

WEINER BRODSKY SIDMAN KIDER PC

1300 NINETEENTH STREET NW
FIFTH FLOOR
WASHINGTON DC 20036 1609
TEL 202 628 2000
FAX 202 628 2011

215389



December 20, 2005

BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: STB Finance Docket No. 34804, Central Washington Railroad Company and Columbia Basin Railroad Company, Inc. – Modified Certificate of Public Convenience and Necessity

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is an original and 10 copies of a modified certificate of public convenience and necessity pursuant to 49 C.F.R. § 1150.21. Attached is a check in the amount of \$1,400 to cover the filing fee for this modified certificate.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michele Nardi".

Rose-Michele Nardi

**CENTRAL WASHINGTON RAILROAD COMPANY
AND COLUMBIA BASIN RAILROAD COMPANY, INC.
--MODIFIED CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

PURSUANT TO 49 C.F.R. § 1150.21

STB FINANCE DOCKET NO. 34804



215389

Applicant's name and address
49 C.F.R. § 1150.23(b)(1)

Central Washington Railroad Company
Columbia Basin Railroad Company, Inc.
111 South 33rd Street, Suite 200
Yakima, WA 98901

Both Central Washington Railroad Company ("CWA") and Columbia Basin Railroad Company, Inc. ("CBRW") are existing class III rail carriers. *See* STB Finance Docket No. 34640, *Central Washington Railroad Company – Lease and Operation – The Burlington Northern and Santa Fe Railway Company*, served Jan. 21, 2005; STB Finance Docket No. 33140, *Columbia Basin Railroad Company, Inc. – Exemption to Lease and Operate – Burlington Northern Railroad Co. and BNSF Acquisition, Inc.*, served Dec. 13, 1996. Accordingly, the information listed in section 1150.23(b)(1)(i)-(iii) need not be included in this Modified Certificate.

Information about the prior abandonment
49 C.F.R. § 1150.23(b)(2)

The rail line subject to the Modified Certificate runs between milepost 0.0, near Toppenish, and milepost 20.56, near White Swan, in Yakima County, WA. In a decision served August 24, 1992, the Interstate Commerce Commission, predecessor to the Surface Transportation Board (the "Board"), granted the petition for exemption filed by Washington Central Railroad Company, Inc. to abandon this rail line. *See* Docket No. AB-326X, *Washington Central Railroad Company, Inc. – Abandonment Exemption – In Yakima County, WA*, served August 24, 1992. The State of Washington acquired this rail line pursuant to the offer of financial assistance procedure. *See* AB-326X, *Washington Central Railroad Company, Inc. – Abandonment Exemption—In Yakima County, WA, In the Matter of an Offer of Financial Assistance*, served March 18, 1993. This rail property was subsequently transferred to Yakima County. The prior operator of this line received a modified rail certificate in a decision served April 28, 1994. *See* Finance Docket No.

32487, *Yakima Valley Rail and Steam Museum Association, d/b/a Toppenish, Simcoe & Western Railroad – Modified Rail Certificate*, served April 28, 1994.¹

Dates of the period of operation
49 C.F.R. § 1150.23(b)(3)

CBRW, as lessee, and Yakima County, as owner, have executed a lease agreement (the “Agreement”) governing the subject rail line. This Agreement (excluding attachments) is attached hereto as Exhibit A. CWA, an affiliate of CBRW, has assumed CBRW’s rights and obligations under the Agreement, but CBRW retains lessee obligations under the Agreement. *See* Agreement at section 17. It is anticipated that CWA will be the operator over the subject rail line; however, because CBRW retains lessee obligations under the Agreement, CBRW is also seeking the authority to operate over the rail line pursuant to this Modified Certificate. CWA anticipates commencing freight rail operations over the subject line on or after December 21, 2005. The initial term of this Agreement is 4 years, which may be extended, upon the occurrence of certain conditions, for an additional 11 years. *See* Agreement at section 2. The Agreement may be terminated earlier upon the occurrence of certain events described in the Agreement. *See e.g.*, Agreement at sections 2, 23, 24, 25, 29 and 30.

Description of service to be performed
49 C.F.R. § 1150.23(b)(4)

CWA and CBRW seek this Modified Certificate to provide rail freight service operations over the subject line. The subject rail line’s only interline connection is with BNSF Railway Company (“BNSF”) at BNSF milepost 73.6, at Toppenish, Washington.

