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ENTERED
Office of Proceedings
January 27, 2023
Part of
Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 36663 Yak Rail LLC--Modified Rail Certificate

Dear Ms. Brown:

Pursuant to the Board's electronic filing Rules, attached for filing is an original **Verified Notice of Exemption of YAK RAIL LLC** ("Notice") under 49 C.F.R. § 1150.23 in the above captioned proceeding. Applicant has separately submitted the \$2,100 filing fee per 49 C.F.R. § 1002.2(f)(15).

Pay.gov tracking ID: 273H9M60
Agency Tracking ID number: 76354498044

If there are any questions about this matter, please contact me by telephone at **(908) 361-7097** or by email to **jsavagelaw@aim.com**.

Respectfully submitted,

/s/ James H. M. Savage
[electronically signed]

James H. M. Savage
Counsel for Yak Rail LLC

Attachment

FILED
January 27, 2023
SURFACE
TRANSPORTATION BOARD

1

FEE RECEIVED
January 27, 2023
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36663__

**YAK RAIL LLC--
MODIFIED RAIL CERTIFICATE**

**NOTICE OF YAK RAIL LLC FOR MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

Yak Rail LLC (“Yak Rail”), a newly organized class III short line railroad and non-carrier hereby files this notice for a modified Certificate of Public Convenience and Necessity to lease and operate a Rail Line (“Line”) previously authorized for abandonment and subsequently acquired by the State of Washington and transferred to Yakima County (“County”).

The Line subject to this Modified Certificate originates at BNSF milepost 73.6 BNSF Railway Company (“BNSF”) Yakima Subdivision at Wesley Junction near Toppenish; and continues west a distance of 20.56 miles to White Swan, with an additional 1.63-mile industrial spur near White Swan, for a total distance of 22.19 miles, all in Yakima County.

This Notice relates to Finance Docket No. 36664, CWW LLC--

Continuance in Control--Yak Rail LLC, in which CWW has filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Yak Rail once Yak Rail leases the Line and becomes a carrier.

In accord with the requirements of 49 C.F.R. §1150.23(b), Yak Rail hereby submits the following information:

Information Regarding Operator

49 C.F.R. §1150.23(b)(1)

Yak Rail is a new entity formed as a limited liability company under the laws of the State of Washington to lease and operate the Line. Yak Rail's Certificate of Formation is attached as Exhibit A.

Yak Rail is presently a non-carrier seeking to become a class III carrier pursuant to this Modified Certificate.

- (i) The full name and business address of Yak Rail is:

Yak Rail LLC
709 N. 10th Ave.
Walla Walla, WA 99362-1775

- (ii) The full name and business address of Yak Rail's sole member is:

Paul Didelius
709 N. 10th Ave.
Walla Walla, WA 99362-1775

- (iii) Prior to initiating operations, Yak Rail will be fully capitalized.

Yak Rail's rail carrier affiliates are:

YCR Corp.
CCET LLC,
CWW LLC,
KET LLC,
RYAL, LLC, and
WRL LLC

Information regarding the prior abandonment

49 CFR. § 1150.23(b)(2)

By decision served August 24, 1992, the Board's predecessor agency, the Interstate Commerce Commission ("ICC") granted the petition for exemption filed by Washington Central Railroad Company, Inc. to abandon the above-described rail line. *See* ICC Docket No. AB-326X, Washington Central Railroad Company, Inc.-- Abandonment Exemption--In Yakima County, WA, served August 24, 1992.

The State of Washington acquired the rail line pursuant to an offer of financial assistance in a State of Maine transaction, subsequently transferring ownership of the line to Yakima County. *See* Docket No. 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.

The Yakima Valley Rail and Steam Museum Association, d/b/a Toppenish, Simcoe & Western Railroad ("TSWR") received a modified rail certificate to lease and operate the Line. *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.

The County terminated TSWR's lease effective December 31, 2005. Thereafter, the Central Washington Railroad Company ("CWA") and Columbia Basin Railroad Company, Inc. ("CBRW") received a modified rail certificate to operate this property. See Finance Docket No. 34804, Central Washington Railroad Company and Columbia Basin Railroad Company, Inc.--Modified Rail Certificate, served Jan. 4, 2006.

