

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 31, 2015
Part of
Public Record

STB FINANCE DOCKET NO. 35922

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

SUPPLEMENT TO
VERIFIED NOTICE OF EXEMPTION

WESTERN WASHINGTON RAILROAD, LLC

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Counsel for Western Washington Railroad, LLC

Date: August 28, 2015

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SURFACE TRANSPORTATION BOARD

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SUPPLEMENT TO
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Western Washington Railroad, LLC ("WWR") provides the following response to the Board's August 11, 2015 decision in the above-captioned proceeding in which the Board requests information regarding WWR's decision to delay seeking Board authorization for the sublicense agreement executed on May 6, 2014 and whether Board authority is required for other agreements incorporated by reference in the sublicense.

1. Timing of WWR's Notice of Exemption Filing

In the spring of 2014, WWR saw the potential for future freight business on the Port of Chehalis's (the "Port") line of railroad in Lewis County, Washington. That line was subject to the March 25, 2010 Railroad Right-of-Way Use and Track Agreement (the "Right-of-Way Agreement") between the Chehalis-Centralia Railroad & Museum ("CCRM") and the Port. The Right-of-Way Agreement provides CCRM with a non-exclusive license to conduct passenger excursion passenger train service operations only on the subject line. With the Port's consent, WWR and CCRM negotiated and executed a Right-of-Way Sublicense Agreement (the "Sublicense Agreement") which provided WWR the right to conduct common carrier freight

rail operations on the subject line.¹ WWRR recognized that Board authority was required prior to commencing such operations.² When WWRR entered into the Sublicense Agreement in May 2014, however, no commercial freight opportunities on the line existed and WWRR decided to wait to seek Board authorization to operate on the subject rail line until business prospects were better developed. In the meantime, WWRR neither conducted common carrier rail operations nor held itself out as a common carrier on the subject rail line.

2. Whether Other Agreements Incorporated into the Sublicense Agreement by Reference Require Board Authorization.

The Board's question appears to assume that other agreements referenced in the Sublicense Agreement are thereby "incorporated" into the Sublicense Agreement. That assumption would not be correct. While the Sublicense Agreement references the Right-of-Way Agreement between CCRM and the Port and CCRM makes representations regarding its compliance with the terms of that agreement, the Right-of-Way Agreement is not made a part of the Sublicense Agreement. The Right-of-Way Agreement remains solely between CCRM and the Port, and WWRR expressly disclaims any assumption of obligations thereunder. *See* Sublicense Agreement, Section 3.2 ("WWR is not assuming any of CCRM's obligations under the Right-of-Way Agreement").

As noted above, the Right-of-Way Agreement provides CCRM with a non-exclusive license to conduct passenger excursion passenger train service operations only on the subject line. Section 3.1 of that agreement expressly prohibits CCRM from, *inter alia*, holding "itself out" as a common carrier of freight or from participating in transportation agreements without

¹ In response to an informal request from the Office of Proceedings, on July 27, 2015, WWRR filed public and unredacted versions of the Sublicense Agreement together with a Motion for a Protective Order. On August 12, 2015, the Board granted the Motion.

² 49 U.S.C. § 10902(a) requires a Class III carrier to seek Board authorization "to acquire or operate an extended or additional rail line."

written permission from the Port. Accordingly, because excursion passenger train service operations do not require Board authority (*see Napa Valley Wine Train Inc.—Pet. For Declaratory Order*, 7 I.C.C. 2d 954, 965-68 (1991)) and the Right-of-Way Agreement does not authorize CCRM to conduct common carrier freight operations, the Right-of-Way Agreement itself does not appear to require Board authorization.

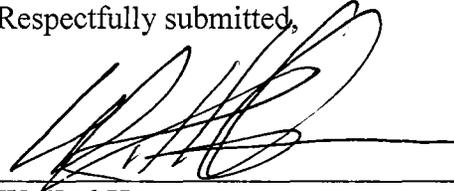
In this transaction, WWRR's right to conduct freight rail common carrier service over the subject lines is based on the Sublicense Agreement between CCRM and WWRR. CCRM's authority to enter into the Sublicense Agreement and to permit WWRR use of the subject line for common carrier freight rail operations is provided for by express written consent of the Port. That consent was attached to the Sublicense Agreement which WRRR previously filed with the Board.

Enclosed for the Board's review as Exhibit 1 is a redacted copy of the Right-of-Way Agreement. Subject to and in accordance with the Board's August 12, 2015 Protective Order, WWRR is filing a sealed envelope containing ten unredacted copies of the Right-of-Way Agreement.

WWRR respectfully requests that the notice of exemption be published and made effective without further delay.

Dated: August 28, 2015

Respectfully submitted,



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EXHIBIT 1

**RAILROAD RIGHT-OF-WAY USE
AND TRACK AGREEMENT**

THIS AGREEMENT, entered into as of March 31, 2010 ^{3/25/2010}, by and between PORT OF CHEHALIS, a municipal corporation of the State of Washington (hereinafter referred to as "Owner"), and the a CHEHALIS-CENTRALIA RAILROAD & MUSEUM, (hereinafter referred to as "Association").

WHEREAS, Association is a Washington nonprofit corporation (USC 501c3) that owns and/or leases certain recreational railroad equipment and offers to the public rail tours between Chehalis and Ruth, Washington; and

WHEREAS, The Port of Chehalis is the Owner of approximately 10.2 miles of rail line right-of-way in Lewis County, Washington (described in further detail in Appendix E to this Agreement(the "Rail Line" "Right of Way" or "Line")), formerly known as the Chehalis Western Railroad and/or Curtis, Milburn and Eastern Railroad;

WHEREAS, under authority of sections 53.08.020 and 53.08.080 of the Revised Code of Washington Owner desires to grant Association a license to provide public rail tours and excursions on the Line according to the terms and conditions stated herein;

NOW, THEREFORE, Owner and Association agree to the following terms and conditions:

1. Definitions.

1.1 The term "track", "Owner's track", "line" or the plural thereof, and the term "trackage" shall mean track structure and all appurtenances, including, but not limited to, rail and fastenings, bridges, sidings, spur tracks, crossings, switches, bumpers, ties, ballast, roadbed, embankments, signals, culverts, drainage facilities of any other structures within Owner's Line necessary for support of the track and road bed structures, and any and all materials and facilities required in connection with construction renewal, maintenance and operation of said track structures and all appurtenances thereof on the Line.