The Agreement provides that the lessee shall obtain (i) property insurance customary in the short line industry, and (ii) public liability insurance, on a claims-made basis, in a minimum amount of \$10,000,000 per occurrence (with customary deductibles and exclusions). The nature and extent of liability insurance coverage is further described in the Agreement. *See* Agreement at section 11. CWA and CBRW have obtained insurance that covers this rail line from Steadfast Insurance Company, Policy No. SCC539346803 and Great American Insurance Policy No. MAC823737609.

There are no preconditions that shippers on the subject rail line must meet in order to receive service from CWA. No entity is subsidizing the rail freight operations that CWA

¹ Yakima County has advised CWA that the termination of the lease agreement between Yakima County and the prior operator will be effective on December 21, 2005.

seeks to provide pursuant to this Modified Rail Certificate.²

Respectfully submitted,



Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W., Fifth Floor
Washington, D.C. 20036

Attorneys for:
Central Washington Railroad Company
Columbia Basin Railroad Company, Inc.

Dated: December 20, 2005

² Pursuant to section 7.2 of the Agreement, Yakima County has agreed to be responsible for costs associated with Capital Improvements (as the term defined in that section of the Agreement) to the rail line. This money is expected to be obtained from federal and state grants. *See id.*

**CENTRAL WASHINGTON RAILROAD COMPANY
AND COLUMBIA BASIN RAILROAD COMPANY, INC.
--MODIFIED CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

PURSUANT TO 49 C.F.R. § 1150.21

STB FINANCE DOCKET NO. 34804

EXHIBIT A

AGREEMENT

Toppenish to White Swan Railroad Line Lease Agreement

WHEREAS, the County (defined below) is the owner of the Railroad Line (defined below); and,

WHEREAS, The Board of Yakima County Commissioners, on behalf of the County, deem it in the best interest of the County that the railroad corridor between Toppenish and White Swan be preserved for future economic growth of the citizens of the County, and County desires to find a qualified lessee to maintain and preserve such corridor during the term of this Toppenish to White Swan Railroad Line Lease Agreement (this "Agreement"); and,

WHEREAS, the Board has adopted Resolution 516-2005 ordering the lease of the Railroad Line to Columbia Basin Railroad Company, Inc. and Columbia Basin Railroad Company, Inc. (herein after referred to as "Lessee") agrees to lease the Railroad Line as a short line operator from the County.

NOW, THEREFORE, the County and Lessee agree to the following terms:

1. Definitions. As used in this Agreement:

1.1. "County" means Yakima County, Washington, its officers, employees and agents;

1.2 "Effective Date" means the date ninety-one (91) days following the date this Agreement is executed by an official of the County, presently expected to be December 21, 2005.

1.3 "Fiscal Year" means the 12-month period beginning on the date that this agreement is executed by all parties;

1.4 "Person" means any natural person, firm, partnership, company, corporation, agency, government or other entity of any kind;

1.5 "Railroad Line" means the railroad right-of-way, track, structures and other operational components of the railroad commonly known as the Toppenish to White Swan Railroad between milepost 0.00 near Toppenish and milepost 20.56 near White Swan, and 1.63 mile of industrial spur near White Swan, all located in Yakima County, Washington, over which rail freight services are to be provided by Lessee pursuant to this Agreement. Legal descriptions and maps of the Railroad Line are attached to the original signed copies of this Agreement.

2. Granting Clause; Term. On the terms and conditions set forth in this Agreement, the County hereby leases to Lessee, and Lessee hereby takes from the County, the Railroad Line. The term of this Agreement shall be not less than four (4) years, beginning on the Effective Date, provided that this Agreement may be terminated for failure to cure a material default as provided in Section 23 below. Not later than the third (3rd) annual anniversary of the Effective Date, Lessee shall provide the County with an

economic development plan specific to the Railroad Line (the "Proposed Plan"). Within the six (6) month period following Lessee's submission of the Proposed Plan, the County and Lessee shall discuss the terms thereof. If within such period the County and Lessee agree on the terms of such plan in writing (such agreement herein referred to as the "Final Development Plan") then this Agreement shall be extended an additional eleven (11) years (15 years total) to allow Lessee to recover investments made in implementing the Final Development Plan. The Final Development Plan will contain milestone dates by which Lessee is to have fulfilled the various requirements of such plan and consequences to Lessee in the event Lessee fails to achieve such objectives, including, without limitation, termination of this Agreement, as the parties may agree in the Final Development Plan.

