

West Virginia Public Port Authority
1900 Kanawha Boulevard, East
Building 5, Room A-137
Charleston, WV 25305

Neal Vance
Executive Director
WV Public Port Authority
Phone: (304) 558-0330
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Operation of Intermodal Facility – Prichard, WV

REQUEST FOR QUOTATION

May 15, 2015

Pre Bid Meeting: **May 28, 2015 at 1:00 PM Eastern**

Bids Due: **June 8, 2015 at 1:00 PM Eastern**

Sealed Bids are requested by the West Virginia Public Port Authority for the operation of the Intermodal Facility located at 401 Heartland Drive, Prichard, WV 25555, in accordance with the following documents:

1. Sample Contract for Facility Operation
2. Sample Contract for Lift Machine Maintenance
3. Proposal Form
4. Norfolk Southern Operating Guidelines for Contractors

A **mandatory** pre-bid meeting will be held on **May 28, 2015 at 1:00 PM (Eastern)**. The meeting will begin in the Administration Building at the Heartland Intermodal Gateway, 401 Heartland Drive, Prichard, WV. In order for your bid to be considered, you must make arrangements to attend this mandatory pre-bid meeting. **Due to space constraints, it is requested that each bidder limit the number of attendees to TWO please.**

The contract will be for an initial term of SEVEN (7) years. The pricing for the first two years will be fixed with pricing in years three and beyond adjusted by 70% of the average change in the Consumer Price Index as outlined further in the agreements. The contractor(s) will begin operations on October 1, 2015.

Proposals must be returned to the undersigned by **June 8, 2015 at 1:00 PM (Eastern)** at 1900 Kanawha Boulevard, East, Building 5, Room A-137, Charleston, WV 25305.

Your proposal shall constitute an offer by you that you will perform the work subject to all terms and conditions set forth in your proposal, which are not inconsistent with the documents listed above. West Virginia Public Port Authority reserves the right to accept or reject any and all proposals for any reason whatsoever. Acceptance of a proposal will only be made, and will only be effective if made, by West Virginia Public Port Authority in writing. No employee of the West Virginia Public Port Authority has authority to accept a proposal by telephone or otherwise orally. There will be no modifications to the terms

and conditions of this Request for Quotation or to your proposal except in writing executed by the West Virginia Public Port Authority. No employee of the West Virginia Public Port Authority has authority to do so orally.

All proposals and all information contained in your proposal will become the property of the West Virginia Public Port Authority. Your proposal shall remain an open, non-revocable offer to the West Virginia Public Port Authority until either the proposal is accepted in writing or the period for the acceptance of your proposal as set forth in your proposal expires.

All questions concerning the bid documents should be directed to the undersigned at (304) 558-0330.

Sincerely,

Neal Vance

Neal Vance
Executive Director
West Virginia Public Port Authority

**West Virginia Department of Transportation,
Public Port Authority**

REQUEST FOR DETAILED PROPOSALS (RFDP)
Perform the Operations and Maintenance

**Heartland
Intermodal
Gateway (HIG)**

Prichard, West Virginia, USA



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1 EXECUTIVE SUMMARY

1.1 Introduction

The Heartland Intermodal Gateway (HIG) Inland Port Terminal (“Project”) is located at the unincorporated community of Prichard in Wayne County, West Virginia. The Project is comprised of a new intermodal terminal facility serving the Norfolk Southern Railroad (NS).

The West Virginia Public Port Authority (WVPPA) is advancing this project as a Public/Private Partnership and is hereby requesting the submittal of Detailed Proposals for the operation, and maintenance of the Project.

2 GENERAL PROCEDURES AND REQUIREMENTS

2.1 Schedule

WVPPA currently anticipates conducting the procurement of the Project in accordance with the following schedule leading to an Interim and/or Comprehensive Agreement. This schedule is subject to revision and West Virginia Department of Transportation (WVDOT) reserves the right to modify this schedule as it finds necessary, in its sole discretion.

<u>Procurement Phase</u>	<u>Date</u>
RFQ Documents Released	May 15, 2015
Pre-Bid Meeting/On-site visit	May 28, 2015
RFDP Submission Deadline	June 08, 2015, 1 p.m.
Award Announcements	June 15, 2015

2.2 WVPPA’s Point of Contact and Project Reference

WVPPA’s sole Point of Contact (POC) for the Project shall be the person designated below. WVPPA’s POC is the only individual authorized to discuss this RFDP with any interested parties, including Contractors. All communications with WVPPA’s POC shall be in writing, as required by the applicable provisions of this RFDP. Contractors may not rely upon any oral responses to any inquiries.

WVPPA’s POC is:

Mr. Neal Vance
Executive Director
West Virginia Public Port Authority
West Virginia Department of Transportation
Building 5, Room 137-A
1900 Kanawha Blvd., E.
Charleston, WV 25305
www.transportation.wv.gov/ports/HIG

- 2.2.1 WVPPA disclaims the accuracy of information derived from any source other than WVPPA's POC and the use of any such information is at the sole risk of the Contractors.
- 2.2.2 All written communications to WVPPA from the Contractors shall specifically reference the correspondence as being associated with the "**Heartland Intermodal Gateway Terminal Operations**".

2.3 Advertising the RFDP

The RFDP shall be advertised on WVPPA's website www.transportation.wv.gov/ports/HIG

2.4 Pre-Submittal Responsibilities

Each Contractor shall be solely responsible for examining the RFDP, including any addenda, and any and all conditions which may in any way affect their proposal or the performance of the work on the Project including, but not limited to, the following responsibilities:

- 2.4.1 That the Contractor, having carefully examined all plans, local conditions, topography, the entire situation surrounding the work proposed, and general labor and material rates and conditions now obtaining and prospectively to obtain in the territory embraced within the limits of the caption hereof, and relating the same to the specifications, undertakes and obligates for himself, subject to approval and acceptance hereof, to perform the duties and obligations herein imposed, for and at the prices herein proposed, and that he will confirm his work to the general progress of all of the other work contemplated to be performed at the project site hereinabove defined, or as directed by the WVPPA Executive Director or by the NS Division Manager.

2.5 Delivery of Proposal

Conceptual Proposals are to be sealed in mailing envelopes or packages bearing the Contractor's name, address and the words "Heartland Intermodal Gateway Terminal Operations Proposal" clearly written on the outside. All Conceptual Proposals must be received by the date and time as designated in Section 2.1. Conceptual Proposals must be delivered to the WVPPA POC as designated below. Neither fax nor email submissions will be accepted. Hand delivered responses to the RFDP must be received by the date and time as designated in Section 2.1, and must be delivered to:

Mr. Neal Vance
Executive Director
West Virginia Public Port Authority
West Virginia Department of Transportation
Building 5, Room 137-A
1900 Kanawha Blvd., E.
Charleston, WV 25305

Contractors are responsible for effecting delivery by the deadline above and late submissions will be rejected without consideration or evaluation, and will be returned unopened to the sender. WVPPA accepts no responsibility for misdirected or lost Proposals.

- 2.5.1 The Conceptual Proposals should be as clear and concise as possible in accordance with the requirements of this RFDP, so that a proper evaluation can be made of the Contractor's capabilities and intent to complete the proposed Project.
- 2.5.2 Contractors submitting Proposals to WVPPA are required to deliver five (5) identical hard copies, which must bear original signatures and one (1) electronic copy (a ".PDF" file in the most current version of Adobe Acrobat), of their Conceptual Proposal on CD-ROM or non-encrypted flash drive.

3 BACKGROUND

3.1 Introduction

This section of the RFDP contains general information about the Project and its background. It is noted that any reference made herein to distances, amounts, percentages, etc. are approximations only.

3.2 The Heartland Corridor

The SAFETEA-LU legislation enacted in 2005 identified the "Heartland Corridor" running along the southern border of West Virginia as a Project of National and Regional Significance and provided funds for a portion of the nearly \$200 million improvement cost. The Heartland Corridor Clearance Project ultimately provided double stack clearance from the Ports of Virginia to Columbus, Ohio. The clearance project was executed as a public-private-partnership between Norfolk Southern Railroad (NS) and the Federal Highway Administration (FHWA) in conjunction with the states of Virginia, West Virginia, and Ohio. The clearance was completed in 2010.

The State of West Virginia proposed to participate in the Heartland Corridor project with the establishment of an intermodal port adjacent to NS's rail line in the unincorporated community of Prichard, Wayne County, WV. Land for this facility was transferred from NS to the WVPPA, which is a division of the WVDOT for development of the proposed HIG.

3.3 Map of Project

The Project is illustrated in Appendix B.

3.4 Progress to Date

The HIG terminal facility is expected to be completed in December 2015. It is the intention on the WVPPA to have a "soft" opening beginning October 1, 2015.

4 PROJECT SCOPE

The Project includes the operation and maintenance of the subject facilities. The Contractor's Proposal shall take into consideration the Operating Agreement and objectives and requirements listed herein.

4.1 Project Requirements

That under the conditions, of the Operating Agreement, the Contractor does hereby undertake to perform the work at the following prices for items listed to wit:

4.1.1 First one-thousand (1000) containers lifted to/from a railcar each month: \$ **per month**

4.1.2 Each additional container lifted to/from a railcar: \$ **per lift**

4.1.3 For the first twelve (12) months of operation of the Facility, the Contractor shall be permitted to invoice WVPPA at cost for the following items, after which time the Compensation paid to Contractor under 4.1 shall be adjusted to include the average monthly expense for these items.

- (a) Performing required railcar inspections
- (b) Utility costs (sanitary sewer, potable water, electricity, and natural gas)

4.1.4 For the full term of the agreement, the Contractor shall invoice WVPPA, at cost for the following items.

- (a) Fuel for lift equipment and hostler trucks
- (b) Mowing and brush cutting services inside the Facility
- (c) Repairing lights and fences and maintaining facility equipment
- (d) Maintaining office equipment and components
- (e) Parts and outside services for lift machines

4.1.5 Maintaining and repairing lift equipment and hostler trucks shall be included in the flat rate per month to operate the facility from section **4.1.1**.

4.1.6 Based on WVPPA's published gate hours, Contractor to provide full time equivalents (FTE) for Gate Operation, at a rate per FTE of \$ per month.

Regular Operations will be a daytime operation with a schedule of 7:00 a.m. to 3:00 p.m., Monday thru Friday. Saturday operations will be 7:00 a.m. to 12:00 p.m. Gate hours are subject to change. Expected gate hours at opening, October 1, 2015 are:

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Open	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	Closed
Close	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	12:00 p.m.	Closed

4.1.7 The rates **4.1.1**, **4.1.2** and **4.1.6** outlined above shall be effective for two years. Effective October 1, 2017 and each successive October 1st anniversary date for the term of the

agreement, the rates described above shall be adjusted by 70% of the change in the AVERAGE CPI – South (Index ID: CWUR0300SA0) from the most recent September to August period and the AVERAGE CPI – South (Index ID: CWUR0300SA0) from the baseline period September 2015 through August 2016 and the baseline rates effective October 1, 2016. PROVIDED; however, that this annual CPI rate adjustment cannot result, in a reduction in the then current rates. It would be calculated as outlined in the following example:

By way of example only, an AVERAGE CPI-South from September 2016 through August 2017 of 212.15 and an AVERAGE CPI-South from September 2015 through August 2016 of 222.17:

Average CPI South September 2016 through August 2017: 212.15
 Average CPI South September 2015 through August 2016: 222.17

$$\text{CPI Adjustment} = .70 \times \frac{(\text{Avg CPI } 09/15-08/16 - \text{Avg CPI } 09/16-08/17)}{\text{Avg CPI } 09/15 - 08/16} = 0.3301615$$

<u>Rate</u>	<u>October 1, 2016</u>	<u>Adjustment</u>	<u>October 1, 2017</u>
4.1.1	\$20,000	.03301615	\$20,660.32 per month
4.1.2	\$25.00	.03301615	\$25.82 per lift

- 4.1.8 Payment for all invoices issued by either party under the terms of this Agreement shall be Net 30 days from date of invoice.
- 4.1.9 Contractor shall invoice WVPPA once per calendar month.
- 4.1.10 All invoices submitted by Contractor to WVPPA under 4.1.3 above must be supported by original source documents with one copy for WVPPA and one copy retained for Contractor's records.

4.2 Operator Agreement

The HIG Terminal Operating and Maintenance Agreement to be executed under this RFDP shall be for a term of seven (7) years, with two (2) additional renewal terms of five (5) years each, these terms are subject to negotiation with the successful Contractor and shall require that the company being awarded this contract provide HIG Terminal Operator Services for customers of the HIG as further described below. That this proposal constitutes a binding offer that the Contractor may not revoke for a period of one hundred eighty (180) days after the deadline for the receipt of proposals for the work which is the subject of this proposal. The Contractor agrees that this proposal may be accepted by WVPPA only by a writing executed by WVPPA. Contractor understands that no employee of WVPPA has the authority to waive this requirement of written acceptance or to award this work orally.