1.2 The term "loss and damage" shall mean all loss of or damage to property, both real and personal, and injury to or death of persons and all liability therefore.

2. TERM AND TERMINATION OF AGREEMENT

2.1 The term of this agreement shall commence on March 31, 2010 ^{3/25/2010} (the "Effective Date") and shall continue for an initial term of one year, unless and until earlier terminated as provided herein. Thereafter, this Agreement shall automatically be renewed for successive one year terms unless one party sends notice to the other party in writing, at least 90 days prior to the then prevailing anniversary date, that it does not wish to renew this Agreement (in which event the Agreement shall terminate on said anniversary date) provided, however, that

notwithstanding anything to the contrary herein, Owner, its successors and assigns, have the right to terminate this agreement for any reason at any time, including, but not limited to, damage to track or bridges, the sale or other disposition of the railroad right-of-way, dismantling of the track and or other significant occurrence which, in Owner's, or its successors and assigns, sole judgment would make use of the track by the Association excessively costly or operationally impractical.

2.2 Association shall also have the option to terminate this agreement prior to the scheduled termination date shown above (early termination) but only under the following conditions also known as "events". If Association does not exercise its right of early termination within such time period as stipulated below, this agreement shall remain a valid and binding obligation upon each of the parties in accordance with its terms, subject to a subsequent occurrence of an early termination event.

A. If the subject Line requires capital improvements or repairs to comply with present or future regulations for which funding isn't available and failure to perform such capital improvements or repairs will materially interfere with or prohibit the Association's ability to provide the public rail tours between Chehalis and Ruth, Washington. Unless otherwise provided herein or agreed in writing, capital improvements and repairs shall become property of Owner, except the following: temporary structures, including but not limited to, administrative and/or service trailers for Association's personnel. Replacement components installed during maintenance shall become property of Owner. Any other capital improvements may not be removed from the Line without the written approval of Owner.

B. Unremedied breach or default by Owner as provided in Section 9 of this agreement.

C. Early termination may be exercised by Association by providing written notice to Owner within ninety (90) days after the occurrence of an early termination event.

D. In any event, no termination of this agreement shall be effective until ninety (90) days after a valid Termination Notice has served on the Association.

E. Failure by Association to submit reports required by this Agreement to Owner in a timely manner.

2.3 Subject to the terms and conditions herein, Owner hereby grants to the Association a non-exclusive license to operate the Association's railroad equipment and conduct passenger tours for the public over the approximately ten and two tenths (10.2) mile section of right-of-way as shown in Appendix E for the purpose of conducting public tours, together with the right to allow its employees, licensees and patrons to park cars in designated areas of the right of way at Chehalis, Washington, subject to the operating restrictions set forth in Appendix A, Appendix B, Appendix C, Appendix D, Appendix E and such other special restrictions as may be established from time to time by Owner. The authorization contained herein grants

Association a license to operate on the Line on the terms and conditions contained herein; however, such authorization does not and shall not be construed to give or grant Association any right, title, or interest of any kind or character in and to the Line or any other property of Owner, and Association acknowledges that it has no leasehold, easement or other interest in any of such real or personal property. Association's right to operate on the Line shall be subject to all of the following limitations: A) Any and all utility easements and occupancies located on the Line; B) Any rights to the property encumbered by encroachments, tenants, licensees, or other occupancies, if any, on the Line; C) Association may not enter into any agreements that permit a third party to use any portion of the Line except by written consent of Owner; D) The limitations and restrictions set forth in any required federal, state, or local approvals or licenses to operate, and this Agreement. Owner's grant of license to Association herein is not exclusive and Owner may grant access to third parties to all or any portion of the Line, pursuant to contracts, agreements, licenses, easements, franchises and leases so long as the operations of such other user do not unreasonably interfere with the operations of the Association, and provided any such user reaches agreement with Association with regard to insurance, indemnification, fees, and other customary matters.

2.4 Association shall maintain its equipment and conduct its railroad operations in compliance with all federal and state laws and regulations which may now, or in the future, be applicable to such equipment and operations. The Association assumes all risk of loss or damage to its equipment by reason of its use and operation on the Line, and covenants and agrees to release and hold Owner, its successors and assigns, harmless from any such loss or damage. In addition, Association shall be responsible for any and all utility charges, including but not limited to electrical service, telephone, wireless communications, water, sewer during any and all periods of its operation. This includes utility charges for signals and crossings on any and all portions of the Line the Association operates trains on or causes utility charges to be billed.

2.5 In summary Association shall provide Owner's Executive Director with copies of the following documents on a monthly basis or as otherwise provided herein.

- General Membership and Board of Director meeting minutes.
- Annual Financial Statement or similar document.
- Weekly track inspection reports.
- Annual third party track inspection reports.
- Bridge third party inspection reports.
- List of repairs & maintenance in progress and/or completed.
- FRA, WUTC and any other regulatory agency inspection or comment reports.
- All reports filed by the Association in compliance with laws or as required herein.
- Annual Operations & Dispatch Plan.
- Incident and accident reports filed with local, state & federal agencies.
- Annual Certificate of Insurance listing Owner as additional insured.

2.6 Fees

(a) For the privilege of operating on and using the Owner's right-of-way and track as set forth above, Association shall pay Owner a User Fee of [REDACTED] per year, payable in arrears, to operate a steam train excursion on weekends, holidays and occasional week days. The payment shall be made not later than December 31st of each year.