The County terminated the above lease with CWA/CBRW effective December 20, 2009, entering into a new lease with YCR Corp. ("YCR") becoming the Line's operator December 21, 2009 pursuant to a modified rail certificate. See Finance Docket No. 35336, YCR Corp.--Modified Rail Certificate--in Yakima County, WA, served Jan. 15, 2010.

YCR's 2009 lease with the County has expired, and County has negotiated a new lease with Yak Rail becoming the Line's operator upon this modified certificate taking effect.

Dates of the period of operation

49 C.F.R. § 1150.23 (b)(3)

Yak Rail, as lessee, and Yakima County, as owner, have executed a lease agreement (the "Agreement") governing the subject rail line. The Agreement is attached hereto as Exhibit B. Yak Rail anticipates commencing freight rail operations over the subject line on or after January 27, 2023. The initial term of this

Agreement is 10 years, which may be extended, upon the occurrence of certain conditions, for an additional 5 years. *See* Agreement at section 7. The Agreement may be terminated earlier upon the occurrence of certain events described in the Agreement. *See* Agreement at section 27.

Description of the service to be performed

49 CFR. § 1150.23(b)(4)

Yak Rail seeks this Modified Certificate to provide rail freight service operations over the subject line. The Line's only interline connection is with BNSF at milepost 73.6, near Toppenish, WA. The Lease 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 \$15,000,000 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 17. Yak Rail has obtained insurance that covers this rail line from Westchester Surplus Lines Insurance Company, Policy No. G71479675 005, attached hereto as Exhibit C.

There are no preconditions that shippers on the Line must meet in order to receive service from Yak Rail. No entity is subsidizing Yak Rail's rail freight operations on the line.

Interchange commitments

49 CFR. § 1180.4(g)(4)(i)

Yak Rail further advises the Board that it is negotiating and expects to shortly enter into an Interchange Agreement with BNSF imposing no interchange commitments (“paper barriers”). Yak Rail will immediately advise the Board in the event the final Interchange Agreement differs from that which is represented herein.

Submitted By:

/s/ James H. M. Savage

[By electronic signature]

James H. M. Savage
22 Rockingham Court
Germantown, MD 20874
Tel. (908) 361-7097
Email: jsavagelaw@aim.com

Counsel for Yak Rail LLC

Dated: January 27, 2023

UNITED STATES OF AMERICA

The State of Washington



Secretary of State

I, **STEVE R. HOBBS**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF FORMATION

to

YAK RAIL LLC

A **WA LIMITED LIABILITY COMPANY**, effective on the date indicated below.

Effective Date: 01/03/2023

UBI Number: 605 007 285



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Steve R. Hobbs, Secretary of State

Date Issued: 01/03/2023

AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board
Yakima County Commissioners' Office, Room 232**

Prepared by:

Matt Pietrusiewicz

Department: Yakima County Roads

Requested Agenda Date: 01/03/2023

Presenting: _____

Document Title:

Toppenish to White Swan Railroad Line Lease Agreement

Board of County Commissioners Record Assigned
BOCC Agreement

#

015-2023

Yakima County, WA

APPROVED FOR AGENDA:

☐ Consent☐ Regular

Board of County Commissioners Determined

Action Requested: *Check Applicable Box*☐ PASS RESOLUTION ☒ EXECUTE or AMEND **AGREEMENT** CONTRACT or GRANT☐ ISSUE PROCLAMATION ☐ PASS ORDINANCE ☐ OTHER _____

Describe Fiscal Impact:

N/A

Background Information:

Yakima County is the owner of the Railroad line from Toppenish to White Swan. After a Public Hearing on Tuesday, November 29th where the proposal from Yakima Rail LLC, 709 N 10th Ave, Walla Walla, WA 99362 was the only proposal and was accepted, Yakima County desires to lease the line to Yakima Rail LLC. Agreement for the lease of the Railroad Line from Toppenish to White Swan must be executed.

Summary & Recommendation:

Execute agreement for the Toppenish to White Swan Rail Line between Yakima County and Yakima Rail, LLC.