4.3 Operator Requirements:

The Subscribed Operator:

- 4.3.1** Understands, consents and fully agrees that the data presented, and other prints of drawings accompanying this proposal, are tentative only and subject to modification by order and in the discretion, judgment and decision of the owner and that such data, quantities and other information, while informative and roughly approximate for the guidance of the Contractor, shall in no way govern the final estimate of compensation to be paid by WVPPA to the Contractor for the execution and accomplishment of the work proposed to be undertaken hereunder.
- 4.3.2** Now has available for the work herein contemplated a complete administrative organization reasonably necessary for a going concern, and has sufficient equipment and labor available, and adequate to prosecute the work herein proposed.
- 4.3.3** Will, upon acceptance of this proposal, if and when ordered to do so in writing by WVPPA, begin the work proposed to be done hereunder within (120) days after receipt of such written order.

5 QUESTIONS AND CLARIFICATIONS

All questions and requests for clarification regarding this RFDP shall be submitted in writing to WVPPA's POC designated in Section 2.2. No requests for additional information, clarification, or any other communication should be directed to any other individual. WVPPA's responses to questions or requests for clarification shall be in writing and may be accomplished by an addendum to this RFDP. WVPPA will not be bound by any oral communications, written interpretations or clarifications that are not set forth in an addendum. WVPPA, at its sole discretion, shall have the right to seek clarifications from any Contractor to fully understand information contained in the Proposal. All questions submitted by the Contractors will be published on the WVDOT/WVPPA website at <http://www.transportation.wv.gov/ports/Pages/default.aspx>, in the form in which they were received.

6 RIGHTS AND OBLIGATIONS OF WVPPA

In connection with this procurement, WVPPA reserves to itself all rights (which rights shall be exercisable by WVPPA in its sole discretion) available to it under applicable law.

6.1 Specific Rights and Obligations of WVPPA

In addition to all rights reserved as specified by law, WVPPA further reserves to itself, without limitation or with or without cause and with or without notice, the following:

- 6.1.1** The right to cancel, withdrawal, postpone or extend this RFDP in whole or in part at any time prior to the execution by WVPPA of an Interim and/or Comprehensive Agreement, without incurring any obligations or liabilities.
- 6.1.2** The right to issue a new RFDP.
- 6.1.3** The right to reject any and all submittals, responses and proposals received at any time.
- 6.1.4** The right to modify all dates set or projected in this RFDP.
- 6.1.5** The right to terminate evaluations of responses received at any time.
- 6.1.6** The right to suspend and terminate the procurement process for the Project at any time.
- 6.1.7** The right to revise and modify, at any time prior to the proposal submittal date, factors it will consider in evaluating responses to this RFDP and to otherwise revise its evaluation methodology.
- 6.1.8** The right to waive or permit corrections to data submitted with any response to this RFDP until such time as WVPPA declares in writing that a particular stage or phase of its review of the responses to this RFDP has been completed and closed.
- 6.1.9** The right to issue addenda, supplements, and modifications to this RFDP.
- 6.1.10** The right to permit submittal of addenda and supplements to data previously provided with any response to this RFDP until such time as WVPPA declares in writing that a particular stage or phase of its review of the responses to this RFDP has been completed and closed.
- 6.1.11** The right to hold meetings and conduct discussions and correspondence with one or more of the Contractors responding to this RFDP to seek an improved understanding and evaluation of the responses to this RFDP.
- 6.1.12** The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFDP, including the right to seek clarifications from Contractors.
- 6.1.13** The right to permit Contractors to add or delete firms and/or key personnel.
- 6.1.14** The right to add or delete the Contractor's responsibilities from the information contained in this RFDP.
- 6.1.15** The right to appoint and change appointees of the Independent Review Panel.
- 6.1.16** The right to use assistance of outside technical, financial, and legal experts and consultants in the evaluation process.
- 6.1.17** The right to waive deficiencies, informalities and irregularities in a proposal, accept and review a non-conforming proposal or seek clarifications or supplements to a proposal.

- 6.1.18** The right to disqualify any Contractor that changes its submittal without WVPPA approval.
- 6.1.19** The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFDP.
- 6.1.20** The right to suspend, discontinue and/or terminate Interim and/or Comprehensive Agreement negotiations with any Contractor at any time prior to the actual authorized execution of such agreement by all parties, subject to appropriate documentation.
- 6.1.21** The right to negotiate with a Contractor without being bound by any provision in the proposal.
- 6.1.22** The right to enter into one or more Interim and/or Comprehensive Agreements with one or more Contractors in furtherance of the development and operation of the Project or any of its components, or to modify or abandon procurement of the Project.
- 6.1.23** The right to request revisions to the Proposal.

6.2 Assumption of Liability

WVPPA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFDP. All such costs shall be borne solely by each Contractor and its team members.

- 6.2.1** In no event shall WVPPA be bound by, or be liable for, any obligations with respect to the Project until such time (if at all) an Interim and/or Comprehensive Agreement, in form and substance satisfactory to WVPPA, has been executed and authorized by WVPPA and, then, only to the extent set forth therein.
- 6.2.2** Any and all information made available to the Contractors is made for convenience purposes only and is without representation or warranty of any kind.

7 COMPREHENSIVE AGREEMENT – MATERIAL TERMS

WVPPA issues this RFDP, inclusive of all appendices and addenda (collectively the “RFDP Documents”) as a preliminary step in the procurement process, which, if carried through to the conclusion, will result in WVPPA entering into an Interim and/or Comprehensive Agreement with the successful Contractor.

8 MISCELLANEOUS

8.1 West Virginia Freedom of Information Act

- 8.1.1** All proposals submitted to WVPPA are subject to the disclosure requirements of §29B Article (<http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=29b&art=1>) of West Virginia State Code as amended governing the Freedom of Information (WVFOIA). Contractors are advised to familiarize themselves with the provisions of each section of code referenced herein to ensure that documents identified as confidential will not be subject to disclosure under WVFOIA. In no event shall WVPPA or WVDOT be liable to Contractor for the disclosure of all or a portion of a Proposal submitted pursuant to this request.
- 8.1.2** If a responding Contractor has special concerns about information which it desires to make available to WVPPA but which it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Contractor should specifically and conspicuously designate that information as such in its proposal and state in writing why protection of that information is needed. The Contractor should make a written request to WVPPA's POC. The written request shall:
1. Invoke such exemption upon the submission of the materials for which protection is sought;
 2. Identify specifically and conspicuously the data or other materials for which the protection is sought;
 3. State the reasons why protection is necessary; and
 4. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the WVFOIA.
- 8.1.3** Blanket designations that do not identify the specific information shall not be acceptable and may be cause for WVPPA to treat the entire proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on WVPPA by applicable Law, and the applicable Law(s) shall control in the event of a conflict between the procedures described above and any applicable Law(s).
- 8.1.4** In the event that WVPPA receives a request for public disclosure of a portion of a proposal, WVPPA will determine whether or not the requested materials are exempt from disclosure. In the event that WVPPA elects to disclose the requested materials, it will endeavor to provide notice to the Contractor of its intent to disclose.
- 8.1.5** Contractors are on notice that WVPPA will post on the WVDOT webpage all responsive Proposals and other relevant information and agreements in accordance with applicable Laws.

8.2 Requirement to Keep Team Intact

The Key Personnel proposed by the Contractor shall remain on Contractor's team for the duration of the procurement process and, if the Contractor is selected and enters into an Interim and/or Comprehensive Agreement, the requirement will be as more specifically defined in the Comprehensive Agreement. If circumstances require a proposed change, it must be submitted in writing to WVPPA's POC. WVPPA will determine whether to authorize a change, which authorization will not be unreasonably withheld. Unauthorized changes to the Contractor's Key Personnel at any time during the procurement process may result in the elimination of the Contractor from further consideration.

8.3 Administrative Requirements

In addition to the specific submittal requirements set forth elsewhere in this RFDP, all Contractors shall comply with the following:

- 8.3.1** All business entities are required to be registered with the West Virginia Secretary of State. Registration is available on the Internet at <http://www.business4wv.com/b4wvpublic/>.
- 8.3.2** WVPPA will not consider for award any proposals submitted by any Contractors and will not consent to subcontracting any portions of the proposed contract to any sub-consultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- 8.3.3** WVPPA does not discriminate against a Contractor because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state Law relating to discrimination in employment.

9 CONFLICT OF INTEREST

9.1 West Virginia Governmental Ethics Act

WVPPA may, in its sole discretion, disqualify the Contractor from further consideration for the award of the contract if it is found by WVPPA that there is a violation of the West Virginia Governmental Ethics Act, §6B Article 1 of the West Virginia State Code, or any similar statute involving the Contractor in the procurement of the contract.
(<http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=06b&art=1>)

Definitions

Blue Signal Protection of Workers- This protection sets forth the minimum requirements for use of blue signal protection. Blue signal protection is designed to protect workers who are engaged in inspecting, testing, repairing, and servicing rolling equipment. Workers, including contractors that are part of the work group, who are working on or near rolling equipment, locomotives, locomotive cranes, and other on-track equipment are authorized to display and use blue signal protection. The proper application of blue signal protection protects workers against unexpected movement.

Board of Directors (BOD)- West Virginia Public Port Authority's Board of Directors.

Conceptual Proposal/Proposal- This is defined as the complete RFDP proposal package including required documentation, ideas and solutions submitted by Contractors.

Drug and Alcohol Program- The Contractor shall maintain a Drug and Alcohol Program for covered employees in accordance with 49 CFR Part 219, including, pre-employment and random testing.

Executive Summary- A brief statement of the proposal covered in the RFDP, background information, concise analysis and main conclusions. This document is intended as an aid to decision making and should be short and to the point.

Flat Rack/Open Top/Tank Containers- Flat rack containers are containers suitable for heavy loads and cargo that need to be loaded from the top or sides (i.e. Pipes/machinery); Open top containers are typically for general (dry) cargo that is loaded from the top or through the doors by crane or crab; Tank containers are for the transport of bulk liquids, gases and powders.

Foreign Trade Zone (FTZ)- A foreign-trade zone (FTZ) of the United States is a geographical area, in (or adjacent to) a United States Port of Entry, where commercial merchandise, both domestic and foreign receives the same Customs treatment it would if it were outside the commerce of the United States. Merchandise of every description may be held in the Zone without being subject to tariffs (customs duties) and other *ad valorem* taxes. This tariff and tax relief is designed to lower the costs of U.S.-based operations engaged in international trade and thereby create and retain the employment and capital investment opportunities that result from those operations. These special geographic areas – Foreign-Trade Zones – are established "in or adjacent to" U.S. Ports of Entry and are under the supervision of the U.S. Customs and Border Protection under the United States Homeland Security Council. Since 1986, U.S. Customs' oversight of FTZ operations has been conducted on an audit-inspection basis known as Compliance Reviews, whereby compliance is assured through audits and spot checks under a surety bond, rather than through on-site supervision by Customs personnel.

Invitation letter- A letter will be sent to pre-qualified Contractors from the WVPPA to solicit an RFDP.

Definitions (continued)

Key Personnel- The personnel listed in the Contractor's RFDP submittal at the time of submission. Changes to this personnel list must be approved by WVPPA prior to agreement finalization.

Letter of Submittal- letter that accompanies the RFDP that details what is being submitted, by whom and emphasizes any aspect of the submission that may be of particular interest to the recipient.

Contractor- A Contractor is short-listed vendor approved to submit RFDP documents for the project.

Orange Vests, Protective Head Gear, Safety Glasses, Hearing Protection and Safety Shoes- are personal safety equipment items required to be furnished by the Operator for all employees to wear when working on HIG property.

Project- The Project is comprised of a new intermodal terminal facility serving the Norfolk Southern Railroad (NS); the Heartland Intermodal Gateway (HIG) Inland Port Terminal.

Public/Private Partnership- A government service or a private business venture which is funded and operated through a partnership of government and one or more private sector companies.

Request for Detailed Proposals (RFDP)- This document containing the requirements and specifications for Contractors to submit detailed proposals on the Project is consider to be the RFDP.

Submission Deadline- This deadline is the date and time the RFDP documents are due from the Contractors.