3. Compensation. During the term of this Agreement, Lessee shall compensate the County for the lease of the Railroad Line by payment of the amount of ten dollars (\$10.00) per loaded freight car for the first one thousand (1,000) cars shipped on the Railroad Line in any Fiscal Year, and twenty dollars (\$20.00) for every additional loaded freight car shipped on the Railroad Line in such Fiscal Year. Lessee shall provide to the County quarterly reports indicating the number of cars handled and shall remit payment based on the above rates.

4. Freight Rail Service. Lessee agrees to provide freight rail service on the Railroad Line a minimum of 5 days a week during daylight hours, with additional service to be provided if reasonably requested by shippers or receivers connected to or on the Railroad Line. This service shall include moving railcars, switching, line-haul, and other related services as are customarily provided to similar industries using rail services. Lessee shall interchange with the BNSF Railway Company, and shall comply with all rules, regulations and requirements of that company, as set forth in the Interchange Agreement between Lessee and BNSF Railway Company to be executed and attached hereto as Exhibit A on or before the Effective Date and thereby incorporated herein by this reference. Lessee shall contact all of the shippers prior to taking over operations of the Railroad Line and notify them in writing the start date of operation and contact information. If the shippers have any service issues that cannot be resolved to the shipper's satisfaction with Lessee, they are to contact the Yakima County Board of County Commissioners with their issues.

5. Yakima Valley Rail & Steam Museum. Lessee has offered a sublet agreement to the Yakima Valley Rail & Steam Museum (the "Museum"), which allows the Museum to operate passenger and excursion services on the Railroad Line and further provides for certain financial subsidies by Lessee to the Museum. The County deems the terms of this offer fair and reasonable. Lessee agrees to hold open its most recent sublease offer made to the Museum from the date of execution hereof to the Effective Date and thereafter, during the initial four (4) year term of this Agreement, agrees to negotiate with other qualified entities to allow them to operate a passenger excursion service on terms no less favorable than those specified in Lessee's final bid submission to the County. At the end of the four (4) year period, Lessee shall in no way be required to enter into any agreement

with the Museum or any successor organization. Failure to honor this commitment by Lessee will be considered a material default of this Agreement.

6. Management of County Owned Assets for Rail and Business Operations. The County has real property/right-of-way assets associated with the Railroad Line that will be made available to Lessee (the "County Owned Assets"). Lessee will have the right to use and/or lease to a third party the County Owned Assets with written approval of the County. Lessee will be responsible for all maintenance and/or upkeep of all County Owned Assets as part of Lessee's Ordinary & Preservation Maintenance obligations under Section 7.1 below. Lessee shall manage all track crossings and sidings included within the Railroad Line in addition to the property management of the County Owned Assets. Lessee shall remit seventy-five percent (75%) of any monies received by Lessee from the leasing and management of the County Owned Assets to the County for the rights of use of the County Owned Assets. The County shall be the holder of all leases of the County Owned Assets. From time to time the County may require the use of rail sidings for loading and unloading of maintenance materials. Upon prior notice to Lessee, these sidings shall be made available at no cost to the County, provided that they do not interfere with other users who have existing leases and provided that the County shall be responsible for all damage, car hire, or demurrage costs incurred as a result of its use hereunder.

7. Maintenance and Improvements. For the purposes of this Agreement there shall be two (2) types of maintenance and improvements. These are "Ordinary & Preservation Maintenance" described in Section 7.1 and "Capital Improvements" described in Section 7.2.

7.1. Ordinary & Preservation Maintenance.

(a) Generally. During the term of this Agreement, Lessee shall perform or cause to be performed all Ordinary & Preservation Maintenance necessary and appropriate to permit continued operation of rail freight services on the Railroad Line in compliance with applicable Federal Railroad Administration safety standards and other applicable State regulations. "Ordinary & Preservation Maintenance" shall include those activities that ensure that the right-of-way and facilities of the Railroad Line remain, as near as practical, in its current or as constructed condition, and as is necessary to provide safe transportation, and those specialized maintenance activities that serve to extend the life of the Railroad Line but do not increase its capacity or efficiency. This shall include, but not be limited to vegetation control, replacement of ties, replacement of spikes, tie plates, joint bars, bolts and other hardware, re-ballasting, signal maintenance and other maintenance activities. Ordinary & Preservation Maintenance shall include all required maintenance of ties and rails at public road crossings on the Railroad Line. The County shall perform all required maintenance of road surfaces from one (1) foot outside of each rail on the Railroad Line. The surface within one (1) foot outside of the rails on the Railroad Line shall be the responsibility of Lessee to maintain. Each entity shall assume all costs of performing its maintenance responsibilities under this Section 7.1 and under Section 7.2 below.

