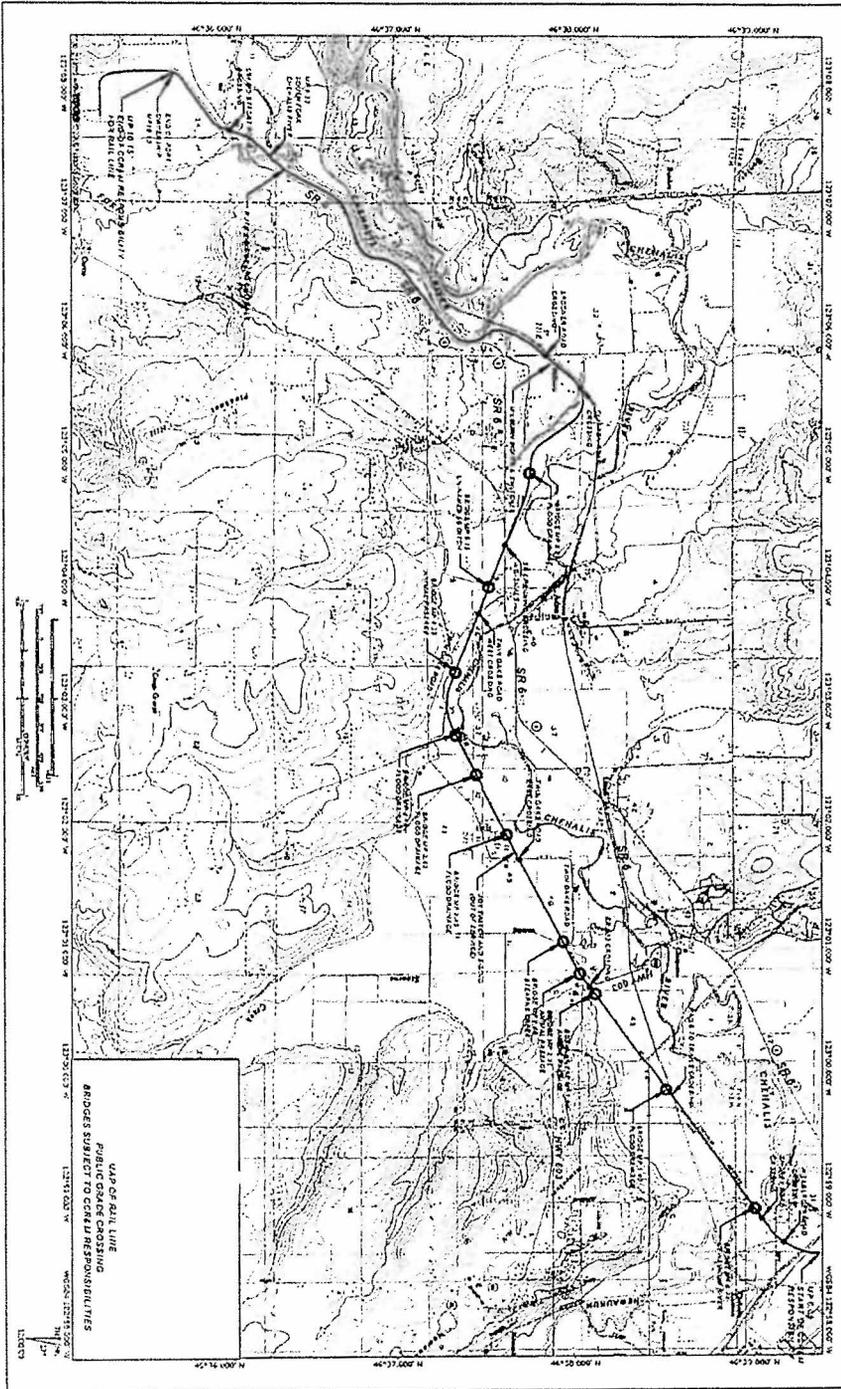


EXHIBIT     A      
    1     OF     1