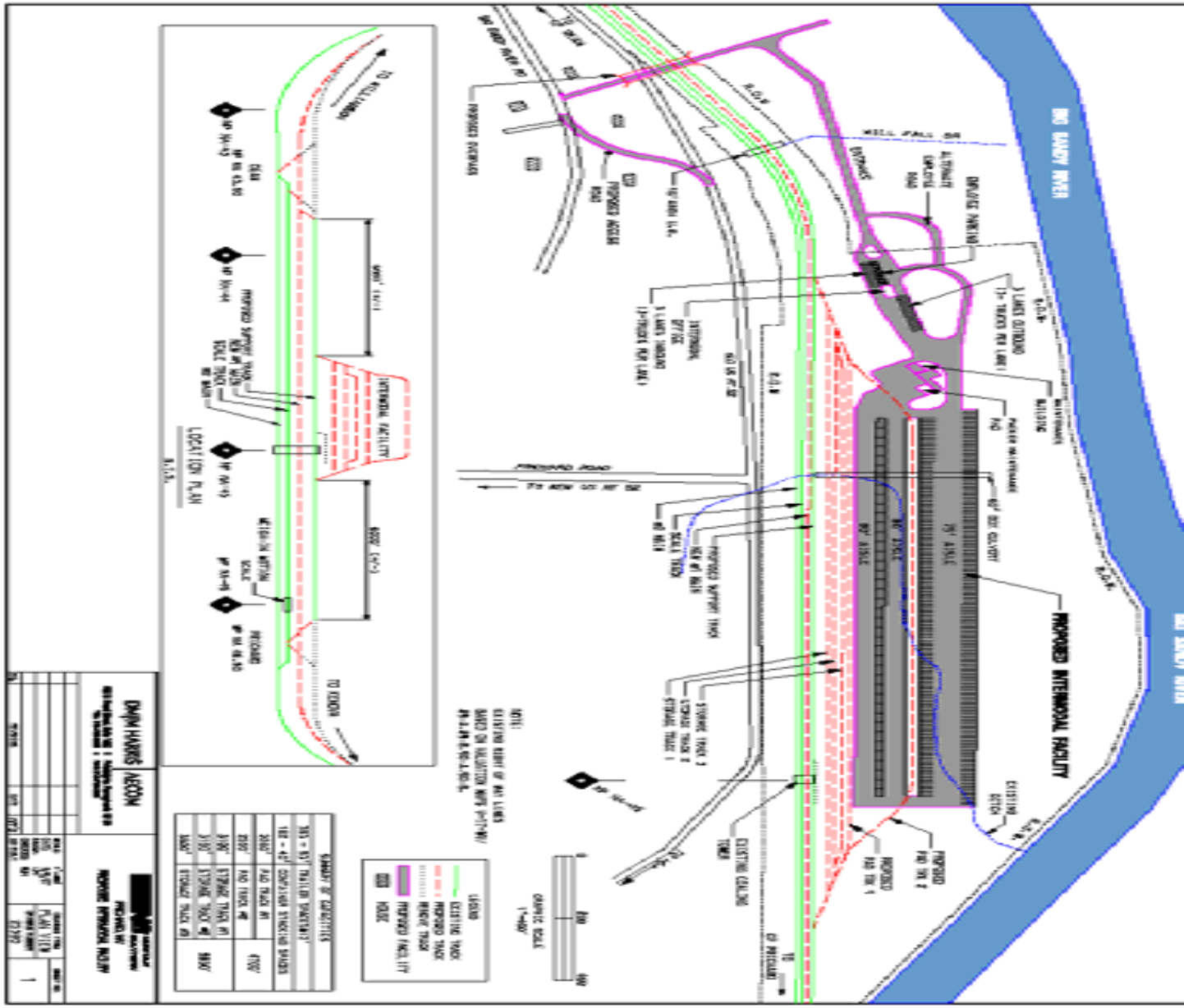
Vendor Inquiry Deadline- This deadline is the date that written inquiries from prospective Contractors are due.

WVPPA's Point of Contact- This is the only point of contact for information and inquiry for the RFDP and Project, information listed within RFDP document.

Project Map



Project Map (continued)



Your Company's Organizational Chart

Your Detailed Manpower Plan for the Facility

<u>Position</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>
GATE STAFF							
RAMP OPERATIONS							
MECHANICS							
SUPERVISOR							

Your Equipment for the Facility. **Note:** Hostlers shall have Tier 4 Diesel Engines.

Hostlers (2 required):

Number of hostlers			
Manufacturer			
Model			
Age			
Estimated Remaining Useful Life (Months)			

Other equipment:

Description			
Manufacturer			
Model			
Age			
Estimated Remaining Useful Life (Months)			

Contract Number: _____

OPERATING AGREEMENT

THIS AGREEMENT, made and entered this **XXXX** day of XXXXXXX, **XXXX** between **WVPPA** (hereinafter called "WVPPA") and _____ (hereinafter called "Contractor"). This Agreement includes the attached Appendices [A](#) and [B](#) to the same extent as if the provisions of Appendices A and B were set forth verbatim herein, and the term "Agreement" as used hereinafter shall include Appendices [A](#) and [B](#).

WITNESSETH

WHEREAS, WVPPA holds itself out to the public as offering to provide intermodal transportation and other specified services with regard to trailers, containers, chassis, and chassis racks (all such equipment being collectively called "Units" in this Agreement);

WHEREAS, WVPPA desires to enter into an agreement with Contractor, for the performance of certain services incidental to such intermodal transportation and other services, as set forth herein and under the conditions hereinafter set forth below;

WHEREAS, such services by Contractor include the loading of Units onto rail cars and the unloading of Units from rail cars at WVPPA's transportation facility described in [Section A1](#) of [Appendix A](#) (hereinafter called the "Terminal"), the movement of Units within the Terminal, and the performance of certain other support services described more fully below; and

WHEREAS, Contractor is willing to perform all such services.

NOW, THEREFORE, for and in consideration of the mutual undertakings set forth below, the parties hereto agree as follows:

SECTION 1: CONTRACTOR OBLIGATIONS.

1.1 Moving, Loading, and Unloading Units. Contractor shall transport Units between any temporary parking or drop-off areas designated by WVPPA within the Terminal and between any such area and the area designated by WVPPA for loading onto or unloading off of rail cars and/or chassis. Contractor shall load any Unit designated by WVPPA onto any flat car or chassis designated by WVPPA and unload any Unit designated by WVPPA off of any flat car or chassis designated by WVPPA. Such loading and unloading shall include the proper application and removal, respectively, of hold-down or tie-down devices to and from the chassis, and, to the extent provided in, to the rail cars. Contractor shall provide all of these services promptly at the times, and in the Unit sequence, specified by WVPPA. In the absence of direct specification of time or sequence by WVPPA personnel, Contractor will perform all services provided for in this [Subsection 1.1](#) in a manner to provide the least number of equipment moves and lifts consistent with the most expeditious forwarding of the freight associated with the Unit. If Contractor has any question about the proper handling of any Unit under the preceding sentence, Contractor shall ask the person designated by WVPPA in [Section A3](#) of [Appendix A](#) for specific guidance.

1.2 Drivers and Equipment. Contractor shall provide the personnel, drivers, tractors, and all equipment necessary to perform its obligations under this Agreement, except that Contrac-

tor shall not be under any obligation to furnish Intermodal Lift Machines for loading and unloading Units onto and off of rail cars without the use of truck tractors unless the furnishing of Intermodal Lift Machines is expressly provided for in Appendix B . Unless otherwise provided in Appendix B, WVPPA may, at its option, furnish such Intermodal Lift Machines, and in that event, Contractor shall operate it as part of and under all the terms and conditions of this Agreement. If Contractor has an obligation under Appendix B to apply and remove hold-down or tie-down devices on rail cars, the equipment to be furnished by Contractor shall include, but shall not be limited to, such number of electric fifth wheel impact wrenches for raising and lowering fifth wheel hitches as shall be necessary to handle, on a timely basis, all of WVPPA's freight traffic through the Terminal. Further specific obligations, if any, to be assumed by Contractor with regard to the kinds of equipment and equipment maintenance and operation are set forth in [Appendix B](#). In no event, however, shall any language, or omission of language, in [Appendix B](#) reduce or limit, in any manner, Contractor's obligation to provide sufficient personnel and equipment to perform properly all of its obligations under this Agreement. The hostler/spotting tractors provided under this agreement shall be Tier 4 diesel-powered.

1.3 Terminal Support Services. Contractor shall also provide any additional services under [Subsection 1.1](#) and [Subsection 1.2](#) which are determined in WVPPA's sole but good faith judgment to be reasonably necessary for the efficient operation of the Terminal, including but not limited to the following additional services (hereinafter called "Accessorial Yard Services"): stacking/unstacking of containers and chassis, mounting of containers to chassis, demounting containers from chassis, loading of chassis to chassis racks, unloading of chassis from chassis racks, bundling of chassis for highway movement, and unbundling of chassis delivered to Terminal by highway. Contractor shall further provide any operating and administrative services specifically described in [Appendix B](#), provided, however, that no language in [Appendix B](#), or omission of language from [Appendix B](#) shall reduce or limit, in any manner, Contractor's obligation to provide all support and incidental services ordinarily and reasonably required in the operation of a rail-highway, intermodal facility.

1.4 Supervision and Performance of Work. Contractor is and shall remain an independent Contractor. Contractor shall be solely responsible for, and WVPPA shall not participate in, the employing or supervising of each person engaged in discharging Contractor's responsibilities under this Agreement; all such persons shall be the sole agents, servants and employees of Contractor. The Contractor will pay all expenses and charges involved or incurred in any way in the performance of its obligations under this Agreement, including without limitation compensation of personnel, fringe benefits, Social Security, Worker's Compensation unemployment insurance (as may be required by State or Federal law) and the cost of fuel, lubrication, supplies, depreciation, parts and maintenance for the equipment used in performing Contractor's obligations hereunder (except for any cost of maintenance expressly assumed by WVPPA under [Subsection 1.2](#) and/or [Appendix B](#) with regard to any Intermodal Lift Machines).

1.5 Protection of WVPPA Property.

1.5.1 Contractor shall also require any person performing any obligation of Contractor under this Agreement, including, without limitation, Contractor's employees, prospective employees, agents, representatives, and subcontractors (hereinafter called "Workers"), to comply, while on or about WVPPA property, with any of the Intermodal Operating Rules that apply to their activities and also to comply with any

other rules or regulations concerning operations or safety that WVPPA furnishes in writing to Contractor.

WVPPA adopts the “Norfolk Southern Intermodal Operations Manual” (as revised from time to time) as part of its Intermodal Operating Rules, and the current edition of the Norfolk Southern Intermodal Operations Manual will be given to Contractor and incorporated by reference as part of this Agreement.

If Contractor has any questions related to its obligations under this [Subsection 1.5.1](#), Contractor shall ask the person designated by WVPPA in [Section A3](#) of [Appendix A](#) for specific guidance.

- 1.5.2** Contractor will provide any information reasonably requested by WVPPA about any of Contractor's Workers who may come on the Terminal or perform any work for WVPPA under this Agreement. Contractor represents and warrants that, as to each of Contractor's Workers who will come onto WVPPA's premises or who will perform work hereunder, Contractor has performed, and such Contractor's Worker has passed, the required background check and a drug screening test, each of which shall be reasonably acceptable to WVPPA and otherwise in compliance with applicable laws, including, but not limited to the Fair Credit Reporting Act as applicable to background checks.

1.5.2.1 e-VERIFILE

- 1.5.2.1.1** Contractor must secure background investigations of its employees through e-VERIFILE.com. Contractor employees successfully undergoing the background investigation will be issued a picture identification card which will be required for the Contractor's employees to enter and work on the Terminal or perform services for WVPPA. Contractor employees without the identification card will not be allowed to work on The Terminal. Employees leaving the employment of Contractor must surrender the identification card to either Contractor or to WVPPA. All charges incurred in the use of e-VERIFILE services and products are the sole responsibility of Contractor. Where a contract permits Contractor to charge travel and business expenses to WVPPA, the e-VERIFILE.com charges are not included among such recoverable expenses. Contractor may include such charges as a part of its overhead costs in determining its price proposals. Contractor must execute e-VERIFILE.com's standard Subscriber Agreement—failure to do so voids this Agreement. The contact information for e-VERIFILE.com is as follows:

e-Verifile.com
(770-859-0717 ext 212)

- 1.5.2.1.2** In the event that WVPPA ceases the use of e-VERIFILE.com for background investigations or switches to another similar service, Contractor will be notified by WVPPA of the

termination and/or transfer. In the event that WVPPA switches to another vendor for similar services the requirements of this Section will apply to Contractor with regard to the use of the alternative vendor's services.

- 1.5.2.1.3** WVPPA does not warrant or guarantee either the accuracy or completeness of the services performed by e-VERIFILE.com; and WVPPA shall have no responsibility to Contractor for the services performed by e-VERIFILE.com.

Contractor uses such services as between WVPPA and Contractor solely at the risk of Contractor. It is the sole discretion and responsibility of Contractor as to performing other background investigations of Contractor's employees.

- 1.5.2.1.4** A sample copy of e-VERIFILE.com's standard Subscriber Agreement is attached for information.

- 1.5.2.2** As to any of Contractor's Workers who have or may come onto WVPPA's premises or perform work hereunder, Contractor will perform any other investigation or procedure reasonably requested by WVPPA for the protection of WVPPA's property or operations, the protection of lading, and the protection of third parties.

- 1.5.2.3** Contractor further agrees that it will hold WVPPA harmless and will indemnify WVPPA in the event any actions are filed against WVPPA in connection with Contractor's completion of any of the foregoing, including but not limited to the conduct and communication of the background check and the drug screening test.

- 1.5.3** If WVPPA elects to waive the requirement of any background check, drug screen, or other investigation or procedure before permitting one of Contractor's Workers to perform work hereunder or to come on any WVPPA property, such waiver shall not constitute a waiver of WVPPA's right to subsequently require any such check, screen, investigation or procedure for that Worker after he or she has begun working under this Agreement.

- 1.5.4** Without limiting the generality of the foregoing in any way, Contractor shall also perform the following acts:

- 1.5.4.1** Arrange an urinalysis screen for any substance specified by WVPPA for each of Contractor's Workers who will perform work under this Agreement, and

- 1.5.4.2** Before any Worker comes on WVPPA's property or performs any work hereunder, provide WVPPA with a certificate from the doctor, clinic, or hospital performing the urinalysis drug screen for that Worker certifying the results thereof.