(b) Coordination. All maintenance activities on public road crossings shall be coordinated between the County and Lessee in order to protect the safety of the general public and rail traffic. All Ordinary & Preservation Maintenance projects will be planned and prioritized at the beginning of each year. All Ordinary & Preservation Maintenance projects shall be selected from the prioritized list.

(c) Salvage. Lessee shall have salvage rights to any materials removed from the project line in the course of maintenance requiring in-kind replacement materials; any profits from salvaged materials shall be used to provide additional Ordinary & Preservation Maintenance.

(d) Annual Expenditure Requirements; Excesses and Shortfalls in any Fiscal Year. Lessee shall be required to expend seven thousand dollars (\$7,000) per year per mile of track constituting the Railroad Line on Ordinary & Preservation Maintenance for a total of one hundred fifty five thousand four hundred dollars (\$155,400.00) (22.2miles x \$7,000.00) (the "Annual O & P Maintenance Amount") per annum. Costs included in the Annual O & P Maintenance Amount shall include, but not be limited to, labor, materials and overhead costs of Lessee but shall not include any profit for Lessee, as such amounts are determined in accordance with customary short-line railroad standards. If Lessee does not spend at least the Annual O & P Maintenance Amount in any such Fiscal Year, Lessee shall pay the difference between the Annual O & P Maintenance Amount and Lessee's actual expenditures for Ordinary & Preservation Maintenance within sixty (60) days after the expiration of such Fiscal Year to an escrow account controlled by both the County and Lessee to be used either (a) in subsequent Fiscal Years for Ordinary & Preservation Maintenance expenditures in excess of the Annual O & P Maintenance Amount in such subsequent Fiscal Years or (b) with the consent of both parties, to provide "matching" or similar funds needed to obtain grants or additional funding for Capital Improvements (as defined in Section 7.2 hereof). If Lessee expends more than the Annual O & P Maintenance Amount in any Fiscal Year, then in the subsequent Fiscal Year Lessee shall be credited with such excess expenditures against the Annual O & P Maintenance Amount it would otherwise be obligated to expend in such subsequent Fiscal Year. In the event that conditions are such that an annual O&P Maintenance expenditure of \$7,000 per mile per year becomes excessive, Lessee may, by showing good cause, petition the Board of County Commissioners to reduce the Annual O&P Maintenance Amount to a level that is commensurate with the necessary O&P Maintenance.

7.2 The term "Capital Improvements" is defined as any construction that adds capacity or efficiency to the Railroad Line. Capital Improvements include long term improvements to the Railroad Line that will reconstruct or adds additional road mile(s) of rail line. This shall include, but not be limited to, the reconstruction of the sub-ballast, upgrade of the rails, re-alignment and re-grading of the tracks, re-construction of bridges and trestles or the construction of additional tracks. The costs associated with Capital Improvements will be the responsibility of the County. The monies for this type of construction are expected to come from State and Federal grants. Yakima County will be

responsible for the development of construction documents and the acquisition of any right-of-way. Any materials that are salvaged as a result of capital improvements will be disposed of as indicated in the associated construction documents.

7.3 All improvements to the Railroad Line shall become the property of the County.

8. **Business Relations.** Lessee shall use its best commercially reasonable efforts to maintain good and proper business relations with all of the shippers on the Railroad Line. No existing business shall be relocated to any other line that is owned or operated by Lessee unless the shipper requesting the relocation notifies the Board of County Commissioners of the County in writing of its desire to so relocate. Lessee shall be required to perform sufficient business relations and development to maintain a minimum of seven hundred fifty (750) loaded freight cars per year on the Railroad Line. Failure to maintain the minimum number of loaded freight cars per year may be considered a material default of this Agreement

9. **Auditing.** The County, upon twenty (20) days' advance written notice to Lessee, but not more frequently than once per calendar year during the term of this Agreement, may, at any reasonable time during regular working hours, enter the premises of Lessee to inspect the records of Lessee pertaining specifically to its operations of the Railroad Line and its performance of this contract. The County shall have access to any and all such records regardless of where they are located, and Lessee shall promptly make copies of such records available to the County, upon the County's request and at the County's expense. The County shall limit disruption of Lessee's normal day-to-day operations in obtaining such records and shall, to the extent permitted by law, maintain the confidentiality of such records and information. The County shall not be entitled to take possession of the originals of any documents. Nothing in this Agreement shall be construed to require Lessee to divulge any information which would be in violation of the Interstate Commerce Act or related federal regulations. In the event the County, or any of its officials, agents or employees, is requested, whether under color of law or otherwise, to provide to any third party any of the information obtained by it under this Section 9, the County agrees to provide Lessee with notice thereof no less than five (5) business days in advance of any disclosure thereof so to allow Lessee to take legal action to preserve the confidential nature of its business information.