(b) Association shall make an annual payment of [REDACTED], for each year of operation, to the Owner which shall be placed by Owner in an exclusive joint access accounting classification (escrow) for the purpose of funding capital repairs and improvements to the Line. The payment shall be made in advance not later the annual anniversary of this agreement each year. Neither Owner nor Association shall be allowed access to the funds except by mutual consent and for approved repairs and/or improvements. If Owner leases line to a common carrier operator, all funds in this account will be applied to capital repairs and improvements as deemed necessary by Owner.

2.7 In the event Owner terminates this agreement for any reason, Owners shall give Association written notice of such termination. Association shall have ninety (90) days after said notice to remove its equipment and restore said right-of-way to its original condition to the satisfaction of Owner.

2.8 Safety and Emergency Response and Recovery Programs. Association shall establish and observe a safety program and an emergency response and recovery program for all of its activities on or about the Line, in accordance with prevailing industry standards for passenger operations and shall use reasonable care in all of its activities in, on or about the Line. Association shall comply with all state and federal laws and regulations regarding accidents/incidents between their locomotives, rail cars, and equipment and other trains, automobiles, pedestrians, bicyclists, and vehicles. Association shall provide Port a copy of any written report made to state or federal agencies regarding incidents and/or accidents. Association shall make a full written report to Port within seven (7) calendar days in narrative format of any accidents and/or incidents as described above that do not require state and/or federal reporting. Narrative shall include, as a minimum, a detailed account of the incident and the events that led up to it, damage to all equipment involved with accompanying photos of all damage, names and contact information of all personnel involved and a full listing of all Association personnel on duty at the time of the incident/accident.

2.9 Encroachers, Trespassers and Other Third Parties: Hazards. Association shall notify Owner in writing of any third party activities on the Line which interfere with Association's performance of its obligations under this Agreement, including, without limitation, any trespassers. Association is responsible for taking reasonable steps to prevent trespass by unauthorized persons. Association shall give Owner prompt written notice of any encroachment onto the Line by adjoining property owners or tenants that Association becomes aware of.

2.10 Security. Association shall be solely responsible for providing any security services or measures it deems necessary or desirable for its property and equipment, and all rail cars and equipment in its possession or control.

2.11 Hazardous Materials. Association and its agents, representatives, contractors, licensees, lessees or other designees, shall be strictly liable to Owner and any other party having an interest in the Rail Facilities to prevent, clean-up, mitigate, remediate and correct any adverse safety or environmental impact, spill or release arising from Association's use of the Line.

In the event of any release of Hazardous Materials occurring on any segment of the Line, Association shall immediately: (a) make any and all reports required by federal, state or local authorities; (b) advise Owner of the Hazardous Materials in the release and their location; and (c) arrange for and perform or cause the performance of any appropriate response in connection with any release of Hazardous Materials from the Line, in accordance with all applicable federal, state, or local laws, rules or regulatory requirements.

The provisions of this Section 2.11 shall survive the termination or expiration of this Agreement.

2.12 Compliance with Law.

Association covenants that it will comply, solely at Association's costs and expense, with all applicable Federal, state and municipal laws, ordinances and regulations (whether imposed upon Association or Owner) pertaining to the Line. Association shall indemnify, protect, defend and hold harmless Owner and its officers, Commissioners, directors, agents or employees from and against all fines, penalties and liabilities imposed upon Association, Owners, or its Commissioners, directors, officers, agents or employees under such laws, rules, and regulations by any public authority or court having jurisdiction over the Line, when such fines, penalties and liabilities are attributable to failure of Association to comply with the obligations of this Section 2.11.

Association further covenants that it will comply with all federal and state laws, ordinances, rules, policies and regulations regarding the sounding of train whistles and/or horns at crossings.

Association shall, at its sole cost, obtain and maintain in full force and affect all governmental licenses, permits, approvals, franchises and other entitlements that are necessary for its operations on or about the Line. Association shall comply with FRA and AAR rules and regulations concerning the inspection of Trains. Operator will keep records of all such inspections to the extent, and for the duration, required by FRA rules and regulations.

Association shall deliver to Owner, promptly after receipt of any written notice, warning, violation, order to comply or other document in respect of the enforcement of any laws, ordinances, and governmental rules, regulations and orders, a true copy of the same.

Association shall notify Owner promptly of any Federal or State inspections of the Line. Association shall deliver copies of any inspections to Owner within five (5) days of its receipt.

2.13 Personnel. Association shall hire, train and supervise, at its sole cost and expense, all persons necessary to perform its duties and obligations hereunder. Operator shall ensure that all persons performing any duties and obligations of Association hereunder are competent, trained, qualified and, to the extent required by law or by sound business practices in the industry, licensed or certified for the task that they are performing.

2.14 Prohibition on Liens

Association shall not create, cause to be created or allow to exist any lien, encumbrance or charge upon the Line or any part thereof. If any mechanic's, laborer's, vendor's, material man's or similar statutory lien is filed against the Line or any part thereof, then Association shall within thirty (30) days after receipt of notice of filing of such mechanic's, laborer's, vendor's, material man's or similar statutory lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise.

2.15 Representations and Warranties. Association represents and warrants that:

Association is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Agreement in accordance with its terms. The authorization, execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Association is bound, or, to the knowledge of Association, any order, rule or regulation of any court or governmental agency or body having jurisdiction over Association or any of its activities.

3. No Common Carrier Service.

3.1 Association may not hold itself out to the public as willing to provide railroad freight service of any kind on Owner's track, whether purporting to be a common carrier or not. Similarly, Association may not publish any tariffs covering the Owner's track or participate in any transportation agreements involving the Owner's track, without written permission from Owner.

4. Non-Assignability by Association.

4.1 Association may not sublet, transfer or assign this Agreement or any part thereof, nor permit others to occupy Owner's track and/or real property, without the express written consent of Owner.