- 1.5.5** WVPPA reserves the right to bar from the Terminal or other WVPPA property any of Contractor's Workers who, in WVPPA's sole judgment, could create any risk or

operating or administrative problems either because of the excluded person's refusal to comply with operating safety procedures, questions about his or her honesty, discipline problems he or she creates with WVPPA's own employees, or any other reason WVPPA has for reasonably believing that person might cause risk or disruption to WVPPA's operations. Upon request by WVPPA, Contractor will exclude from the performance of any work under this Agreement and bar from the Terminal or other WVPPA property any of Contractor's Workers designated by WVPPA as excluded under this Agreement. WVPPA shall not be required to specify, in any such request or otherwise, either the basis for its decision or which of the foregoing objections it has to the excluded person.

- 1.5.6** WVPPA's right under this section to exclude any person from its property or from work under this Agreement shall not be waived by its failure to require any background check, drug screen, or other investigation or procedure under the other provisions of this [Subsection 1.5](#), by its prior failure to act upon any information that was, or should have been, included in such check, screen, investigation or procedure, by the successful passing by Contractor's employee of the required or any other background check or by any other act or omission of WVPPA.
- 1.5.7** Before permitting any of its Workers to perform any service under this Agreement, Contractor shall inform him or her of all of WVPPA's rights under this [Subsection 1.5](#).
- 1.5.8** Before permitting any of its Workers to operate Intermodal Lift Machines, forklifts, hostlers, or other motorized vehicles (collectively "Vehicles"), Contractor shall ensure that the Worker is properly trained in all aspects of the proper operation of the Vehicle to be operated.

Contractor to issue documentation to each Worker identifying the types of Vehicles the Worker has been trained to operate. Workers will keep the documentation with them at all times while they are on the Terminal, and present the documentation upon request. Contractor shall maintain a duplicate copy of the Worker documentation available for inspection at all times.

1.5.9 Vehicle Inspections.

- 1.5.9.1** Contractor's Workers assigned to operate Vehicles shall inspect the Vehicle in accordance with the applicable operator's manual prior to use and not operate the Vehicle if it is found to have any deficiencies that would impair its proper operation. Contractor's Workers performing such pre-use inspections shall immediately report any such defect(s) observed to their supervisor.
- 1.5.9.2** Contractor's Workers operating Vehicles shall immediately discontinue use of any Vehicle if defect(s) are observed during their operation of the Vehicle that impair its proper operation. Contractor's Workers observing such defects shall immediately report any such defect(s) observed to their supervisor.
- 1.5.9.3** Accurate reports documenting all observed defects to Vehicles shall be provided to the persons designated by WVPPA in Sections [A3](#) and [A4](#)

of [Appendix A](#) and to any other person(s) designated by WVPPA to receive such reports.

1.6 Conflict of Interest. Contractor shall not permit any person, firm or corporation, or employees thereof, in any manner interested in the freight to be handled hereunder to perform any of Contractor's obligations under this Agreement or to become financially interested in Contractor's business. Contractor shall not employ, lease or rent any vehicle used in the usual course of business by such person, firm or corporation, and Contractor shall not permit any monies paid for services performed hereunder to be refunded, directly or indirectly, to any shipper, consignee or anyone interested in the freight so handled.

1.7 Injury Reports. Contractor shall immediately notify the person designated by WVPPA in [Section A2](#) of [Appendix A](#) of any death of, or injury requiring medical treatment to, any person, including but not limited to employees of Contractor while on WVPPA property or performing services hereunder. Contractor agrees to furnish full details of any such accident or incident.

Contractor acknowledges WVPPA's responsibility to report deaths or injuries to Federal agencies. Contractor may be held liable by WVPPA for any penalties imposed upon it for failure to notify appropriate authorities.

1.8 Damage Reports. Contractor shall immediately notify the person designated by WVPPA in [Section A3](#) of [Appendix A](#) of any loss or destruction of or damage to any property whatsoever, including but not limited to the Units and the cargo or lading therein. Contractor agrees to furnish full details of any such accident or incident.

1.9 Audit. The Contractor shall, during the existence of this Agreement and for one calendar year thereafter, upon written request of WVPPA, furnish WVPPA within sixty (60) days from the receipt of a written request, a detailed accounting of its expenses of operation and its charges to WVPPA verified by a written report of a Certified Public Accountant which contains no qualification of the verification of such expenses and charges in accordance with generally accepted accounting principles.

Contractor shall also permit WVPPA full and complete access to such books and records (including those of Contractor and of any corporate parent, subsidiary, or affiliate) as may be required to conduct a proper audit, in accordance with generally accepted accounting principles, of Contractor's operations, charges and accounting under this Agreement. Contractor shall also permit WVPPA to copy any portion of those books and records that WVPPA is entitled to examine under the foregoing sentence.

In the event of any dispute about what records are required for a proper audit under this [Subsection 1.9](#), WVPPA may designate as arbitrator any of the eight largest accounting firms in the United States, and both parties shall accept as final and binding that firm's decision about what records are subject to WVPPA's examination under this [Subsection 1.9](#). The expense of such accounting firm for such services as arbitrator shall be borne equally by WVPPA and Contractor, unless it rules that all requested documents shall be made available to WVPPA, in which case the Contractor shall pay the entire fee, or that none of the requested documents shall be made available to WVPPA, in which case WVPPA shall pay the entire fee.

- 1.10** Contractor shall provide WVPPA with copies of Contractor's Training and Safety program and shall provide WVPPA with copies of updates of such programs as issued. A hard copy of such program shall be available at all times at the facility.

SECTION 2: WVPPA OBLIGATIONS.

- 2.1 Compensation.** WVPPA covenants and agrees to pay, and Contractor agrees to accept, as full compensation for all services provided hereunder by Contractor and all obligations assumed hereunder by Contractor the amounts or rates of compensation set forth in [Appendix B](#). Without limiting the generality of the foregoing, the compensation shown in [Appendix B](#) includes all Unit moves, lifts, and repositioning of any kind and all Assessorial Yard Services, and Contractor shall not be entitled to any additional compensation for any such services.
- 2.2 Facilities.** WVPPA will provide office space for contractor administrative functions, restrooms, and parking areas for use by Contractor's Workers. WVPPA will provide one (1) diesel fuel tank for Contractor's use.

SECTION 3: LIABILITY, INDEMNITY AND INSURANCE.

- 3.1 Indemnity for WVPPA.** Contractor shall indemnify and hold harmless WVPPA and the other Indemnified Parties listed in [Subsection 3.2](#) below from and against any and all liability, damages, claims, suits, judgments, costs, expenses (including, but not limited to, litigation costs and attorney fees) and losses resulting from:
- 3.1.1** Injury to or death of Contractor's agents, servants, or employees and loss or destruction of or damage to property or equipment of Contractor or its agents, servants or employees arising directly or indirectly from this Agreement or the presence at or about the Terminal, or any other WVPPA property, of any of Contractor's agents, servants or employees, regardless of cause, and whether caused directly or indirectly by the negligence of WVPPA, its agents, servants, or employees, or otherwise;
- 3.1.2** Except as provided in [Subparagraph 3.1.1](#) of this [Subsection 3.1](#), injury to or death of any person whomsoever (including, but not limited to, employees of WVPPA) and loss or destruction of or damage to any property whatsoever (including, but not limited to, property of WVPPA) caused directly or indirectly by the acts or omissions of Contractor, its agents, servants, or employees or arising in any manner either from the presence of Contractor, Contractor's agents, servants, or employees at or about the Terminal or any other WVPPA property in connection with this Agreement or from Contractor's performance or attempted performance of this Agreement (and regardless of whether a Trailer involved in such loss and damage or injury is in Contractor's possession at the time of loss, damage or injury), unless such injury, death, loss, or damage is caused solely by the negligence of WVPPA, its agents, servants, or employees; or
- 3.1.3** Any failure by Contractor to comply with any covenant of this Agreement, including, without limitation, the provisions of Sections [1](#), [3](#), [5](#) and the provisions of any Appendix hereto.

- 3.2 Indemnified Parties.** Contractor shall indemnify and hold harmless WVPPA, its corporate parents, subsidiaries, lessors, and affiliates and each of their respective officers, agents and employees thereof (herein the "Indemnified Party" or "Indemnified Parties") to the extent described in [Subsection 3.1](#) above.
- 3.3 Insurance.** Contractor, shall at its expense, obtain and maintain during the period of this Contract in a form and with companies satisfactory to WVPPA, the following insurance coverages:
- 3.3.1** Workers' Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Contractor's officers, agents, servants or employees arising directly or indirectly out of the performance of the services herein undertaken;
 - 3.3.2** Employers' Liability Insurance with Limits of not less than \$1,000,000 each accident, \$1,000,000 policy limit for disease, and \$1,000,000 each employee for disease;
 - 3.3.3** Commercial General Liability Insurance with a combined single limit of not less than \$5,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Contract. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. The policy shall not deny coverage for any obligation of the insured under the Federal Employers Liability Act, as amended. In addition, said policy or policies shall be endorsed to name WVPPA as an additional insured and shall include a severability of interests provision;
 - 3.3.4** If the use of motor vehicles is required, Automobile Liability Insurance with a combined single limit of not less than \$5,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name WVPPA as an additional insured and shall include a severability of interests provision;
 - 3.3.5** Insurance covering damage to lading or cargo with limits of not less than \$150,000 for freight in each intermodal container or trailer;
 - 3.3.6** In the event Contractor leases or otherwise uses WVPPA's Intermodal Lift Machines in order to perform the services specified in this Agreement, Contractor shall maintain all risk property insurance at replacement cost value on said Intermodal Lift Machines.
 - 3.3.7** Contractor shall furnish certificates of insurance to the person designated by WVPPA in [Section A5](#) of [Appendix A](#), certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to WVPPA. Upon request, Contractor and its subcontractors, if any, shall furnish WVPPA with copies of the insurance policies or other satisfactory evidence of such insurance. Contractor

shall require all subcontractors who are not covered by the insurance carried by Contractor to maintain the insurance coverage described in this Section.

- 3.3.8** The insurance coverage required herein shall in no way limit the Contractor's liability under this Contract.

SECTION 4: TERM AND TERMINATION.

- 4.1 Term.** This Agreement shall become effective as of the date stated at the beginning of this Agreement, and shall remain in full force and effect for a period of 7 years or unless terminated in accordance with [Subsection 4.2](#). Nothing in this Agreement shall limit or restrict in any way WVPPA's right to solicit, at any time for any reason, new bids for operation of the Terminal.

4.2 Termination.

- 4.2.1** WVPPA may terminate this Agreement at any time for any reason upon giving Contractor at least Thirty (30) days' notice.
- 4.2.2** Contractor may terminate this Agreement upon at least Ninety (90) days' prior written notice to the person designated by WVPPA in [Section A6](#) of [Appendix A](#).
- 4.2.3** If Contractor breaches any material provision of this Agreement, including, without limitation, any of its obligations under Sections [1](#), [3](#), and [5](#) (all of which provisions are considered material), WVPPA shall have the right to terminate this Agreement without prior notice to Contractor.

SECTION 5: GENERAL CONTRACT PROVISIONS.

- 5.1 Notices.** All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown below or such successor address(es) as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by telegram or fax, with confirmed receipt, addressed to the following offices and addresses:

For WVPPA:

X

For Contractor:

X

All notices shall be effective on day following confirmed receipt of the letter, telegram, or fax.

- 5.2 Assignment.** Neither this Agreement nor any of the services to be performed hereunder shall be assigned or sublet without the prior written consent of WVPPA. The proceeds to be paid hereunder by WVPPA to Contractor shall not be assigned, sublet or factored by Contractor; and such assignment, sublet or factoring shall constitute a material breach of this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of and be binding upon all successors and assigns.

- 5.3 Amendment.** No terms or conditions, other than those stated herein, including any Appendix hereto, and no agreement or understanding, oral or written, in any way purporting to modify this Agreement, shall be binding on either party unless hereafter made in writing stating that it is intended as a change to this Agreement and signed by an authorized representative of both parties. All proposals, negotiations and representations, if any, made prior and with reference hereto are merged herein.
- 5.4 Non-Waiver.** The waiver of any breach of any of the terms and conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as a continuing or permanent waiver of any such terms and conditions, all of which shall be and remain in full force and effect as to future acts or happenings notwithstanding such waiver. The parties intend that none of the provisions of this Agreement shall be thought by the other to have been waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.
- 5.5 Severability.** If any provision in this Agreement, including but not limited to the provisions of [Section 3](#) and of any Appendix to this Agreement, is found for any reason to be unlawful or unenforceable, the parties intend for such provision or provisions to be severed and deleted from this Agreement and for the balance of this Agreement to constitute a binding agreement, enforceable against both WVPPA and Contractor. The parties intend that the "provision or provisions to be severed and deleted" under the preceding sentence extend only to those specific words found to be unlawful or unenforceable and not to the entire section, paragraph, clause or phrase including them unless its deletion is also required to make the remaining agreement lawful and enforceable.
- 5.6 Remedies Cumulative.** Any rights or remedies under this Agreement, including, without limitation, those provided in the preceding paragraph, are cumulative and in addition to all other rights and remedies hereunder or at law. Any cancellation or termination of this Agreement shall not relieve either party of any obligation or liability accruing under this Agreement prior to such cancellation or termination.
- 5.7 Arbitration.**
- 5.7.1** The parties adopt the following arbitration provisions to avoid the problems of litigation or deadlock in the event the parties cannot resolve any dispute between themselves. Except as provided in [Subsection 1.9](#), any claim, dispute or controversy arising out of or relating to this Agreement, the parties' relationship under this Agreement, or the breach of this Agreement, shall be determined by arbitration by a single arbitrator pursuant to the applicable Rules of Practice and Procedure of the American Arbitration Association in effect at the time the demand for arbitration is filed. Unless otherwise agreed to by the parties, the location of the arbitration shall be in Washington, D.C. The decision of the arbitrator shall be final and binding. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. Judgment to enforce the decision or award of the arbitrator may be entered in any court having jurisdiction.
- 5.7.2** Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the Agreement to arbitrate and the failure of

one party to comply with that Agreement to arbitrate, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

5.7.3 Neither party shall institute any legal proceeding against the other to enforce any right hereunder, except that either party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this [Subsection 5.7](#).