Motion:

Department Head/ Elected Official

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial

Signature

Late Agenda Requests Require BOCC Chairman Signature:

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 deem it in the best interest of the County that rail service on the railroad corridor between Toppenish and White Swan be preserved for the economic benefits to the citizens of the County; and,

WHEREAS, The Board of Yakima County Commissioners desire to lease the line to a qualified lessee to provide freight rail service on the line during the term of this Toppenish to White Swan Railroad Line Lease Agreement (this "Agreement"); and,

WHEREAS, The Board of Yakima County Commissioners desire to lease the line to a qualified lessee to provide freight rail service on the line during the term of this Toppenish to White Swan Railroad Line Lease Agreement (this "Agreement"); and,

WHEREAS, the Railroad Company (herein after referred to as "Lessee") agrees to lease the Railroad Line from the County for the purpose of providing Freight Rail service on the line.

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

1) Definitions. As used in this Agreement:

- a) "County" means Yakima County, Washington;
- b) "Person" means any natural person, firm, partnership, company, corporation, agency, government or other entity of any kind;
- c) "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) Ownership: Yakima County is the sole owner of the Railroad property.

3) Lessee Qualifications: The Lessee certifies that it is a legally and properly organized Railroad Company and has and shall maintain during its tenure under this Agreement, adequate qualified professional management, and operations staff necessary for operation of a short-line railroad. And in all events, Lessee has, and shall maintain during its tenure under this

Agreement, staff properly qualified to conduct interchange operations with any Class I or Class II rail carriers as may be, or become, necessary.

4) Freight Rail Service: Lessee agrees to provide freight rail service on the Railroad Line up to seven (7) days a week. Service shall be provided at a frequency necessary to adequately serve the number of car loadings being handled. Service on weekends or legal holidays shall be provided to shippers on the Railroad Line only if requested by the shipper, and under terms established by Lessee. Service shall generally be provided during daylight hours. Operation during hours of darkness shall be limited to those occasions where it is necessary to begin or end daily movements to meet workload requirements. Under no circumstances shall train movements be conducted between the hours of 9:00 p.m. and 5:00 a.m. Freight rail service shall include moving railcars, switching, line-haul, and other related services as are customarily provided to similar industries using rail services. Lessee shall, during the term of this agreement, interchange with a Class I or Class II rail carrier, and shall comply with all rules, regulations and requirements as set forth in the Interchange Agreement(s). A copy of the Interchange Agreement(s) shall be provided to the County prior to execution of this Agreement, and shall be attached hereto and incorporated herein as Exhibit A.

5) Modified Certificate of Public Convenience and Necessity: The Railroad Line is qualified for operation under a Modified Certificate of Public Convenience and Necessity, (49 CFR 1150, Subpart C). Lessee agrees that it will only seek to operate on the Railroad Line under a Modified Certificate of Public Convenience and Necessity. Nothing in this Lease shall authorize the Lessee to operate, or to seek to operate, as a general common carrier on the Railroad Line. Lessee shall be responsible for making all STB filings in accordance with 49 CFR 1150.23, and a copy of said filing shall be provided to the County

6) Subsidies: Lessee shall not require any subsidy as may be authorized by 49 CFR 1150, Subpart C, from the County as a precondition for operation of the Railroad Line. Lessee may not require any financial subsidy from any shipper on the line, except that; Lessee may require a guarantee of a minimum number of car loadings per calendar year as a precondition to provide common carrier service to the shipper.

7) Effective Date, Term: The effective date of this agreement shall be January 25, 2023 or the effective date of Surface Transportation Board (STB) authorization of lessee, at which time the Lessee shall assume the common carrier obligation on the Railroad Line under a Modified Certificate of Public Convenience and Necessity. The term of this Agreement shall be ten (10) years, beginning on the effective date, provided that this Agreement may be terminated for failure to cure a material default as provided in Section 27 below. No earlier than eight (8) months, or later than six (6) months prior to the termination of the ten-year lease term, the lessee may submit to the County a proposal to extend the lease for an additional five (5) years. The Annual Compensation contained in any such proposal shall not be less than the Annual Compensation for the initial lease term. The Board of Yakima County Commissioners shall have the sole authority to accept or reject any lease extension proposal. Failure by any shipper(s) on the Railroad Line to meet any precondition for service by Lessee shall not relieve Lessee of any obligations or compensation payable under the terms of this Agreement.