5. Control of Management, Maintenance and Operation.

5.1 Association hereby agrees to maintain, directly or through use of sub-contractors, the Line as provided herein. Prior to of the first year of this agreement and prior to December 31st of each subsequent year of this agreement Association will provide Owner an Annual Operations and Dispatch Plan prior to commencement of locomotive and tour train operations of the subject line. Owner will have approval authority of the plan and must approve the plan, in writing, before Association is authorized to commence its annual operations. Association must specify in this plan the portions of 49 CFR, Subtitle B, Chapter II, Parts 200-240 that they desire Owner to exempt from compliance (Owner's discretion).

5.2 Prior to March 1st of each year Association will at their sole cost & expense cause to occur a segment by segment (1/10 MP) inspection of the rail line as depicted in Appendix E subject to this agreement by an independent 3rd party inspector qualified and mutually acceptable to both parties to inspect and determine if the rail line is compliant with FRA Class 1 track safety standards. The minimum qualifications of the inspector shall be at least 10 years railroad engineering, construction and maintenance on a U.S. Class I railroad. The inspection will list the segment by segment condition of the rail line and specify that work which is needed to bring the line into compliance with FRA Class 1 Track Safety Standards. If the inspection lists work to be done to bring the line into said compliance then the Association at its sole cost and expense shall either accomplish or cause to be accomplished the required work before commencing operations on the line. Photo documentation of defects will be included in the inspector's report. A copy of the report shall be provided to Port not later than March 1st of each year or within five (5) calendar days of Association receiving said report if later than March 1st. This inspection will be a "go/no-go" inspection for the purpose of determining if the track meets FRA Class 1 Track Safety Standards. Required repairs listed in the report must be completed and verified by Port staff before passenger operations commence.

5.3 Not later than December 1st of 2012 and each five (5) year anniversary thereafter Association shall at its sole cost and expense have all bridges and trestles shown on Appendix E inspected for defects and structural soundness by an independent 3rd party inspector who is mutual acceptable to both parties to this agreement and who is recognized in the railroad industry for knowledge and skill in inspecting and determining the structural soundness of wooden railroad bridges and trestles. Photo documentation and any boring records of defects will be included in the inspector's report. A copy of the report shall be provided to Port not later than January 1st or within five (5) calendar days of Association receiving said report if later than January 1st. The Association shall either accomplish or cause to be accomplished at its sole cost and expense all work required to repair defects and restore safety and structural soundness to the bridges and trestles. This inspection will be a "go/no-go" inspection for the purpose of determining if the bridges meets federal and state safety standards. Required repairs listed in the report must be completed and verified by Port staff before passenger operations commence. Association is responsible to complete Priority 4 and 5 bridge repairs listed in the Osmose Railroad Services, Inc. inspection report dated 1-18-2008

5.4 Association agrees with and is bound to the provisions, in their entirety, of Appendix A, B, C, D & E of this agreement.

5.5 Association shall order and direct movement of its engines, cars, or other equipment over the Line under such reasonable rules and regulations customary among railroads of similar type. All rules, regulations and orders, and interpretations and applications thereof, shall be reasonable, fair and just as between the parties and shall not discriminate against either of them. Association will adhere to applicable requirements and provisions of 49 CFR, Subtitle B, Chapter II, Parts 200 – 240. Failure to do so will constitute a material breach of this agreement.

5.6 Prior to the commencement of operation or the placement of railcars on Owner's Line, Association shall establish, with Owner's approval, an operating plan for the tracks which includes operating schedules and staffing.

5.7 Each calendar year, prior to commencement of operations of locomotives or rail cars on Owner's tracks, Association will provide proof to Owner that worker's compensation insurance premiums have been paid to the Washington Department of Labor & Industries and are current for Association's paid operations staff.

5.8 Association may not conduct any activities associated with Phase I or Phase II Environmental analysis without Owner's written consent. Further, Association may not conduct or allow to be conducted any economic impact analysis, rail line analysis, or inspection other than Association's inspection required by this agreement of the trackage without Owner's written consent.

5.9 Upon the expiration or earlier termination of this Agreement, Association shall promptly restore the Line to its condition as of the Effective Date (other than with respect to capital or other improvements approved by Owner), at Association's sole cost and expense, to the reasonable satisfaction of Owner, normal wear and tear excepted. In the event Association fails or neglects to do so, Owner Shall have the right to effect restoration of the Line or any part thereof at the sole cost and expense of Association.

5.10 Utilities. Association shall establish and maintain an account with PUD #1 and pay for all electrical utility costs for the highway grade crossing signals.

6. Pick Up and Removal of Wrecks.

6.1 If any engine, car or other equipment moved by Association is wrecked or derailed upon the Owner's track, the Association shall, as soon as possible, pick up and remove such derailment or wreck, and any cost of equipment removal and repair to the track shall be borne by Association. In the event that such wreck or derailment obstructs public or private crossings, the removal shall commence immediately and be accomplished as quickly as possible. The Association shall be liable for all private and public costs and damages arising from such

wrecks or derailments to include repairs to the Owner's tracks, road bed bridges, signals, switching gear, right of way, and crossings. Owner shall not be required to furnish any supplies, materials, or equipment for the operation of the Association's trains, removal of wrecks or the repair of the Owner's track as a result of wrecks and/or derailments.

7. Insurance and Liability

7.1 The Association hereby agrees to defend, indemnify and hold harmless Owner, its employees and agents, successors and assigns, against any and all loss, damage, liability, claims, demands or costs resulting from injury or harm, to persons or property (including, without limitation, Association's employees or property) arising out of or in any way connected with the Association's operations. Association's activities shall be deemed to include those of its contractors.

7.2 All insurance provided under this agreement shall be endorsed to include the Owner (including any successor Owner), its officers (including elected official), employees, agents, volunteers as additional insureds. In addition, Association's insurance shall be primary as respects the Owner, and any insurance maintained by Owner shall be excess and not contributing insurance with the Association's insurance.