5.7.4 If any dispute between the parties arises from or in connection with any claim or litigation initiated by any third party (either as claimant, plaintiff, counter claimant, or defendant/third party plaintiff), then, unless the parties agree otherwise, the resolution of that dispute under the arbitration provisions of this [Subsection 5.7](#) may, at the option of either party, be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with such a claim or litigation so initiated by a third party, either party may at any time initiate arbitration under this [Subsection 5.7](#) to determine prospective liability between the parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either party. In the event WVPPA is made a party to such claim or litigation so initiated by a third party, WVPPA shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether WVPPA is required to, or in fact does, initiate a cross claim, counterclaim or third-party claim under subclause (iii) of [Subsection 5.7.3](#) above, and regardless of Contractor's indemnity obligations under [Section 3](#) above.

5.8 Governing Law. The laws of the State of West Virginia shall govern the construction and interpretation of this Agreement and all rights and obligations of the parties under it, except that the legal effect of any indemnity obligation under this Agreement for claims arising from personal injury or property damage shall be governed by the law of the state in which that personal injury or property damage occurred.

5.9 Pandemic Contingency Planning, Prevention and Response by Contractor. A material obligation of Contractor under this Agreement is that Contractor maintains a current and updated Pandemic Contingency Plan ("PCP"). For the purposes of this Agreement, a PCP is defined as a documented course of action to be followed for the purpose of ensuring critical services are provided in the event of a pandemic. Contractor shall take all reasonable and appropriate actions to prevent and minimize the occurrence and transmission of pandemic diseases among and by the employees of Contractor. Such actions must include, but are not limited to, the following:

- 5.9.1** Contractor must provide the person designated by WVPPA in [Section A5](#) of [Appendix A](#) with Contractor's current and updated PCP and related information annually within ten (10) days of the current respective anniversary date of the Agreement.
- 5.9.2** As a part of Contractor's PCP, Contractor shall purchase for the use of its employees appropriate and adequate preventative equipment (for example Nitrile gloves, 3M N95 Respirators, Instant hand sanitizer, etc.).
- 5.9.3** Contractor must bar or remove from the Terminal any of Contractor employees, agents and subcontractors suffering from a pandemic disease. In addition, Contractor must report to the person designated by WVPPA in [Section A3](#) of [Appendix A](#), any employees, subcontractors or agents of Contractor who exhibit possible symptoms of a pandemic disease. Contractor understands that WVPPA may in its sole discretion bar or remove from the Terminal any Contractor employee, subcontractor or agent exhibiting current or possible symptoms of a pandemic disease.
- 5.9.4** In case of a pandemic outbreak affecting the employees of Contractor, Contractor must immediately advise the person designated by WVPPA in [Section A3](#) if the services provided by Contractor under the Agreement will be affected, curtailed or limited.
- 5.9.5** Upon request from Contractor, the person designated by WVPPA in [Section A5](#) shall provide Contractor with a copy of the version of WVPPA's PCP which WVPPA makes available on a public basis.
- 5.9.6** Contractor is responsible for ensuring that its subcontractors and agents maintain and engage in appropriate pandemic contingency planning and response.
- 5.9.7** The outbreak of pandemic diseases among the employees of Contractor shall be considered to be a Force Majeure event; however, notwithstanding the foregoing, the failure by Contractor to comply with the provisions of this [Subsection 5.9](#) shall constitute a material breach of this Agreement.
- 5.9.8** In the event that Contractor encounters any situation affecting the ability of Contractor to provide full services to its customers (whether the situation is pandemic or otherwise and regardless of whether the situation qualifies as a Force Majeure event), in allocating its remaining services between its customers Contractor must provide WVPPA with a level of service not less than the level of services provided by Contractor to the most favored of its customers—it being the intent of WVPPA and Contractor that Contractor shall reasonably attempt to provide WVPPA with all services required by this Agreement notwithstanding the pandemic situation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

WVPPA
("WVPPA")

("Contractor")

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Appendix A

(A1) WVPPA's intermodal facility called the "Terminal" in this Agreement is as follows:

Prichard, WV

(A2) Executive Director, West Virginia Public Port Authority

(A3) Mike Rutledge

(A4) Jeremy Carnell

(A5) Executive Director, West Virginia Public Port Authority

(A6) Executive Director, West Virginia Public Port Authority

Appendix B

In general, Contractor will perform the loading of containers/trailers/chassis onto flat cars, unloading of containers/trailers/chassis from flat cars, and movement of containers/trailers/chassis within the terminal conforming to the daily requirements of train schedules and terminal parking plans.

In performance of its duties, Contractor will:

- (A) Obtain a copy of the Norfolk Southern Intermodal Operations Manual and review all sections of this manual with instructional implementation immediately. Specific attention must include procedures involving hitch securement, Accident/Injury investigation and reporting, Safety Attire, Crane inspections/Reports, driver requirement for hostlers and procedures for new hires. Contractor agrees to be governed by NS's Intermodal Operations Manual (as revised from time to time) and such other rules applicable to the operation as NS may publish from time to time, which prescribe certain responsibilities and authority concerning the operations and property of others, including those of the WVPPA, in Contractor's care, custody or control. A copy of the current editions of these publications is attached or will be given to contractor and incorporated by reference as part of this Agreement.

All WVPPA safety requirements apply to Contractor, Contractor's employees and Contractor's subcontractors. Responsibility for safety and environmental stewardship cannot be transferred, and Contractor must take appropriate steps to ensure compliance with applicable Safety Rules and environmental regulations during the performance period. The *Norfolk Southern Operating Guidelines for Contractors* booklet contains additional information and is required reading for all employees involved with this Agreement.

- (B) Provide and maintain sufficient yard vehicles, operating yard tractors, electric 5th wheel wrenches, tie-in bars, snatch-up cables, sledge hammers and any other tools or equipment needed to meet service requirements and train schedules. Equipment and tools must be in operating condition at all times with inspections and upkeep provided.

All Intermodal Lift Machines capable of lifting Trailers to/from rail cars are to be equipped at all times with extension cords, sledge hammer, snatch-up cables, tie-in bars, and electric 5th wheel wrenches.

- (C) Provide all Contractor supplied yard vehicles with OSHA-approved back-up alarms and flashing strobe lights, approved by NS, which are to be working at all times when vehicles are in motion. Provide and maintain fire extinguishers in serviceable condition for all yard vehicles and Intermodal Lift Equipment (even if not provided by Contractor) in use on Terminal and make monthly inspections.
- (D) Provide and maintain a two-way radio system for all Vehicles used for Intermodal Operations and must use approved NS frequency. Additionally, provide hand-held radios for other Workers as required for the performance of their assigned duties under this Agreement. Contractor will provide cell phone for Contractor's on-site Managers to provide direct communication.
- (E) Provide structured guidelines, documentation, and training for all personnel with emphasis on: 1. Tie-down personnel, 2. Intermodal Lift Machine Operators, 3. Hitch Securement

procedures, 4. Hazmat and Security Awareness Training, and 5. Unit Inspection and Documentation of Damages in SIMS. Contractor will provide noise monitoring to assure compliance with OSHA standards, this includes but is not limited to enforcement of hearing protections for all groundsmen & Intermodal Lift Machine operators at all times while performing duties.

- (F) Maintain sufficient personnel at all times both inside and outside to perform quality, safe, and sufficient service in accordance with WVPPA requirements. This includes qualified outside supervisors during all loading and unloading times, management staff to oversee and insure that duties are coordinated and performed in a safe, courteous, efficient manner. Supervisors will be responsible for training and discipline. Perform timely and accurate SIMS and Yard Management System event recordings, including on/off rail cars, on/off chassis racks, on/off ground stacking, and placement and release of bad order equipment, etc. Maintain a minimum work force which must be approved and reviewed by the person designated by WVPPA in [Section A3](#) of [Appendix A](#) and have flexibility to respond to volume adjustments as necessary. Contractor will provide sufficient manpower to support the operations of the Intermodal Facility with a goal of providing 100% customer satisfaction and in accordance with NS's Intermodal Operating Rules. Additionally if required, Contractor will provide a chassis/rotator operator on all shifts and will provide additional personnel to handle chassis to and from ground storage during container shortages to prevent any deterioration in inbound and outbound service standards. Contractor shall provide any and all operating & administrative services ordinarily and reasonably required in the operation of an intermodal facility, including but not limited to the performance of proper equipment inspections as requested by the person designated by WVPPA in [Section A4](#) or [Appendix A](#), the maintenance of records relating to such inspections, and any other paper work ordinarily and reasonably generated in the operation of such a facility.
- (G) Contractor's managers will perform joint safety audits with the person designated by WVPPA in [Section A3](#) of [Appendix A](#) on a regular basis, and will provide safety training, safety promotion, and safety meetings with all Workers with a goal of eliminating unsafe acts and injuries.
- (H) Provide WVPPA with records of the kind and in the form specified by WVPPA that are legible, neat, and accurate. Documents must be sufficient to support the facts in the event of any dispute by litigation or otherwise. Contractor must maintain records consistent with this Agreement, WVPPA's Intermodal Operating Rules, and any other such other rules applicable to the operation as WVPPA may publish from time to time.
- (I) Contractor to maintain the Terminal in a satisfactory condition at all times, as directed by the person designated by WVPPA in [Section A3](#) of [Appendix A](#). Contractor will invoice WVPPA for all third party invoices related to this obligation with no markup. Failure by Contractor to maintain these areas will result in WVPPA handling, with Contractor responsible for WVPPA's cost for such handling, plus 10%.
- (J) Contractor shall ensure that all areas designated by WVPPA for loading/unloading of Units to/from Railcars are kept free of all trash, IBC's, scrap iron, etc, at all times to avoid the possibility of damage to Units and trip hazards which could result in personal injury or accidents.

- (K) Keep all work and maintenance areas clean and organized at all times, provide up-to-date MSDS information, and ensure compliance with all environmental regulations including disposal of used oil, filters, and lubricants. Contractor must ensure that all fuels, lubricants, and any other items used for maintenance are properly stored and labeled.
- (L) Ensure that all inbound traffic is grounded in a timely manner after placement, and that outbound traffic is loaded in accordance with cutoffs, pull times and other service standards. Load all traffic in block to the extent possible, including loading on proper car types according to restrictions, embargoes, and other directives. Insure that all ground transfers are promptly notified and delivered per instructions. Ensure all lift events are recorded in a timely manner. In the event that recording cannot be done in a timely manner, notice must be given to the Norfolk Southern's Division Manager for corrective action and steps must be taken to input those events at the earliest possible opportunity.
- (M) Maintain and ensure that WVPPA's parking plan is in effect. Contractor will comply with such parking plan. This includes proper parking of units and stacking of containers and/or chassis as specified by WVPPA.
- (N) Ensure that all freight makes service standards with respect to cutoff times and loading times. Contractor will be responsible for actual drayage/transportation cost to destination plus an additional \$50.00 administrative fee upon request for each Unit which fails to make service as a result of Contractor error or negligence.
- (O) Contractor will be responsible for all damages resulting from error or negligence of Contractor's employees. The preceding sentence includes but is not limited to damages to Units and the cargo contained therein, Intermodal Lift Machines, and rail cars.

For the purposes of this Section O, the term "damages" when applied to Units shall be defined in accordance with the definition contained in the then current Uniform Intermodal Interchange Agreement.

Contractor's responsibility for damages to Units loaded by Contractor to railcars shall be determined by an inspection of the Units before unloading from the railcars at the destination rail terminal. Under this paragraph, Contractor will only be responsible for damages that could reasonably be attributed to errors or negligence of Contractor.

Contractor's responsibility for damages shall also include any associated charges such as lading damage, detention, per diem, drayage, wrecker bills and any other costs incurred by WVPPA as a result of such errors or negligence.

Contractor can avoid responsibility for these damages and associated charges by documenting all observed damages to Units in WVPPA's designated computer system(s) within allowed timeframes (see paragraph below).

All damages to Units must be entered in WVPPA's designated computer system(s) immediately. EXCEPTION - Damages to Units arriving at the Terminal on railcars must be entered in WVPPA's designated computer system(s) within 3 hours of grounding, provided that all such damages are supported by on-railcar recorded images of the damaged Unit or chassis, submitted in WVPPA's designated computer system(s) within 7 days of grounding.