8) Annual 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 Nine Thousand dollars and no cents (\$9,000.00) per year. The Annual Compensation for the lease shall be paid to the County in four (4) equal quarterly installments. Prior to execution of this Agreement by the County, the lessee shall pay the first quarterly payment in full, along with a pro rata amount equal to 10% of the first quarterly payment. Thereafter, quarterly payments shall be paid, in advance, to the County no later than the tenth (10th) day of April, July, October and January of each year.

9) Yakima Valley Rail & Steam Museum: Lessee shall, if requested by the Yakima Valley Rail & Steam Museum ("Museum"), allow the Museum to operate passenger and excursion services on the Railroad Line, provided that the Museum shall:

- a) Provide their own liability insurance with the minimum limits contained in this Agreement.
- b) Include the Lessee and the County as named insured's on the Museum's liability insurance policy.
- c) Indemnify both the Lessee and the County to the extent provided for by law.
- d) Provide documentation that all Museum personnel and equipment have all the proper certifications that would normally be required to operate on a railroad line.
- e) Ensure that the track is inspected and suitable for passenger rail service at no cost to Lessee or the County.

As a further condition, the Lessee may require the Museum to agree to other criteria that are reasonably necessary to ensure compliance with all applicable regulations and prevent interference with the Lessee's freight rail operations.

10) Management of Other Assets: Appurtenant to the Railroad Line are additional railroad rights of way and rail sidings that shall be considered separate from the Railroad Line but shall be part of the lease. Lessee shall have the right to use and/or lease to a third party the Other Assets. Lessee shall be responsible for all maintenance and/or upkeep of the Other Assets as part of Lessee's Maintenance obligations under Section 12 below. Lessee shall be entitled to retain all revenues derived from any sublease authorized by this agreement.

- a) 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 Yakima County, provided that the use by the County does 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 because of its use hereunder.

11) Crossings: Lessee shall be responsible for the management of all public and private track crossings that are part of the Railroad Line. This shall be construed to include the establishment of rules and regulations for permitting and maintenance of private crossings and, regular inspection and maintenance of ties, rails, crossing surfaces and signals at public road crossings on the Railroad Line. The Public Agency with responsibility for the road shall perform all

required maintenance of road surfaces from one (1) foot outside of each rail on the Railroad Line. Lessee shall maintain crossing surfaces within one (1) foot outside of the rails on the railroad.

12) Railroad Line Inspection and Maintenance: During the term of this Agreement, Lessee shall perform or cause to be performed all inspections and maintenance necessary and appropriate to permit continued operation of rail freight services on the Railroad Line in compliance with applicable Federal and State laws. Maintenance shall include those routine activities that ensure that all track components, signals, sidings and right-of-way of the Railroad Line remain in a condition that is equal to, or better than their condition at the commencement of this Agreement. In general Maintenance shall include, but not be limited to;

- a) vegetation control,
- b) maintenance of the ballast, roadbed, drainage facilities, culverts and bridges,
- c) repair or replacement of broken or damaged rail sections,
- d) replacement of damaged or otherwise unserviceable ties,
- e) replacement of spikes, tie plates, bolts, and other hardware,
- f) replacement of joint bars, g) maintenance of track surface, alignment and gage,
- g) maintenance of switches, sidings, derails, fences, and other appurtenances,
- h) signal maintenance and other crossing device maintenance including all crossbucks and stops signs installed at public road crossings.

13) Capital Improvements; Capital Improvements are any improvements that add capacity or efficiency to the Railroad Line. Capital Improvements include improvements to the Railroad Line that will reconstruct the existing facilities to a better than existing condition or add additional road miles of rail line. Capital Improvements shall include, but not be limited to, the reconstruction of the sub ballast, re-ballasting that improves the existing track conditions, upgrade of the rails, re-alignment and re-grading of the mainline track or sidings, re-construction of bridges and trestles or the construction of additional track or sidings, construction of new crossing signals, and the installation of specialized crossing surfaces. The costs associated with Capital Improvements will generally be the responsibility of the Lessee. Any Capital Improvements made to the Railroad Line by the Lessee shall be approved in advance by the County and shall become the property of the County. The County may from time to time seek State and Federal grants to fund certain Capital Improvements. As a condition of grant funded Capital Improvements, the County will be responsible for the development of construction documents and the acquisition of any right-of-way. The County shall notify the Lessee in advance of application for any grant funded Capital Improvement.