7.3 Prior to commencement of any operations, Association shall comply with the insurance or other requirements of the applicable Industrial Accident and Worker's Compensation laws and, in addition, shall obtain and, during the term of this agreement, maintain, in full force and effect Comprehensive or Commercial General Liability Insurance (Occurrence form) including contractual and SCU, with minimum limits of [REDACTED] primary layer per occurrence and [REDACTED] aggregate. Primary insurance shall at all times total at least [REDACTED]. The insurance required hereby shall name Owner, Owner's Commissioners, Owner's Executive Director, Owner's staff, Owner's subcontractors and agents as "Additional Insured's," and contain a cross liability clause and be primary to other liability coverage of Owner. Before commencing operations over the right of way, Association shall furnish Owner copies of the insurance policies or other proof satisfactory to Owner, evidencing compliance herewith. Insurance policy must show that the policies are noncancellable without at least thirty (30) days' written notice to Owner.

7.4 Association shall include any subcontractors or agents as insureds under its policies or require such subcontractors or agents to maintain acceptable to Owner, which insurance shall be specified in writing prior to commencement of work by the subcontractor or agent or after consultation with owner, but shall be less than general commercial liability insurance in an amount no less than [REDACTED] per incident, [REDACTED] aggregate.

7.5 The policies of insurance shall provide thirty (30) days prior written notice to the Owner of material changes or cancellation.

7.6 As evidence of insurance coverage, the following documents must be provided to Owner prior to commencement of Association operations on owner's trackage.

- A. A certified copy of the policy or policies
- B. Copies of all relevant endorsements naming Owner as an Additional Insured, showing the policy number and signed by an authorized representative of the insurance company on Form CG2026 (ISO) or equivalent.
- C. Copies of all relevant Endorsement Form Lists to the policy or policies showing endorsements on the policy and including any company specific or manuscript endorsements, and
- D. For commercial general liability and business automobile liability insurance, a copy of a "separation of insureds" or "severity of interest" clause, indicated in substance that, except with respect to the limits of insurance, and rights or duties specifically assigned to the first insured, the insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

7.7 All policies shall be subject to approval by Owner as to form, coverage, and being primary to all other insurance. Owner also shall require each insurance company to be rated A-:VII or higher in the current A.M. Best's Key Rating Guide, and to be licensed to do business in the State of Washington, or a surplus Lines carrier authorized to do business in the State of Washington.

7.8 Association and its insurer(s) shall waive their rights of subrogation against Owner for claims for damages arising from any risk covered by the required insurance policies or any other coverage maintained by Association. Association's insurance shall be primary with respect to any insurance carried by Owner.

7.9 Failure to comply with insurance coverage requirements or failure to comply with indemnify requirements shall constitute material breach of this agreement.

8. Marketing

8.1 Association is expected to build and expand rail tour business and shall actively market and solicit rail tour business on the subject line.

8.2 Owner may assist, at its option, with marketing and solicitation efforts to attract rail tourism business to the line.

8.3 Owner's agreement with the Association does not limit or restrict the Owner from soliciting a common carrier operator on the rail line.

8.4 Association shall conduct an annual Port of Chehalis Community Appreciation Event. Owner and Association will jointly market and advertise this event. The date and time shall be established to coincide, whenever possible, with a scheduled Chehalis community wide event. As a condition of conducting this event, Association will offer one or more specified steam train excursion ride(s) to the general public at no charge. Association will pay, or seek sponsorship, for all their operating costs for this event.

9. Default

9.1 Except when a shorter period of time is elsewhere provided in this agreement, if at any time either party shall fail to remedy any default or breach with respect to any provision, covenant or condition of this agreement to be kept or performed by such party, within sixty (60) days of written notice of the default event the non-defaulting party may declare this agreement terminated. Upon declaration by Owner that this Agreement is terminated, all Association's rights herein shall terminate and Association shall immediately cease all operations on the Line and remove any, and all, Association owned and leased equipment and other property from the Owner's Line and real property. Owner shall be entitled to all remedies herein, at law and in equity, each and every right being cumulative in nature and in addition to every other right and remedy.

10. Service of Notices.

10.1 Notice under this Agreement shall be in writing and shall be deemed to be properly served if delivered to, or deposited in the U.S. Mail, postage prepaid, addressed to:

Chehalis-Centralia Railroad & Museum
Attention: President
1945 S. Market Blvd.
Chehalis, WA 98532

Port of Chehalis
Attention: Executive Director
321 Maurin Road
Chehalis, WA 98532

Or such other address as may be designated from time to time.

11. Limitations on Owner's Obligation to Provide Trackage.

11.1 In the event Owner shall be dispossessed of any portion of the right of way and track subject to this agreement by competent public authority, or shall sell its ownership of the Line and/or elect to remove and sell any part of the Line for salvage, then the rights granted to Association shall terminate as provided in Section 2.1 above. Owner agrees to notify Association within seventy-two (72) hours if Owner receives: (1) notice regarding any possible public authority dispossession; (2) if Owner offers the right of way and track for sale, or (3) Owner receives an offer to purchase the right of way and track which Owner is considering accepting.

11.2 The Owner shall notify the Association within seven (7) days after receiving an offer from a common carrier operator to operate the Line.

11.3 In the event Owner leases the Line to a common carrier, The Owner agrees to request the common carrier operator to exercise its best and faithful efforts to enter into a favorable agreement with the Association for their continued use of the subject rail line. Owner considers a favorable agreement to be one which has provisions for Association to continue growth and expansion of rail tourism on the line.