- (P) Prepare necessary summary reports, daily pull and place sheets, end of month recaps, computer updates, and insure that all aspects of WVPPA's designated computer systems are performed in a neat and complete manner.
- (Q) Provide all back up paperwork for proof of proper notification and provide proper information in WVPPA's designated computer system(s).
- (R) Inspect inbound Units for defects, documenting any observed defects in WVPPA's designated computer system(s).
- (S) Provide a monthly report of inbound and outbound train performance including but not limited to percentage of on-time releases by train, reasons for service failures, percentage of placements and availabilities of inbound train traffic, by train.
- (T) Provide a daily yard check of all on hand Units. Each inventory will be reconciled daily, any discrepancies immediately resolved keeping a record of these as directed by the person designated by WVPPA in [Section A4](#) of [Appendix A](#). Additionally, Contractor will compile and furnish WVPPA's Customers certain reports as directed by WVPPA.
- (U) Contractor will supply all fuel for Vehicles required by Contractor for the performance of its duties under this Agreement. Contractor will report fuel consumption as required by the person designated by WVPPA in [Section A4](#) of [Appendix A](#).
- (V) Except as outlined below in items Z.2, Z.3 and Z. 4 below, Contractor will invoice WVPPA for all lifts on the basis of to/from rail car only. All extra yard lifts to/from chassis, stacks, etc., as well as all other accessorial services to be part of the to/from car rate. Contractor will ensure that all administrative and collection procedures for storage, Trailer use, and live lift charges are followed. Contractor will be responsible for all uncollectible storage, Trailer use, and live lift charges if found negligent in its duties.
- (W) WVPPA's facility is currently in operation from Monday through Sunday with operations on holidays as deemed required at the sole discretion of WVPPA. WVPPA reserves the right in its sole discretion to change the hours of operation of its facility and to require Contractor to perform its services on any day and at any time of the day. Contractor shall not be entitled to bonus, extra or overtime compensation for service outside the normal operation hours of the facility or on holidays.
- (X) In its use and occupancy of Company's premises, Contractor will comply with all federal, state, and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes, and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances, or waste.
- (Y) Contractor will provide the following information on a monthly basis:
 - (1) Total hours of use for each Intermodal Lift Machine
 - (2) Diesel fuel consumption for both Intermodal Lift Machines and hostlers
 - (3) Injury report, showing manhours worked and injuries
 - (4) Productivity report, with detail for outside operations
- (Z) Contractor will perform the following services at the following rates of compensation:

NOTE: Lift is defined as on or off a rail car only.

- 1** First one-thousand (1000) containers lifted to/from a railcar each month: \$ **per month**
- 2** Each additional container lifted to/from a railcar: \$ **per lift**
- 3** For the first twelve (12) months of operation of the Facility, the Contractor shall be permitted to invoice WVPPA at cost for the following items, after which time the Compensation paid to Contractor under 4.1 shall be adjusted to include the average monthly expense for these items.
 - (a)** Performing required railcar inspections
 - (b)** Utility costs (sanitary sewer, potable water, electricity, and natural gas)
- 4** For the full term of the agreement, the Contractor shall invoice WVPPA, at cost for the following items.
 - (a)** Fuel for lift equipment and hostler trucks
 - (b)** Mowing and brush cutting services inside the Facility
 - (c)** Repairing lights and fences and maintaining facility equipment
 - (d)** Maintaining office equipment and components
 - (e)** Parts and outside services for lift machines
- 5** Maintaining and repairing lift equipment and hostler trucks shall be included in the flat rate per month to operate the facility from section 1.
- 6** Based on WVPPA's published gate hours, Contractor to provide full time equivalents (FTE) for Gate Operation, at a rate per FTE of \$ per month.

Regular Operations will be a daytime operation with a schedule of 7:00 a.m. to 3:00 p.m., Monday thru Friday. Saturday operations will be 7:00 a.m. to 12:00 p.m. Gate hours are subject to change. Expected gate hours at opening, October 1, 2015 are:

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Open	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	Closed
Close	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	12:00 p.m.	Closed

- 7** The rates **1, 2 and 6** outlined above shall be effective for two years. Effective October 1, 2017 and each successive October 1st anniversary date for the term of the agreement, the rates described above shall be adjusted by 70% of the change in the AVERAGE CPI – South (Index ID: CWUR0300SA0) from the most recent September to August period and the AVERAGE CPI – South (Index ID: CWUR0300SA0) from the baseline period September 2015 through August 2016 and the baseline rates effective October 1, 2016. PROVIDED; however, that this annual CPI rate adjustment cannot result, in a reduction in the then current rates. It would be calculated as outlined in the following example:

By way of example only, an AVERAGE CPI-South from September 2016 through August 2017 of 212.15 and an AVERAGE CPI-South from September 2015 through August 2016 of 222.17:

Average CPI South September 2016 through August 2017: 212.15

Average CPI South September 2015 through August 2016:222.17

$$\text{CPI Adjustment} = .70 \times \frac{(\text{Avg CPI 09/15-08/16} - \text{Avg CPI 09/16-08/17})}{\text{Avg CPI 09/15} - \text{08/16}} = 0.3301615$$

Rate	October 1,2016	Adjustment	October 1, 2017
1	\$20,000	.03301615	\$20,660.32 per month
2	\$25.00	.03301615	\$25.82 per lift

- 8 Payment for all invoices issued by either party under the terms of this Agreement shall be Net 30 days from date of invoice.
- 9 Contractor shall invoice WVPPA once per calendar month.
- 10 All invoices submitted by Contractor to WVPPA in **3** above must be supported by original source documents with one copy for WVPPA and one copy retained for Contractor's records.

E-Railsafe Subscriber Agreement

1. ACCESS TO THE e-VERIFILE.COM WEBSITE AND THE REPORTS. e-VERIFILE.COM has entered into agreements with one or more railroad companies subject to regulations promulgated by the Federal Railroad Administration (individually the "**Railroad**") to perform background screening regarding certain employees of CUSTOMER and to provide such information to the Railroad for the purpose of ensuring and maintaining the security of the properties and operations of Railroad. CUSTOMER either performs or would like to perform work for the Railroad and is required by the Railroad to have CUSTOMER'S employees screened by e-VERIFILE.COM. e-VERIFILE.COM grants to CUSTOMER a nontransferable, nonexclusive license to access the website of e-VERIFILE.COM for the purposes set out in this Agreement. e-VERIFILE.COM grants to CUSTOMER a nontransferable, nonexclusive license to access its website and the background consumer reporting information included therein (the "**Reports**") during its normal hours of operation solely for the purpose of performing research and related work in the regular course of CUSTOMER's business. All services will be requested using the web based e-VERIFILE.COM system. The criminal report will be made available online. If employees of CUSTOMER meet certain screening criteria, e-VERIFILE.COM will issue to CUSTOMER an identification badge (the "**Badge**") to be worn by such employees while such employees are on the property of the Railroad. The Badge will be delivered to CUSTOMER using a delivery company which employs technology to track delivery conformation. CUSTOMER will be responsible for proving Badges to its employees.

CUSTOMER understands and agrees that its use of the Reports is subject to restrictions imposed by e-VERIFILE.COM's data suppliers as well as federal and state laws. CUSTOMER agrees to comply with all such restrictions of which it receives notice, whether such notice is provided in writing or given online, and such restrictions are incorporated herein by reference. In the event of any conflict between this Agreement and such additional restrictions, the additional restrictions will control. e-VERIFILE.COM reserves the right at any time and without prior notice to limit CUSTOMER's access to its website in order to perform repairs, make modifications or as a result of circumstances beyond e-VERIFILE.COM's reasonable control.

2. PASSWORDS. e-VERIFILE.COM will assign CUSTOMER username(s) and password(s) for CUSTOMER's personnel who are authorized to obtain Reports from e-VERIFILE.COM. CUSTOMER is responsible for, and will be billed for, all Reports purchased using the usernames assigned to it. If CUSTOMER learns or suspects that unauthorized use of its account is taking place, or if the user's (employee) employment is terminated by CUSTOMER, then CUSTOMER shall immediately notify e-VERIFILE.COM in writing and e-VERIFILE.COM will replace the username and password.

3. SOLE USE. The Reports and other products and services provided by e-VERIFILE.COM are for the sole and internal use of the CUSTOMER and may not be resold, sub-licensed or otherwise revised in any way or delivered to any third party. Notwithstanding the foregoing, CUSTOMER agrees and authorizes e-VERIFILE.COM to permit Railroad access the Reports and/or information in and from the Reports and further agrees that Railroad may in its discretion share such information with other railroads and federal and state authorities.

4. FCRA USER REQUIREMENTS. With respect to all consumer reporting information embodied in any Reports it obtains from e-VERIFILE.COM, CUSTOMER warrants and agrees that it has complied and will continue to comply with all provisions of the Fair Credit Reporting Act, as amended (15 USC § 1681b) (the "FCRA") (www.ftc.gov/os/statutes/050131fcra.pdf), and any other applicable State or Federal laws. CUSTOMER warrants and agrees that it has a "permissible purpose" (as defined by Section 604 of the FCRA) for obtaining the consumer

reporting information embodied in the Reports, such as 1) establishing a consumer's eligibility for employment purposes or the issuance of new or continued insurance, 2) consumer identification verification, 3) consumer report screening, or 4) otherwise in connection with a legitimate business need related to a business transaction involving the consumer. CUSTOMER warrants and agrees that it has filed all necessary "certification of use" documents required by individual states and that it maintains signed releases (where required) on file in its office. CUSTOMER acknowledges its responsibilities and obligations stipulated in the FCRA and the penalties for obtaining consumer reporting information under false pretenses. CUSTOMER shall make its employees aware of such requirements.

5. AUDIT RIGHTS. CUSTOMER authorizes either e-VERIFILE.COM and/or any Railroad to audit CUSTOMER'S systems, procedures and use of the Reports and any other e-VERIFILE.COM products or services to assure compliance with the terms of the Agreement, the FCRA and other applicable laws, regulations, policies or procedures. CUSTOMER shall cooperate fully in connection with any such audit and will provide, or obtain, access to such systems properties, records and personnel as e-VERIFILE.COM may reasonably require for such audit purpose.

6. INDEMNIFICATION. CUSTOMER agrees to indemnify and hold harmless e-VERIFILE.COM and its officers, directors, employees and shareholders from (a) any and all damages, costs, expenses, or penalties (including reasonable attorneys fees) suffered by e-VERIFILE.COM from third party claims that arise out of this Agreement and that result from the neglect or intentional misconduct of CUSTOMER, and (b) any and all damages, costs, expenses, or penalties (including reasonable attorneys fees) and any other liabilities imposed by local, state, or federal laws or regulations or claimed by any third party that result from or arise out of (i) any breach by CUSTOMER of any warranty or agreement contained herein, or (ii) any misuse of any Report provided by e-VERIFILE.COM hereunder.

7. PAYMENT. The current prices for the Reports, and other products and services, are posted at the e-VERIFILE.COM website. CUSTOMER agrees to pay, by credit card (only Visa or MasterCard) or by company check, for all Reports, and other products and services, it orders from e-VERIFILE.COM under the CUSTOMER's account number. If payment cannot be processed, e-VERIFILE.COM will invoice CUSTOMER, and the invoice will be due upon receipt. Invoices not paid in full by CUSTOMER within 30 days of the invoice date are subject to a late fee of 1.75% per month (or the maximum fee allowable by law, if this is less), plus all costs of collection, including reasonable attorneys' fees. CUSTOMER acknowledges and agrees that e-VERIFILE.COM may suspend access privileges to the Reports without notice if payment cannot be processed. CUSTOMER will assume responsibility for and pay all applicable state, local, federal or other taxes (exclusive of taxes based on e-VERIFILE.COM's net income) which result from this Agreement or the products and services provided hereunder.

8. TERMINATION. This agreement may be terminated by either party at any time upon notice. CUSTOMER agrees, however, to pay for all requests received by e-VERIFILE.COM prior to termination.

9. DISCLAIMERS AND LIMITATION OF LIABILITY. THE REPORTS AND PRODUCTS PROVIDED UNDER THIS AGREEMENT BY e-VERIFILE.COM ARE SUPPLIED BY VARIOUS SERVICE BUREAUS. THE REPORTS ARE PROVIDED "AS IS" AND NEITHER e-VERIFILE.COM NOR ITS SERVICE BUREAUS IN ANY WAY WARRANTS OR ASSUMES ANY LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION, PRODUCTS OR SERVICES PROVIDED BY e-VERIFILE.COM TO CUSTOMER AND e-VERIFILE.COM SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES. e-

VERIFILE.COM MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PERFORMANCE, TIMELINESS, CURRENCY, ACCURACY, ADEQUACY, OR COMPLETENESS OF ITS WEBSITE AND e-VERIFILE.COM SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES.

CUSTOMER ACKNOWLEDGES THAT EVERY BUSINESS DECISION INVOLVES THE ASSUMPTION OF A RISK AND THAT e-VERIFILE.COM DOES NOT AND WILL NOT UNDERWRITE THAT RISK IN ANY MANNER WHATSOEVER. If e-VERIFILE.COM is found liable for any cost or damage suffered by CUSTOMER, its liability is hereby limited to the sum Twenty Five Thousand dollars (\$25,000.00). The remedies set forth in this paragraph and termination of this Agreement are CUSTOMER's exclusive remedies for claims or damages arising out of or relating in any way to this Agreement or the Reports, products or services provided hereunder. IN NO EVENT SHALL e-VERIFILE.COM OR ANY SERVICE BUREAU OR OTHER DATA SUPPLIER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES.