14) Coordination: The County and the Lessee shall to the greatest extent possible mutually cooperate on the development of Capital Improvements. The County shall notify the Lessee in advance of any Grant applications being submitted to funding agencies, and of any other improvements to the line proposed to be funded by the County. The Lessee shall cooperate with the County and any County contractors performing County sponsored work on the line. This cooperation shall include grant application review, construction document review, provision of flaggers, and modification of train orders necessary to accommodate the work. Costs incurred by the Lessee

shall only be reimbursed to the extent that they are included in any mutually agreed upon funding estimate for the work.

15) Business Relations: Lessee shall use all commercially reasonable and prudent efforts to maintain good and proper business relations with all the shippers on the Railroad Line.

16) Auditing: The County, upon twenty (20) days' advance written notice to Lessee, and not more frequently than once per calendar year during the term of this Agreement, may, at any 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, 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.

17) Liability and Property Damage Insurance:

- a) 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.
- b) 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 its officers, employees and agents as additional insured's. Liability coverage shall be in an amount not less than \$15,000,000.00 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. A copy of the policy document including the declarations page(s), and contact information for the insurer shall be delivered to the County prior to Lessee's entry onto or use of the Railroad Line and commencement of operations, and prior to any renewal or change of insurer.
- c) 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, 128 North Second Street, Yakima, Washington 98901."

- d) Lessee agrees to maintain public liability insurance, at the above-mentioned levels, for a sufficient period of time after termination of the lease to cover any incidents that may have occurred while lessee was operating the Railroad Line.
- e) 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 may order Lessee to suspend train and motive power operations on the Railroad Line 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.

18) 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 insurance deductibles and 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 and agents.

- a) 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.
- b) 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.
- c) Lessee specifically agrees that they have inspected the Railroad Line and all appurtenances prior to the commencement of this Agreement and agrees to accept the Railroad Line and appurtenances in their current condition and will indemnify and defend the County from any loss, injury, damage, expense or claim arising from any preexisting condition of the Railroad Line as provided in this section.
- d) 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.

19) 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.

20) Compliance with Laws: Lessee agrees to make no unlawful use of the Railroad Line or any portion thereof. Lessee also agrees to comply with all federal, state and local laws, ordinances and regulations including applicable provisions of the uniform fire, building, plumbing,

electrical, and mechanical codes which have been adopted by Yakima County, and all applicable environmental laws and regulations.

a) Lessee shall promptly notify the Federal Railroad Administration in writing of the Lessee's acceptance of responsibility for the Railroad Line in accordance with 49 CFR§ 213.5 (c). A copy of the above notification and any response thereto shall be promptly provided to the County.

21) Fees and Taxes: Lessee assumes full responsibility for the payment of all payroll taxes, use, sales, income, leasehold 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, by Lessee in performance of this Agreement.

22) 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 other than as specifically allowed by this Agreement.

23) Operating Rights, Management and Control:

- a) 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 and betterments to the leased property as Lessee may deem necessary, expedient, or proper, all of which shall be at the sole expense of Lessee, and with the prior approval by the County, except as may be set forth herein or in subsequent agreements.
- b) Lessee shall have the exclusive right to adopt and promulgate rules and regulations governing 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.
- c) As part of its responsibilities, Lessee shall maintain all appropriate interchange agreements, tariffs, charges, and other appropriate governmental, regulatory, or commercial agreements.
- d) Lessee shall maintain the general appearance of the Railroad Line so that it does not become a nuisance to the community. Lessee specifically agrees to remove all vegetation that may create hazardous conditions at any railroad crossing in compliance with the Washington Utilities and Transportation Commission.
- e) 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 in a timely manner. In addition to written reports, notice of all accidents shall be given in writing or orally to the County not less than one business day from the time of the accident.

- f) 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 25.
- g) The County has the exclusive right to grant franchises for the use of the railroad rights-of-way. The County agrees that its franchisees' 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 shall be paid to the County and deposited into a special fund established for the Railroad Line.

24) Safety and Other Inspections: Lessee shall be solely responsible for any and all safety and operational inspections required for continuing railroad operations. 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.

25) 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.

26) Liens and encumbrances:

- a) 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.
- b) 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.