12. Condition of Line, Warranty Disclaimer

12.1 Association acknowledges that prior to its execution hereof, Association had the opportunity to investigate and determine (a) the physical aspects and condition of all portions of the Line, (b) traffic projections and (c) such other matters as Association deemed relevant to analyze the proposed transaction, to discover any risks and to determine whether the transaction is economically viable for Association. Association's investigations have included, among other things, meetings with the Owner. Association further acknowledges that Association's entry into this agreement is based solely on the results of its own investigation and examinations, or its election not to investigate some or all of such matters as may be relevant, and not on any representation, warranty, promise or statement by Owner or any representative or agent thereof except as expressly set forth in this agreement. Association agrees that, except as otherwise expressly set forth in this Agreement, Owner has not made any representation, warranty, promise or statement, express or implied, to Association or to anyone acting for or on behalf of Association, concerning or regarding such matters.

12.2 Association acknowledges that it has inspected the condition of the Line and conducted due diligence to its satisfaction prior to entering this agreement. Association acknowledges and agrees that its right to use the Line is granted hereunder on an "as is/where is" basis and Association shall be responsible for making sure that the condition of the Line is appropriate for its intended use as of the date of this agreement. Owner makes no representation or warranty as to the condition of the Line or its safety or suitability for any particular use or as to any other matter affecting this agreement. Association is prohibited from selling, salvaging, demolishing or removing any part of the Line, including but not limited to the track, ties, ballast and track supports, without the prior written consent of Owner.

13. Governing Law/Attorney Fees.

13.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington applicable to agreements made and to be performed entirely with such state by residents thereof.

13.2 In the event of any litigation between the parties hereto arising out of this Agreement, or Association's use of the railroad right of way and adjoining property, the prevailing party therein shall be allowed all reasonable attorney's fees expended or incurred in such litigation, to be recovered as part of the cost therein.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement, in duplicate, on the day and year first above written.

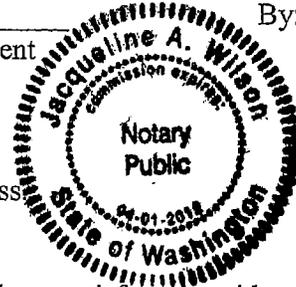
PORT OF CHEHALIS

CHEHALIS-CENTRALIA RAILROAD ASSOCIATION

By: Mark Giffey
Its Commission President
"Owner"

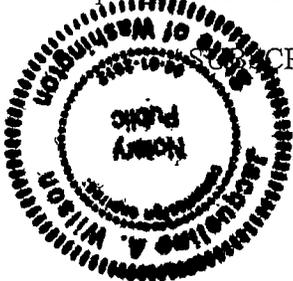
By: Bill Thompson
Its President
"Association"

STATE OF WASHINGTON)
)ss.
COUNTY OF Lewis)



I certify that I know or have satisfactory evidence that Mark Giffey is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument and acknowledged it as the authorized agent of the party on behalf of whom instrument was executed to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 25 day of March, 2010.



STATE OF WASHINGTON)
)ss.
COUNTY OF Lewis)

Jacqueline Wilson
(printed name):
NOTARY PUBLIC in and for the State of Washington, residing at Lewis.
My Commission expires: 4-1-2010
Jacqueline Wilson

I certify that I know or have satisfactory evidence that Bill Thompson is the person who appeared before me, and that person acknowledged signing this instrument, on oath stated their authority to execute the instrument and acknowledged it as the authorized agent of the party on behalf of whom instrument was executed to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 25 day of March, 2010.

Jacqueline Wilson
(printed name):
NOTARY PUBLIC in and for the State of Washington, residing at Lewis Co..
My Commission expires: 4-1-2010
Jacqueline Wilson

GENERAL OPERATING PROCEDURES AND RESTRICTIONS

1. TRACKAGE AND SEASON

- 1.1 Regular passenger operations are restricted to those operating limits defined in Section 2.2 of the Owner Right of Way Use and Track Agreement, dated March 31, 2010. Regardless of the type of operation being conducted by Association, they must be curtailed if conditions exist that would make the safe operation of trans impossible. This would include unseasonably wet weather where floods and/or washouts could occur.
- 1.2 Association's "season" shall be as specified in the Annual Operations and Dispatch Plan as approved by Owner.

2. TRACK AND RIGHTS OF WAY MAINTENANCE

During the term of the Agreement, the Association will provide the following services:

- a) Perform weekly track and right of way inspections during the operational season.
- b) Perform all track and right of way repair and maintenance, as defined in Appendix C, and as required to better or equal FRA Class I Track safety Standards.
- c) Vegetation on railroad property which is on or immediately adjacent to roadbed will be controlled by Association so that it complies with 49 CFR, Subtitle B, Chapter II, Part 213.37.
- d) Provide Owner with written inspection and maintenance reports which shall include all defects found and all repairs made to same in a form and content approved by Owner. A sample format of this report is included in Appendix D to this agreement. Such reports shall be submitted at least monthly during the Association's "season" as approved in the Annual Operations and Dispatch Plan and quarterly at other times. A copy of each week's inspection report will be forwarded to Owner's Executive Director before the following Wednesday at noon.
- e) Owner and Association agree that, upon receiving oral or written requests from either party, the parties will meet and perform joint inspections of the Line to determine if existing maintenance efforts are adequate.

3. OPERATING PARAMETER/RESTRICTIONS

During the term of this Agreement the following shall apply:

- Association shall conform to the operating parameters and restrictions set forth 49 CFR, Subtitle B, Chapter II, Parts 200-240 and as determined by Owner and as set forth within Appendix B, attached hereto, or to such other parameters and conditions as may be set forth by Owner from time to time.

- Owner may conduct periodic track and operational efficiency inspections from time to time to determine whether Association is performing those obligations as outlined in this Agreement.
- As a result of these inspections, any subsequent restrictions, requirements and parameters will become a part of this Agreement and are subject to change from time to time. Timeframes to remedy deficiencies will be agreed upon by Owner and Association. Regardless, timeframes must be such that safe operations of trains will be ensured.
- Fueling activities for locomotives, on-track equipment or contractors' equipment will be restricted to the location at Chehalis, or where Owner may otherwise designate from time to time. Fuel storage tanks are not permitted on Owner's premises under any circumstances.