10. **Ownership.** Yakima County is the sole owner of the Railroad Line.

11. **Liability and Property Damage Insurance.**

11.1 Lessee agrees to purchase and maintain with companies authorized to do business in the State of Washington such property insurance covering the Railroad Line and all property included in this Agreement as is customary in the short-line railroad industry.

11.2 Lessee agrees to purchase and maintain with companies authorized to do business in the State of Washington claims-made basis public liability insurance coverage naming Yakima County and their officers and employees as additional insureds. Liability coverage shall be in an amount not less than \$10,000,000.00 per occurrence with such commercially reasonable exclusions and deductibles as is customary in the short-line railroad industry. The policy shall be endorsed to delete the policy exclusion for property in the care, custody and control of the insured. Certificates of insurance shall be delivered to the County within 10 business days of issuance.

11.3 The following clause shall be made a part of all insurance policies:

This policy shall not be canceled or materially changed without thirty (30) days prior written notice to Yakima County, Washington, whose address is Board of Yakima County Commissioners, County Courthouse, Room 232, 128 North Second Street, Yakima, Washington 98901.

11.4 Lessee agrees to maintain public liability insurance, at the above-mentioned levels, for a sufficient period of time after termination of this Agreement to cover any incidents that may have occurred while Lessee was operating the Railroad Line.

12. Hold Harmless/Indemnity. Lessee does release, indemnify, promise to defend and save harmless the County, its officers, employees and agents from and against any and all liability, loss, damages, expense, actions, and claims, including costs and reasonable attorney's fees incurred by the County, its officers, employees and agents in defense thereof, asserted or arising directly or indirectly out of Lessee's performance of any service pursuant to this Agreement, including any claims arising from the common carrier obligation, except those arising solely from negligent acts of the County, its officers, employees & agents. Lessee specifically agrees to indemnify and hold harmless the County, its officers, employees and agents from any and all bodily injury claims brought by employees of Lessee and expressly waives its immunity under the industrial insurance Act and federal Employers Liability Act or other similar acts as to claims which are brought against the County by such persons. Nothing in the foregoing shall obligate Lessee to indemnify the County from any loss, injury, damage, expense or claim arising from (i) the County's (or its employees', agents', or contractors') exercise of any rights to access the Railroad Line, (ii) the County's breach of any provision of this Agreement or (iii) any act, omission or condition existing prior to the commencement of the term of this Agreement, and the County shall indemnify and hold Lessee harmless from and against any loss, injury, damage, expense or claim arising from any circumstances described in this sentence.

13. Licenses. Lessee shall be responsible for acquiring all permits, licenses, and authority necessary to operate and maintain the Railroad Line and meet all requirements for such permits, licenses and authority. The County shall assist and cooperate in application for permits and licenses where the County's participation is required by state and federal agencies.

14. Lessee Qualifications. The Railroad Line shall be operated by qualified professional management and operations staff that have a minimum of one (1) year experience of managing or operating a short-line railroad and in all events with staff meeting the requirements of the BNSF Railway Company. All staff shall be regular employees of Lessee.

15. Compliance with Laws. As part of the Ordinary & Preservation Maintenance obligation under Section 7.1 hereof, Lessee agrees to comply with all federal, state and local laws, ordinances and regulations including applicable provisions of the uniform fire, building, plumbing, electrical, or mechanical codes which have been adopted by Yakima County, 49 CFR parts 200-300 and all applicable environmental laws and regulations.

15.1 Lessee shall comply with all applicable state and federal laws and regulations affecting its employees in the operation of the Railroad Line and shall at all times defend, indemnify and save the County harmless from all actions, claims, demands and expenses arising out of said laws and regulations.

15.2 Lessee agrees to make no unlawful use of the Railroad Line or any portion thereof.

15.3 The foregoing provisions of this Section 15 shall not apply to obligate Lessee to maintain any buildings or other structures or improvements that are not under its control.