10. GENERAL PROVISIONS. This Agreement is governed by Georgia law. This Agreement may not be assigned by CUSTOMER or by operation of law without the prior written consent of e-VERIFILE.COM. All notices required or permitted hereunder shall be in writing and shall be mailed, e-mailed, faxed or hand delivered to the other party. Performance by e-VERIFILE.COM is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, government, weather, fire, power or telecommunications failure, inability to obtain supplies, or breakdown of equipment. The terms and conditions set forth in this Agreement constitute the entire agreement of the parties, and any additional or different terms or conditions set forth in any other document shall be of no effect. CUSTOMER AGREES THAT A COPY OF THE SIGNED ORIGINAL OF THIS AGREEMENT TRANSMITTED BY TELECOPIER (OR FACSIMILE) TO e-VERIFILE.COM WILL BE BINDING ON CUSTOMER AND HAVE THE SAME FORCE AND EFFECT AS THE SIGNED ORIGINAL.

ACCEPTED AND AGREED:

CUSTOMER

(Organization Name) _____

Authorized Signature _____

Title _____

Name (Print) _____

Date _____

Address _____

e-VERIFILE.COM, Inc.

Authorized Signature _____

Title _____

Name (Print) _____

Date _____

Address _____

CONTRACT NO: xxxxxx
EQUIPMENT MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered this [REDACTED] day of [REDACTED] between **West Virginia Public Port Authority** (hereinafter called "WVPPA") and [REDACTED] (hereinafter called "Contractor"). This Agreement includes the attached Appendices A-G to the same extent as if the provisions of Appendices A-G were set forth verbatim herein, and the term "this Agreement" as used hereinafter shall include Appendices A-G.

WITNESSETH:

WHEREAS, WVPPA transfers trailers and containers onto and off of railcars at WVPPA's transportation facility described in [Appendix A](#) (hereinafter called the "Terminal").

WHEREAS, WVPPA desires to have Contractor maintain WVPPA's equipment used in said operations and perform related services.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the parties, it is hereby mutually agreed as follows:

Section 1: EQUIPMENT

- 1.1. This Agreement shall apply to the following equipment owned or leased by WVPPA at time of commencement of the term of this Agreement:

Make	Serial	Number	ID Number
Reach Stacker	TBD	TBD	TBD
Reach Stacker	TBD	TBD	TBD
Forklift	TBD	TBD	TBD

- 1.2. This Agreement may be amended from time to time by mutual consent to add, subtract or substitute equipment used in the above described operations and services. The parties intend to evidence such amendments by written documents expressly supplementing this Agreement but agree that all equipment used in said operations and services (hereinafter called "Equipment") shall be subject to the terms and conditions hereof regardless of whether a written document is executed with respect thereto.

- 1.3. Changes to the Equipment listed in [Subsection 1.1](#) will be maintained in [Appendix B](#) of this Agreement.

Section 2: CONTRACTOR RESPONSIBILITIES AND OBLIGATIONS

Contractor shall:

- 2.1. Provide mechanics in the Terminal for both routine service and breakdown repair as shown in [Appendix C](#).
- 2.2. Provide a full complement of tools, equipment, and shop supplies in the Terminal to support mechanics as shown in [Appendix D](#).
- 2.3. Provide all parts, greases, and fluids in the Terminal to support mechanics as shown in [Appendix E](#).
- 2.4. Perform all maintenance necessary to maintain the Equipment in proper operating condition, including, without limitation, maintenance complying fully with [Section 3](#) in a timely fashion.
- 2.5. Supply to WVPPA, in an agreed upon format, reporting of:
 - 2.5.1. Current Equipment availability.
 - 2.5.2. Reports of Equipment out of service for any reason. Reports shall be accurate, thorough and show WHO/WHAT/WHEN/WHY/WHERE.
 - 2.5.3. Maintenance and repairs as performed on a daily basis.
 - 2.5.4. All periodic inspections as per the recommendation of the Original Equipment Manufacturer (OEM).
 - 2.5.5. A listing of all parts installed on each piece of Equipment.
 - 2.5.6. The quantity of each fluid added to each piece of Equipment.
 - 2.5.7. Laboratory sample reports for engine oil, transmission fluid and hydraulic fluid for each piece of Equipment, at minimum every 6 months. The laboratory will be approved by WVPPA in advance.
 - 2.5.8. A monthly report for each piece of Equipment, summarizing hours of engine operation, availability, scheduled maintenance, and unscheduled maintenance.
 - 2.5.9. A weekly inspection, documentation and report of condition and status of each above ground storage tank and associated components. In the event a defect is noted, notify the person(s) designated by WVPPA in [Section A3](#) of [Appendix A](#).
- 2.6. Every 6 months, Contractor will schedule an inspection of the fire suppression system on each piece of Equipment by an

independent third party mutually acceptable to Contractor and WVPPA.

Section 3: PROCEDURES TO BE FOLLOWED BY CONTRACTOR

In performing scheduled and all other maintenance performed by Contractor under [Section 2](#), Contractor shall:

- 3.1. Perform all such procedures generally in accordance with recommendations of the OEM and at intervals no less frequent than recommended by the OEM. Contractor warrants that it shall perform the services to be performed hereunder in a safe, efficient, and workmanlike manner strictly in accordance with the requirements of this Agreement. Contractor warrants that any tools and equipment used in performing such services shall be in good working condition and repair and suitable for performing the services.
- 3.2. Comply with any and all other maintenance procedures expressly prescribed in [Appendix F](#).
- 3.3. Be familiar with and shall comply with:
 - 3.3.1. All applicable laws statutes, codes, rules, regulations and ordinances of any state, federal or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis), including, without limitation, any laws or regulations applicable to Contractor's employees, and; any applicable provisions of, or regulations under, the Occupational Safety and Health Act ("OSHA"), including, without limitation 29 C.F.R. §1910.147 relating to lockout and tagout of the Equipment, and
 - 3.3.2. WVPPA's Energy Control Program for Lockout/Tagout ("WVPPA's Lockout/Tagout Policy") promulgated as required by 29 C.F.R. §1910.147, as in effect and supplied by WVPPA to Contractor from time to time (a copy of which is attached hereto as [Appendix G](#)).
- 3.4. Develop specific procedures for implementing WVPPA's Lockout/Tagout Policy with regard to the Equipment, and utilize them at all times for the Equipment.
- 3.5. Cause reports for out-of-service/in-service conditions to be fully recorded in Contractor's SERVICE REPORT. Reports shall be accurate, thorough and show WHO/WHAT/ WHEN/WHERE/WHY.
- 3.6. Notify promptly the person(s) designated by WVPPA, as specified in [Section A3](#) of [Appendix A](#) whenever any Equipment

is made subject to lockout/tagout and again when the Equipment is returned to service.

- 3.7. Keep the Equipment clean and free of any external substance which would constitute a hazard to the safety of any persons on or about the Equipment, including, without limitation, oil, grease or other substance.
- 3.8. Contractor shall immediately contact the person(s) designated by WVPPA, as specified in [Section A3](#) of [Appendix A](#) in the event of any substance release, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water.
- 3.9. Contractor shall immediately report to the person(s) designated by WVPPA, as specified in [Section A3](#) of [Appendix A](#), any and all inquiries from, or visits or inspections by, governmental entities concerning environmental or other conditions at the facility.
- 3.10. Contractor shall not dispose of hazardous wastes of any kind at the Terminal or on any premises owned or operated by WVPPA.
- 3.11. Contractor hereby acknowledges WVPPA's policy of strict waste minimization, and agrees to comply with such policy by minimizing to the extent practicable the creation of wastes in connection with the work.
- 3.12. Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances, or waste as limited to the facilities hazardous waste recovery systems.
- 3.13 Contractor shall also require any person performing any obligation of Contractor under this Agreement, including, without limitation, Contractor's employees, prospective employees, agents, representatives, and subcontractors (hereinafter called "Workers"), to comply, while on or about WVPPA property, with any of the Intermodal Operating Rules that apply to their activities and also to comply with any other rules or regulations concerning operations or safety that WVPPA furnishes in writing to Contractor.

WVPPA adopts the "Norfolk Southern Intermodal Operations Manual" (as revised from time to time) as part of its Intermodal Operating Rules, and the current edition of the Norfolk Southern Intermodal Operations Manual will be given to Contractor and incorporated by reference as part of this Agreement.

If Contractor has any questions related to its obligations under this Subsection 3.13, Contractor shall ask the person designated by WVPPA in [Section A3](#) of [Appendix A](#) for specific guidance.

3.14 If any Contractor undertaking in connection with this Agreement is subject to any law or regulation concerning Material Safety Data Sheets ("MSDS(s)"), Contractor shall, prior to commencement of work and in compliance with the OSHA Hazard Communication Standard (HCS) at 29 CFR 1910.1200:

3.14.1. make available any required MSDSs

3.14.2. advise of the labeling system used at the work site for any containers of hazardous chemicals as defined by OSHA HCS, and

3.14.3. advise of any precautionary measures that need to be taken to protect employees during normal operation conditions and in foreseeable emergencies.

3.15 Contractor shall immediately notify the person(s) designated by WVPPA, as specified in [Section A2 of Appendix A](#) of any death of, or injury requiring medical treatment to, any person, including but not limited to employees of Contractor while on WVPPA property or performing services hereunder.

3.16 Contractor shall immediately notify the person(s) designated by WVPPA, as specified in [Section A4 of Appendix A](#) of any loss or destruction of or damage to any property whatsoever, including but not limited to any containers, trailers, or chassis, and the cargo or lading therein. Contractor agrees to furnish full details of any such accident or incident.

3.17 Contractor shall provide to WVPPA documentation of mechanic's participation in Contractor's Safety Program.

3.18 Contractor acknowledges its knowledge of WVPPA's responsibility to report deaths or injuries to Federal agencies and its full knowledge of all penalties and damages to which WVPPA may be subjected if such reports are not made because of Contractor's failure to notify WVPPA.

3.19 Contractor is and shall remain an independent contractor. Contractor shall be solely responsible for, and WVPPA shall not participate in, the employing or supervising of each person engaged in discharging Contractor's responsibilities under this Agreement; all such persons shall be the sole agents, servants and employees of Contractor. The Contractor will pay all expenses and charges involved or incurred in any way in the performance of its obligations under this Agreement, including without limitation compensation of personnel, fringe benefits, Social Security, Worker's Compensation unemployment insurance (as may be required by

State or Federal law) and the cost of fuel, lubrication, supplies, depreciation, parts and maintenance for the equipment used in performing Contractor's obligations hereunder except for any cost of maintenance expressly assumed by WVPPA under [Section 4](#) and/or [Appendix A](#).

Section 4: WVPPA OBLIGATIONS

WVPPA shall:

- 4.1. Provide one (1) building, furnished with lighting and electrical service, for use as parts storage/work facility;
- 4.2. Provide one (1) office space and access to restroom facilities;
- 4.3. Provide a suitable work area for servicing and repairing Equipment; and
- 4.4. If the Contractor is not in default hereunder, pay Contractor upon receipt of an invoice for its services rendered under this Agreement at the rates contained in or determined by [Appendix C](#).

Section 5: LIABILITY, INDEMNITY AND INSURANCE

- 5.1. **Indemnity for WVPPA.** Contractor shall indemnify and hold harmless WVPPA and the other Indemnified Parties listed in [Subsection 5.2.](#) below from and against any and all liability, damages, claims, suits, judgments, costs, expenses (including, but not limited to, litigation costs and attorney fees) and losses resulting from:
 - 5.1.1. Injury to or death of Contractor's agents, servants, or employees and loss or destruction of or damage to property or equipment of Contractor or its agents, servants or employees arising directly or indirectly from this Agreement or the presence at or about the Terminal, or any other WVPPA property, except to the extent such injury, death, loss or damage is caused solely by the negligence of WVPPA, its agents, servants, or employees;
 - 5.1.2. Except as provided in [Subsection 5.1.1.](#) of this [Subsection 5.1.](#), injury to or death of any person whomsoever (including, but not limited to, employees of WVPPA) and loss or destruction of or damage to any property whatsoever (including, but not limited to, property of WVPPA) caused directly or indirectly by the acts or omissions of Contractor, its agents, servants, or employees or arising in any manner either from the presence of Contractor, Contractor's agents, servants, or employees at or about the Terminal or any other WVPPA

property in connection with this Agreement or from Contractor's performance or attempted performance of this Agreement (and regardless of whether a trailer involved in such loss and damage or injury is in Contractor's possession at the time of loss, damage or injury), except to the extent such injury, death, loss, or damage is caused by the negligence of WVPPA, its agents, servants, or employees; or

- 5.1.3. Any failure by Contractor to comply with any covenant of this Agreement, including, without limitation, the provisions of Sections [2](#), [3](#) and [7](#) and the provisions of any Appendix or Addendum hereto.
- 5.1.4. Any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Contractor or its agents, servants, or employees related in any way to this Agreement or from any other act or omission of Contractor, its agents, servants, or employees contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by WVPPA without actual knowledge that it might violate any such law, statute, code, ordinance or regulation; provided that Contractor shall not be responsible for the pre-existing environmental condition of the premises or any problem or condition caused or created by any person other than Contractor or its agents, servants, or employees.

5.2. **Indemnified Parties.** Contractor shall indemnify and hold harmless WVPPA, its corporate parents, subsidiaries, lessors, and affiliates and each of their respective officers, agents and employees thereof (herein the "Indemnified Party" or "Indemnified Parties") to the extent described in [Subsection 5.1.](#) above.