4. RESTRICTIONS: EQUIPMENT

- Locomotives and their use are subject to the review and approval of Owner to minimize any negative impact on track and track structures.
- All equipment, including locomotives, must be inspected and approved for operation by Association in accordance with 49 CFR, Subtitle B, Chapter II, Part 230. Association will maintain required documentation of inspections and hold out such for Owner's inspection upon request.

5. REGULATORY REQUIREMENTS

Association must at all times be knowledgeable of, conversant with and qualified in the rules and regulations and requirements of the following:

Washington Utilities & Transportation Commission (WUTC)
 Federal Railroad Administration (FRA)
 Department of Transportation (DOT)
 Surface Transportation Board (STB)
 Other applicable State and Federal regulatory agencies

Association must maintain the Line to a minimum of FRA Class I Track Safety Standards.

Association's failure to do so gives Owner termination rights described elsewhere in this agreement. Owner reserves the right to impose additional, reasonable requirements and/or restrictions as set forth in Section 3 above.

APPENDIX B

OPERATING REQUIREMENTS AND RESTRICTIONS

Association agrees to operate passenger service on the track defined in Section 2,3,4,5 & 6 of the RAILROAD RIGHT OF WAY USE AND TRACK AGREEMENT, dated March 30, 2010 unless prior written permission is received from Owner. Any request to operate on track other than is identified in Sections 2, 3, 4, 5, & 6 must be submitted in writing as required in Section 10 (Service of Notices).

Association is required to implement and comply with all applicable requirements and provisions of CFR 49, Subtitle B, Chapter II, Part 218.

Association agrees to operate passenger train service in compliance with all Federal, State and local regulations as well as all Owner approved Association Timetables, General Orders and Special Instructions requirements.

Association agrees that Association will submit to Owner operational timetables and dispatch schedules for Owner's approval. The Association will obtain written authority prior to occupying any portion of the main line or any siding. Association Train Dispatcher will furnish Owner with all written documents necessary for and pertaining to operating trains on the line.

Association agrees to comply with all flagging requirements at road crossings which have had their crossing signal protection devices taken out of service and agrees to indemnify and hold harmless Owner and its employees for any accident or collision resulting in damage, injury and/or death of any said crossings involving trains operated by Association.

Association agrees to operate passenger trains at speeds not to exceed the maximum authorized speeds for rail class and service to be provided. Slower speeds are required, as conditions warrant, to safely negotiate curves, highway crossings and terminal areas.

Association is prohibited from allowing any person or persons from operating a locomotive or other on-track equipment that is not qualified and certified to perform such service, as required by Federal and State rules, regulations and requirements. Association will implement the intent of 49 CFR, Subtitle B, Chapter II, Part 217.11 and have such available for Owner's inspection upon request.

Either party is to notify the other party of any change in previously communicated normal operating schedule or procedures.

APPENDIX C

Required Routine Maintenance Defined

All maintenance criteria for this appendix are contained in 49 CFR, Subtitle B, Chapter II, Part 213 unless otherwise noted or approved by Owner.

1. Track inspection and monitoring
 - Full line weekly as required by Associations operating schedule
 - Switches and crossings weekly or as required by FRA regulations per Association's operating schedule.
 - The entire line and all rail and roadbed components inspected annually by a qualified and mutually acceptable inspector whose fees for such track inspection are at no cost to the Port per requirements outlined in this Agreement.
 - At Owner's request Association will provide Owner inspection transportation via speeder or other hi-rail equipment on all, or portions, of the line. The frequency of this requirement will be approximately every other month or as otherwise requested by Owner.

2. Track and roadbed
 - Tamping under and around ties as needed
 - Regulating as needed
 - Ballast added as required
 - Gauging and aligning as needed

3. Worn/defective track components replacement/repair
 - Rail replaced as needed
 - Ties replaced as needed
 - Joint bars & bolts/nuts/washers inspected, tightened, replaced as needed
 - Plates replaced as needed
 - Spikes driven as needed
 - Gauge bars adjusted as needed
 - Insulator joints inspected and repaired as needed
 - Switch components (frogs, switch points, switch stands, etc.) inspected and repaired as needed

4. Signal inspection and maintenance. Association will hire and pay at their sole expense and at no cost to the Port (as required) FRA/WUTC certified personnel for signal inspections. A copy of the inspector's report will be provided Owner.
 - Automated signal systems and components serviceable
 - Crossbucks, stop signs, and other warning signs effective and serviceable
 - Poles, wires, insulators, etc. in good repair and serviceable
 - All signals in good repair and serviceable
 - Whistle boards posted at all crossings.

5. Highway and road crossing maintenance
 - Minor pavement and pothole patching as needed around tracks that aren't done by county or state road maintenance.
 - Rail alignment and guides
 - Ties, joints, and associated components

6. Right of Way Maintenance to include vegetation control
 - Ditching and drainage clean out
 - Culverts and drain pipes clean out
 - Rip-rap repair/replacement
 - Brush cutting & removal
 - Tree cutting/removal
 - Bridge warning, mile posts, warning and speed signs in place and serviceable
 - Fencing and barriers in place and serviceable
 - Obstruction removal from ROW
 - Repair of slides, sinks, erosion, silting, etc. affecting ROW
 - Vegetation spraying along ROW
 - Clean up of debris and other foreign materials on ROW

7. Bridges
 - Bridges & trestles inspected by Association once every five years with the next inspection scheduled not later than November 2012 and once every 5 years thereafter. Inspection shall be by a qualified and mutually acceptable inspector whose fees for such inspection(s) are at no cost to the Port.
 - Association shall accomplish those Priority 4 & 5 repairs in the Osmose Railroad Services, Inc. inspection report dated 1-18-2008.
 - Safety appliances and walkways
 - Approach walkways
 - Rail structure and fastening
 - Cross ties
 - Removal of logs, log jams, and debris from around piling and bridge embankments. Movement of logs and debris from the upstream to the downstream side of bridge pilings and embankments is acceptable.