16. Fees and Taxes. Lessee assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other taxes, fees, licenses, excises, or payments required by any city, county, state or federal law or regulation which are now or may during the term of this Agreement be enacted as to all persons employed by Lessee and as to all duties and activities required of Lessee in performance of this Agreement.

17. Assignment or Subletting Prohibited. Lessee agrees not to assign this Agreement or any portion thereof, nor sublet or subcontract the operation or the Railroad Line portion thereof nor permit any other person or persons to occupy the same or any portion thereof without the prior written consent of the County, other than identified in Section 5 above. Notwithstanding the foregoing, the County hereby agrees to the assignment by Lessee to Central Washington Railroad Company ("CWRC"), which is the entity under contract with BNSF Railway Company to operate its Yakima Valley properties, of Lessee's rights and obligations under this Agreement. By execution hereof below, CWRC hereby assumes and agrees to perform all obligations of "Lessee" under this Agreement. Nothing in this assignment shall relieve Columbia Basin Railroad Company, Inc. of any obligations of "Lessee" under this Agreement..

18. Operating Rights, Management and Control

18.1 Lessee shall have the exclusive right to provide freight rail service on or over the Railroad Line during the term of this Agreement. Except as otherwise provided herein, Lessee exclusively shall control, manage, administer, and supervise the Railroad Line and all operations thereon. Lessee may effect such additions, changes, betterments, and repairs to the leased property as Lessee may, with the prior approval by the County, deem necessary, expedient, or proper, all of which shall be at the sole expense of Lessee, except as may be set forth herein or in subsequent agreements.

18.2 Lessee shall have the exclusive right to adopt and promulgate rules and regulations governing access to, use, and operation of the Railroad Line, consistent with federal and state laws and regulations and consistent with regulations adopted by Lessee for other rail freight facilities owned or operated by Lessee.

18.3 As part of its responsibilities, Lessee shall maintain all appropriate interchange agreements, tariffs, charges, and other appropriate governmental, regulatory, or commercial agreements.

18.4 Any use of the Railroad Line by Lessee for other than as provided in Sections 4 and 5 above shall require prior written approval from the County.

18.5 Lessee shall maintain the general appearance of the Railroad Line so that it shall not become a nuisance to the community. Lessee specifically agrees to remove all vegetation that may create hazardous conditions at any railroad crossing (as part of the Operation & Preservation Maintenance), as directed by the County and in compliance with the Washington Utilities and Transportation Commission requirements.

18.6 The County and Lessee shall notify each other of all complaints received or reports issued concerning operation of the Railroad Line. Lessee shall keep accurate records of injuries or accidents associated with the Railroad Line and records of every such incident shall be delivered to the County Traffic Engineer in a timely manner. In addition to written reports, notice of all accidents shall be given in writing or orally to the County Traffic Engineer not less than one business day from the time of the accident.

18.7 All employees of Lessee shall conduct themselves in a business-like manner when representing the Railroad Line. Any conduct that would reflect poorly or any loss of goodwill towards the County or the Railroad Line by an employee of Lessee, which is not addressed by Lessee after receipt of notice thereof, will be considered a material default of this Agreement as specified in Section 23.

18.8 The County has the exclusive right to grant franchises or easements for the use of the railroad rights-of-way, and the County agrees that its or its franchisees' or grantees' use thereof will comply with all railroad safety obligations imposed by law or by Lessee which are applicable to the entire Railroad Line. Any fees that are collected as a result of granting said franchises or easements shall be paid to the County, unless such

franchise or easement rights are being managed by Lessee in which event Lessee shall be entitled to retain twenty-five percent (25%) of such fees.

18.9 In the event the parties agree upon the Final Development Plan defined in Section 2 hereof, the County and Lessee each agree to use its best efforts to allow Lessee to implement the Final Development Plan.

19. Safety and Other Inspections. Lessee shall allow the County access to all documents related to inspection of the Railroad Line, or the rail corridor applicable thereto or rolling stock used thereon upon reasonable advance notice to Lessee. Lessee shall permit and provide for inspection of the Railroad Line by the County upon request.

20. Condition of Premises. Lessee agrees that it has examined the Railroad Line and accepts the Railroad Line in its present condition and acknowledges that the County has not made any promises for improvement. Notwithstanding the foregoing, the County agrees to use any State or Federal funds it may obtain with respect to the Railroad Line for Capital Improvements as described in Section 7.2 of this Agreement.