27) Default, Waivers and Termination for Default:

- a) 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.
- b) Termination for Material Default: If either party shall fail to cure a material default within twenty (20) business days of written notice, 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.

- c) Other Events of Termination: In addition to the parties' rights to terminate this Agreement under Section 27(b), 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.

28) Force Majeure Events:

- a) Events: This Section, 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 27 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.
- b) Rights and Obligations: In the event of loss or damage to all or any portion of the Railroad Line described in Section 28(a) 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.
 - 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.

29) Actions Upon Termination; Surrender of Premises: In the event of termination of this Agreement under Sections 7, 27 or 28, Lessee agrees to quit and deliver said Railroad Line to the County in as good order and condition as in existence on the date hereof, excepting reasonable use and wear. Lessee shall be responsible for filing all notifications as required by 49 CFR 1150.24 and shall not be relieved of any Common Carrier obligation until the requisite time period following said notification has elapsed.

30) Notices. Any notices herein provided to be given by United States mail addressed to:

To County:

Board of Yakima County Commissioners
128 North 2nd Street
Yakima, WA 98901

To Lessee:

YAK Rail LLC
709 N. 10th Ave.
Walla Walla, WA 99362
Attn: Paul Didelius
pd@columbiarail.com
(509) 492-3340

Notices herein to be given shall be deemed to be delivered if mailed by certified United States mail, addressed to the Parties at the addresses set forth above.

31) Nondiscrimination: Lessee agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, sexual orientation, 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.

32) Assignment:

- a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. 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, , which in the case of Lessee transfer of lease to another reputable railroad operating company shall not be unreasonably withheld. Changes in Lessee's majority ownership or voting control shall require County's prior written consent.

- b) 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.

33) Construction, Amendment and Severability:

- a) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.
- b) Terms or provisions of this Agreement may be changed, waived, discharged, or terminated only by an instrument in writing executed by both.
- c) This Agreement and the attachments hereto contain the entire Agreement of the parties and supersede any and all prior agreements or oral understandings among the parties.
- d) The headings of the several paragraphs contained herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

34) Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceedings for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.

Agreement Number

BOCC Agreement

015-2023

Yakima County, WA



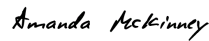
Paul Didelius – Yak Rail LLC



BOARD OF YAKIMA COUNTY COMMISSIONERS



LaDon Linde, Chair



Amanda McKinney, Commissioner



Kyle Curtis, Commissioner

Constituting the Board of County Commissioners
for Yakima County, Washington

DATED: JAN 24 2023

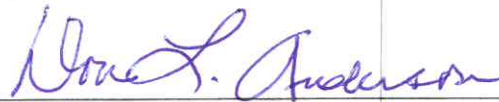
Attest:



Julie Lawrence, Clerk of the Board
Erin Franklin, Deputy Clerk of the Board



Approved as to Form:



Deputy Prosecuting Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/24/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|--|--|
| PRODUCER Commercial Insurance Associates, LLC 103 Powell Court, Ste 200 Brentwood TN 37027 | CONTACT NAME: PHONE (A/C, No, Ext): 615-515-6000 E-MAIL ADDRESS: administrator@com-ins.com FAX (A/C, No): 615-515-6001 |
| INSURED CWW LLC, & MOR, LLC; Yak Rail LLC 709 N. 10th Ave Walla Walla WA 99362 | INSURER(S) AFFORDING COVERAGE INSURER A: Westchester Surplus Lines Insurance Company INSURER B: Crum & Forster Indemnity Co INSURER C: INSURER D: INSURER E: INSURER F: |

COVERAGES**CERTIFICATE NUMBER:** 1837163665**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--------------------------------|----------|---------------|-------------------------|-------------------------|--|
| A | COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | Y | Y | G71479675 005 | 1/15/2023 | 1/15/2024 | EACH OCCURRENCE \$ 15,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 30,000,000 PRODUCTS - COMP/OP AGG \$ \$ |
| B | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | Y | Y | 133-752280-5 | 7/20/2022 | 7/20/2023 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y / N <input type="checkbox"/> | N / A | | | | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Worker's Compensation is covered by FELA

CERTIFICATE HOLDER**CANCELLATION**

FOR INFORMATION ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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