SAMPLE

APPENDIX D
To
Port of Chehalis and Chehalis Centralia Railroad &
Museum
Railroad Right of Way Use and Track Agreement

Chehalis – Centralia Railroad & Museum Weekly/Monthly Track Inspection & Correction Record

Curtis Line Class I Track

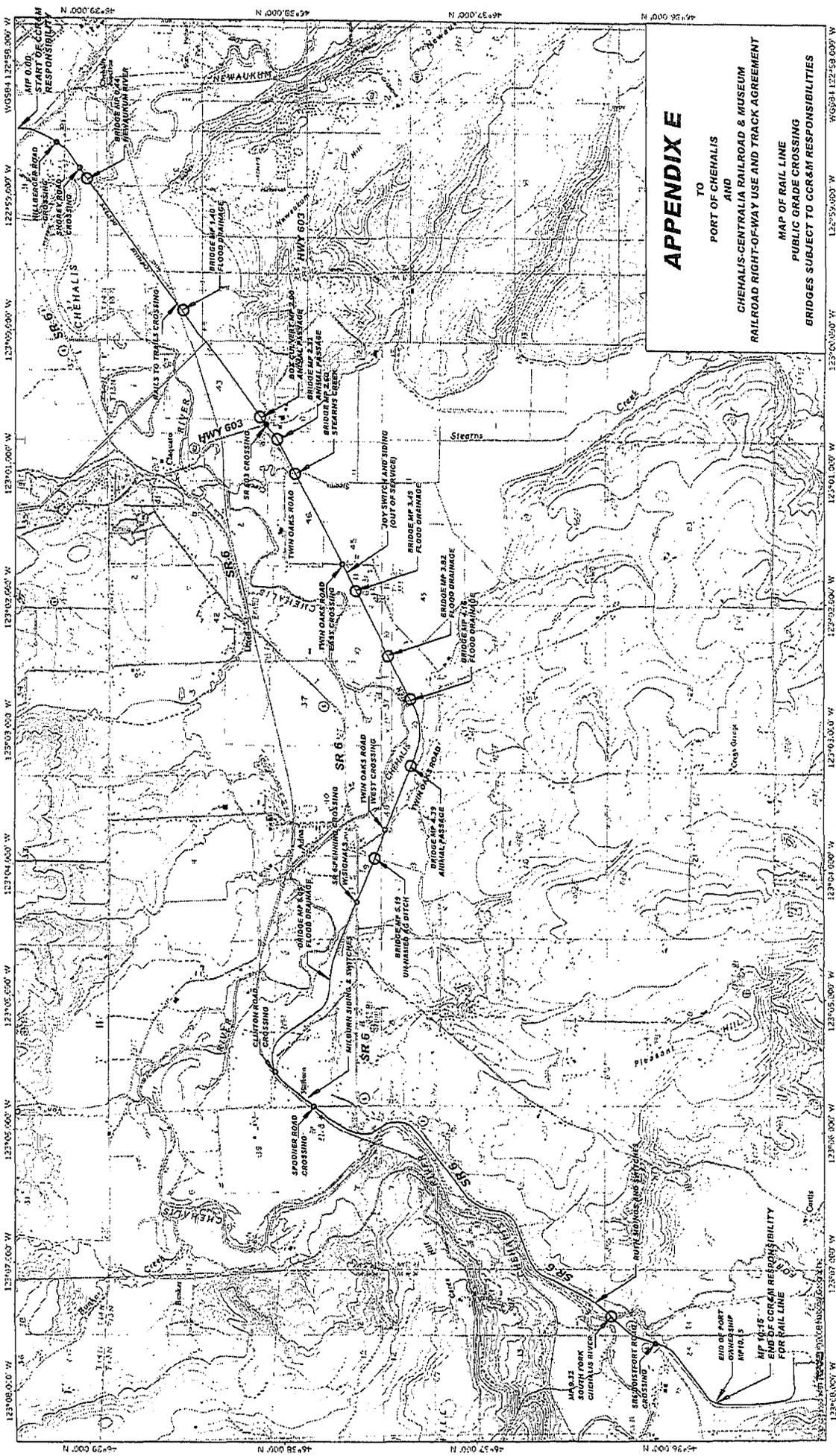
Date: _____ Inspected from MP: _____ to _____

Inspector Name: _____

Week of	Location	Defects Found	Corrective Actions	Date Corrected
4/26/10	MP 1.80	<i>End of culvert plugged w/debris</i>	<i>Remove brush plugging culvert</i>	4/30/10
"	MP 2.0 – 2.50	<i>Numerous spikes need setting</i>	<i>Work crew drove spikes</i>	4/30/09

Sample entries in italics

Association Initial ET Date 3/29/2010
Owner Initial ML Date 3/28/2010



APPENDIX E

TO
PORT OF CHEHALIS
AND
CHEHALIS-CENTRALIA RAILROAD & MUSEUM
RAILROAD RIGHT-OF-WAY USE AND TRACK AGREEMENT

MAP OF RAIL LINE
PUBLIC GRADE CROSSING
BRIDGES SUBJECT TO CCR&M RESPONSIBILITIES

Association Initial *MT* Date *3/25/2017*
 Owner Initial *MT* Date *3/25/2017*



123°08'00" W 123°09'00" W 123°10'00" W 123°11'00" W 123°12'00" W 123°13'00" W 123°14'00" W 123°15'00" W 123°16'00" W 123°17'00" W 123°18'00" W 123°19'00" W 123°20'00" W 123°21'00" W 123°22'00" W 123°23'00" W 123°24'00" W 123°25'00" W 123°26'00" W 123°27'00" W 123°28'00" W 123°29'00" W 123°30'00" W