21. Immediate Suspension of Operations.

21.1 Upon notice from the County Engineer to Lessee, Lessee shall immediately suspend the movement of trains and motive power on the Railroad Line when in the judgment of the County Engineer operation of trains or motive power would be or has been unsafe and further operations would not be in compliance with applicable federal or state railroad safety regulations or rules and regulations of the State of Washington. The County Engineer shall take reasonable action in an attempt to verify the existence of unsafe conditions prior to the suspension of operations. In the event the actions of the County or the County Engineer under this Section 21.1 are found to have been unreasonable or not in good faith, the County will indemnify and hold Lessee harmless from and against all loss, damage, cost or expense incurred by Lessee in connection with such suspension, including specifically, any penalties imposed by the State of Washington or the United States, or any agency or instrumentality thereof.

21.2 Lessee shall immediately suspend operation of trains and motive power on the Railroad Line if its liability insurance required by this Agreement should lapse or be canceled for any reason. The County Engineer may order Lessee to suspend train and motive power on the Railroad Line operations for lapsed or canceled insurance in the event Lessee does not take such action voluntarily. Operation of trains and motive power by Lessee shall remain suspended until insurance coverage is reinstated.

22. Liens and encumbrances.

22.1 Lessee agrees to keep the Railroad Line free from all liens of any nature caused or incurred by any act or omission of Lessee. Lessee shall not have the right or authority to incur any mechanics', laborers' or other liens against the Railroad Line.

Lessee cannot use this Agreement as collateral for any purpose, without prior written consent of the County.

22.2 Lessee is not authorized to grant any easement, right of way, permit, or license of any nature to any person to use any part of the Railroad Line without the prior written consent of the County.

23. Default, Waivers and Termination for Default.

23.1 Waivers of Default. Sufferance or waiver of any default by either party shall not affect such party's rights regarding other or future defaults and failure to take any action on account of such default shall not prohibit either party from taking action for other or future defaults. An express waiver shall not waive any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers of any covenant, term, or condition of this Agreement shall not be construed as a waiver for a subsequent breach of the same covenant, term, or condition.

23.2 Termination for Material Default. If either party shall fail to cure a material default within twenty (20) business days of written notice, or within such additional period, if any, as may be reasonably required using the defaulting party's best commercially reasonable efforts to cure the default if the default is not capable of being cured within a twenty (20) day period, the other party may elect to terminate this Agreement upon thirty (30) days written notice to the other, which notice shall state the grounds therefore with specificity. Termination or exercise of other rights by either party with respect to any default shall not affect the rights or obligations of any non-defaulting party under this agreement. The parties shall have such other rights and remedies as are provided by law.

24. Other Events of Termination. In addition to the parties' rights to terminate this Agreement under Section 23.2, this Agreement shall be terminated immediately upon the issuance of any final and non-appealable order by the United States Surface Transportation Board or any court or other administrative agency that terminates Lessee's authority or ability to provide rail freight services on the Railroad Line.

25. Force Majeur Events.

25.1. Events. This Section 25, to the exclusion of any other provision of this Agreement, governs the rights and obligations of the parties under circumstances in which Lessee's performance of freight service on all or any portion of the Railroad Line is prevented by an event beyond its control, and which is without the fault or negligence of Lessee, which shall include without limitation acts of God, explosions, fires, vandalism, flood, or any other severe weather disturbance. The parties agree that, if such an event shall occur which substantially impairs Lessee's ability to provide such service, thereby impairing Lessee's ability to perform its obligations, including payment obligations, under this Agreement, Lessee shall use its best commercially reasonable

efforts to continue to perform its obligations hereunder, provided that if Lessee should fail to perform any such obligation due to such event, such failure shall not be deemed to be an event of default under Section 23 hereof so long as Lessee continues to use such efforts. In the event of loss or damage to the Railroad Line which is covered by property insurance, Lessee agrees to make any necessary claims for insurance proceeds and use such proceeds to repair the damaged Railroad Line or to defray the expenses incurred as a result of making the repair.

25.2. Rights and Obligations. In the event of loss or damage to all or any portion of the Railroad Line described in Section 25.1 not covered by, or in excess of insurance coverage, Lessee shall not be responsible for repairs in excess of such limits, and Lessee may (i) seek additional funds from Lessor or others, make necessary repairs and continue to perform rail freight service on the Railroad Line or (ii) terminate this Agreement as to such portion (or all) of the Railroad Line and remit all insurance proceeds to Lessor in which event the severed portion (or all) of the Railroad Line that will not be operated by Lessee shall thereupon be excluded from the Railroad Line under this Agreement.

26. Actions Upon Termination; Surrender of Premises. In the event of termination of this Agreement under Sections 23, 24 or 25:

(a) Lessee agrees to quit and deliver the Railroad Line to the County in as good order and condition as in existence on the date hereof, excepting reasonable use and wear; and

(b) The County or its designee (a) shall assume the common carrier obligation to provide freight service of the Railroad Line, (b) shall obtain all requisite authority from the United States Surface Transportation Board, or its successor agency, to provide common carrier freight service over the Railroad Line; and (c) shall obtain any and all authority and permits from the State of Washington, and any other federal, state or local agencies, necessary to provide common carrier freight service over the Railroad Line, and (d) shall obtain all manpower and equipment necessary to perform common carrier freight operations over the Railroad Line. Upon the termination of this Agreement, Lessee agrees to file a discontinuance and not oppose or obstruct the County's efforts to obtain the requisite authorities required to be obtained by the County or its designee hereunder.

27. Notices. Any notices herein provided to be given shall be deemed to be delivered if mailed by United States mail addressed to:

Columbia Basin Railroad
Attn: Nicholas B Temple, Jr.
111 South 33rd, Suite 200
Yakima, Washington 98901

Board of Yakima County Commissioners

128 North 2nd Street, Room 232
Yakima, Washington 98901

28. Notices herein to be given by the County to Lessee shall be deemed to be delivered if mailed by certified United States mail addressed to Lessee at, the address set forth above.

29. Nondiscrimination. Lessee agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW Chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 121 01 et seq.) or any other applicable law or regulation. In the event Lessee violates this provision, the County may terminate this agreement immediately.

30. Assignment.

30.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to Section 17 hereof, Lessee's rights and obligations hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly without County's prior written consent. Changes in Lessee's majority ownership or voting control shall require County's prior written consent.

30.2 This Agreement is intended and shall be deemed to be the sole property of the County and may at the option of the county be forthwith terminated if this Agreement or the rights of Lessee hereby be transferred or attempt to be transferred by judicial process, or if Lessee shall attempt to transfer the same otherwise than as herein provided, or if Lessee shall become bankrupt or insolvent, or if its property or any part thereof be placed in charge of a receiver by order of any court or for any other reason whatsoever. No third parties are intended to be benefited by, nor shall any third party be entitled to enforce, any provision of this Agreement.

31. Construction, Amendment and Severability.

31.1 The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.

31.2 Terms or provisions of this Agreement may be changed, waived, discharged, or terminated only by an instrument in writing executed by both.

31.3 This Agreement and the attachments hereto contain the entire Agreement of the parties and supersedes any and all prior agreements or oral understandings among the parties.

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

I certify that I know or have satisfactory evidence that Nicholas B. Temple is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Columbia Basin Railroad Company, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8th day of September, 2005.

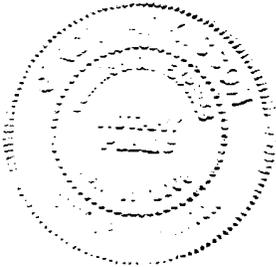
Cindy Addison
(Signature)
Notary Public in and for the State
of Washington, residing at Yakima, Wa.
My appointment expires 6/25/08.

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

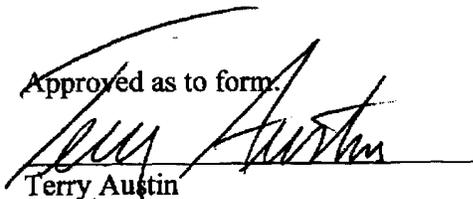
I certify that I know or have satisfactory evidence that Nicholas B. Temple Jr. is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Central Washington Railroad Company. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8th day of September, 2005.

Cindy Addison
(Signature)
Notary Public in and for the State
of Washington, residing at Yakima, Wa.
My appointment expires 6/25/08.

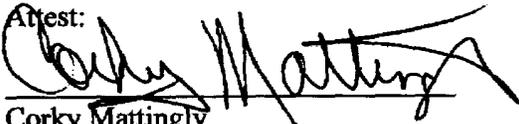


Approved as to form.

A handwritten signature in black ink, appearing to read "Terry Austin", written over a horizontal line.

Terry Austin
Deputy Prosecuting Attorney

Attest:

A handwritten signature in black ink, appearing to read "Corky Mattingly", written over a horizontal line.

Corky Mattingly
Auditor