5.3. **Insurance** Contractor, shall at its expense, obtain and maintain during the period of this Agreement, in a form and with companies satisfactory to WVPPA, the following insurance coverages:

- 5.3.1. Workers' Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Contractor's officers, agents,

servants or employees arising directly or indirectly out of the performance of the services herein undertaken;

- 5.3.2. Employers' Liability Insurance with limits of not less than \$1,000,000 each accident, \$1,000,000 policy limit for disease, and \$1,000,000 each employee for disease;
- 5.3.3. Commercial General Liability Insurance with a combined single limit of not less than \$5,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Agreement. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. The policy shall not deny coverage for any obligation of the insured under the Federal Employers Liability Act, as amended. In addition, said policy or policies shall be endorsed to name WVPPA as an additional insured and shall include a severability of interests provision;
- 5.3.4. If the use of motor vehicles is required, Automobile Liability Insurance with a combined single limit of not less than \$5,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name WVPPA as an additional insured and shall include a severability of interests provision;
- 5.3.5. In the event Contractor leases or otherwise uses WVPPA's equipment in order to perform the services specified in this Agreement, Contractor shall maintain all risk property insurance at replacement cost value on said equipment.
- 5.4. Contractor shall furnish certificates of insurance to the person(s) designated by WVPPA, as specified in [Section A5 of Appendix A](#), certifying the existence of such insurance, Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to WVPPA. Upon request, Contractor and its subcontractors, if any, shall furnish WVPPA with copies of the insurance policies or other satisfactory evidence of such insurance. Contractor shall require all subcontractors who are not covered by the insurance carried by Contractor to maintain the insurance coverage described in this Section.
- 5.5. The insurance coverage required herein shall in no way limit the Contractor's liability under this Agreement.

Section 6: TERM, TERMINATION, and SURVIVAL

6.1. **Term.** This Agreement shall become effective as of the date stated at the beginning of this Agreement, and shall remain in full force and effect until **XXXXXXXX** unless terminated in accordance with [Subsection 6.2.](#) Nothing in this Agreement shall limit or restrict in any way WVPPA's right to solicit, at any time for any reason, new bids for the services provided hereunder.

6.2. Termination.

6.2.1. WVPPA may terminate this Agreement as to any particular unit(s) of Equipment or all unit(s) of Equipment at any time for any reason upon giving Contractor at least thirty (30) days' notice. Contractor may terminate this Agreement upon at least sixty (60) days' prior written notice.

6.2.2. If either WVPPA or Contractor violates any covenant contained in this Agreement, the party not in default may provide the defaulting party with written notice of such default and a demand to cure such default within thirty (30) days. If the default is not cured within thirty (30) days after the giving of such notice, the party giving the notice shall have the right, as long as such default continues, to cancel this Agreement immediately without prior notice to the party in default.

6.3. **Survival.** Termination of this Agreement for any reason shall not release either party from any obligation that may have accrued before such termination, nor shall it preclude either party from Arbitration under [Subsection 7.9.](#)

Section 7: GENERAL CONTRACT PROVISIONS

7.1. **Notices.** All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown below or such successor address(es) as that party may specify by notice hereunder. Such notices shall be transmitted by United States registered or certified mail return receipt requested, or by fax, with confirmed receipt, addressed to the following offices and addresses:

For WVPPA:

For Contractor:

X

X

All notices shall be effective on day following confirmed receipt of the letter or fax.

- 7.2. **Severability.** If any provision in this Agreement, including but not limited to the provisions of [Section 5](#) and of any Appendix to this Agreement, is found for any reason to be unlawful or unenforceable, the parties intend for such provision or provisions to be severed and deleted from this Agreement and for the balance of this Agreement to constitute a binding agreement, enforceable against both WVPPA and Contractor. The parties intend that the "provision or provisions to be severed and deleted" under the preceding sentence extend only to those specific words found to be unlawful or unenforceable and not to the entire section, paragraph, clause or phrase including them unless its deletion is also required to make the remaining Agreement lawful and enforceable.
- 7.3. **Remedies Cumulative.** Any rights or remedies under this Agreement, including, without limitation, those provided in the preceding paragraph, are cumulative and in addition to all other rights and remedies hereunder or at law. Any cancellation or termination of this Agreement shall not relieve either party of any obligation or liability accruing under this Agreement prior to such cancellation or termination.
- 7.4. **Assignment.** Neither this Agreement nor any of the services to be performed hereunder shall be assigned or sublet without the prior written consent of WVPPA. The proceeds to be paid hereunder by WVPPA to Contractor shall not be assigned, sublet or factored by Contractor; and such assignment, sublet or factoring shall constitute a material breach of this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of and be binding upon all successors and assigns.
- 7.5. **Changed Circumstances; Renegotiation.** Upon addition, substitution or removal of Equipment as contemplated by Section 1.2 of this Agreement, the parties shall review the changes in Contractor's costs associated with such addition, substitution or removal of Equipment and, to the extent warranted, renegotiate in good faith the charges specified in Appendix C. If the parties fail to agree otherwise as to a new level of rates, or its effective date, the rates applicable during any period of renegotiation shall be those currently in effect at the beginning of such period.
- 7.6. **Amendment.** Except as otherwise expressly provided in [Section 1.2.](#), no terms and conditions, other than those stated herein, including the Appendices hereto, and no agreement or understanding, oral or written, in any way purporting to

modify this Agreement, shall be binding on either party unless hereafter made in writing stating that it is intended as a change to this Agreement and signed by an authorized representative of both parties. All proposals, negotiations and representations, if any, made prior and with reference hereto are merged herein.

- 7.7. **Non Waiver.** The waiver of any breach of any of the terms and conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as a continuing or permanent waiver of any such terms and conditions, all of which shall be and remain in full force and effect as to future acts or happenings, notwithstanding such waiver. The parties intend that none of the provisions of this Agreement shall be thought by the other to have been waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.
- 7.8. **Prohibited Persons.** WVPPA reserves the right to temporarily or permanently bar from WVPPA's property any of Contractor's employees, servants or agents ("Workers") who have failed, in WVPPA's sole discretion, to act safely, respectfully, responsibly, professionally, and/or in a manner consistent with WVPPA's desire to minimize risk and maintain its property with maximum security and minimum distractions or disruptions or for any other lawful reason. WVPPA shall not be required to specify either the basis for its decision or which objections, if any, it has to the barred individual(s). The decision to bar one or more of Contractor's Workers from WVPPA property shall not be interpreted as a request for Contractor to fire the individual(s). Contractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all claims, demands, suits, liability, damages, losses, costs (including, but not limited to, attorneys' fees) and expenses arising from or in connection with (a) any allegation that WVPPA is an employer or joint employer of one of Contractor's Workers or is liable for related employment benefits or tax withholdings or (b) WVPPA's decision to bar or exclude one of Contractor's Workers from WVPPA's property.
- 7.9. **Arbitration.**
- 7.9.1. The parties adopt the following arbitration provisions to avoid the problems of litigation or deadlock in the event the parties cannot resolve any dispute between themselves. Any claim, dispute or controversy arising out of or relating to this Agreement, the parties' relationship under this Agreement, or the breach of this Agreement, shall be determined by arbitration by a single arbitrator pursuant to the applicable commercial arbitration rules of the American

Arbitration Association ("AAA") in effect at the time the demand for arbitration is filed. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The party filing the arbitration shall be solely responsible for the filing fee with the AAA. Unless otherwise agreed to by the parties, the location of the arbitration shall be in Washington, D.C. The decision of the arbitrator shall be final and binding. Judgment to enforce the decision or award of the arbitrator may be entered in any court having jurisdiction. The arbitrator shall not have the power to award attorneys' fees to the prevailing party. The arbitrator shall not have the power to award pre-judgment interest.

7.9.2. Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one party to comply with that agreement to arbitrate, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

7.9.3. Neither party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this [Subsection 7.9.](#)

7.9.4. If any dispute between the parties arises from or in connection with any claim or litigation initiated by any third party (either as claimant, plaintiff,

counterclaimant, or defendant/third party plaintiff), then, unless the parties agree otherwise, the resolution of that dispute under the arbitration provisions of this [Subsection 7.9.](#) may, at the option of either party, be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with such a claim or litigation so initiated by a third party, either party may at any time initiate arbitration under this [Subsection 7.9.](#) to determine prospective liability between the parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either party. In the event WVPPA is made a party to such claim or litigation so initiated by a third party, WVPPA shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether WVPPA is required to, or in fact does, initiate a crossclaim, counterclaim or third-party claim under subclause (iii) of [Subsection 7.9.3.](#) above, and regardless of Contractor's indemnity obligations under [Section 5](#) above.

7.10. **Governing Law.** The laws of the State of West Virginia shall govern the construction and interpretation of this Agreement and all rights and obligations of the parties under it, except that the legal effect of any indemnity obligation under this Agreement for claims arising from personal injury or property damage shall be governed by the law of the state in which that personal injury or property damage occurred.

7.11. **Books and Records.** During the term of this Agreement and for eighteen (18) months thereafter, WVPPA and its duly authorized representatives shall be permitted access, within a reasonable time after request, to Contractor's books, records, accounts and other related documentation, pertaining to any work performed by Contractor under this Agreement for the purpose of auditing and verifying such work, the cost of such work, and/or any other charges or payments or price adjustments billed hereunder.

Section 8: CONTRACTOR EMPLOYEE BACKGROUND CHECKS

8.1. Contractor must secure background investigations of its employees through e-VERIFILE who will or might enter upon the property of WVPPA. Nothing in this background investigation requirement is to be taken as preventing Contractor from hiring any particular

individual or requiring Contractor to terminate such individual if already hired; however, Contractor understands and acknowledges that a successful background investigation is a mandatory requirement to enable the individual Contractor employee to enter upon the property of WVPPA. Contractor employees successfully undergoing the background investigation will be issued a picture identification card which will be required for the Contractor's employees to enter and work on WVPPA property or perform services for WVPPA. Contractor employees without the identification card will not be allowed to work on WVPPA property. Employees leaving the employment of Contractor must surrender the identification card to either Contractor or to WVPPA. While WVPPA has negotiated on the behalf of Contractor standard volume rates with e-VERIFILE for the investigations, identifications cards and other products, all charges incurred in the use of e-VERIFILE services and products are the sole responsibility of Contractor. Where a contract permits Contractor to charge travel and business expenses to WVPPA, the e-VERIFILE charges are not included among such recoverable expenses. Contractor may include such charges as a part of its overhead costs in determining its price proposals. Contractor must execute e-VERIFILE standard Subscriber Agreement- failure to do so voids this Agreement. The contact information for e-VERIFILE is as follows:

www.e-Railsafe.com
770-859-9899

- 8.2. In the event that WVPPA ceases the use of e-VERIFILE for background investigations or switches to another similar service, Contractor will be notified by WVPPA of the termination and/or transfer. In the event that WVPPA switches to another vendor for similar services the requirements of this Section will apply to Contractor with regard to the use of the alternative vendor's services.
- 8.3. WVPPA does not warrant or guarantee either the accuracy or completeness of the services performed by e-VERIFILE; and WVPPA shall have no responsibility to Contractor for the services performed by e-VERIFILE. Contractor uses such services as between WVPPA and Contractor solely at the risk of Contractor. WVPPA leaves it to the sole discretion of Contractor as to performing other background investigations of Contractor's employees.
- 8.4. A sample copy of e-VERIFILE standard Subscriber Agreement is attached for information.
- 8.5. Contractor agrees to comply with all applicable federal and state laws, rules and regulations applicable to background investigations of employees (including, but not limited to, appeal rights and the protection of employee personal information).

Section 9: Pandemic Contingency Planning, Prevention and Response by Contractor.

A material obligation of Contractor under this Agreement is that Contractor maintains a current and updated Pandemic Contingency Plan ("PCP"). For the purposes of this Agreement, a PCP is defined as a documented course of action to be followed for the purpose of ensuring critical services are provided in the event of a pandemic.

Contractor shall take all reasonable and appropriate actions to prevent and minimize the occurrence and transmission of pandemic diseases among and by the employees of Contractor. Such actions must include, but are not limited to, the following:

9.1 Contractor must provide the person designated by WVPPA in [Section A5](#) of [Appendix A](#) with Contractor's current and updated PCP and related information annually within ten (10) days of the current respective anniversary date of the Agreement.

9.2 As a part of Contractor's PCP, Contractor shall purchase for the use of its employees appropriate and adequate preventative equipment (for example Nitrile gloves, 3M N95 Respirators, Instant hand sanitizer, etc.).

9.3 Contractor must bar or remove from the Terminal any of Contractor employees, agents and subcontractors suffering from a pandemic disease. In addition, Contractor must report to the person designated by WVPPA in [Section A3](#) of [Appendix A](#), any employees, subcontractors or agents of Contractor who exhibit possible symptoms of a pandemic disease. Contractor understands that WVPPA may in its sole discretion bar or remove from the Terminal any Contractor employee, subcontractor or agent exhibiting current or possible symptoms of a pandemic disease.

9.4 In case of a pandemic outbreak affecting the employees of Contractor, Contractor must immediately advise the person designated by WVPPA in [Section A3](#) if the services provided by Contractor under the Agreement will be affected, curtailed or limited.

9.5 Upon request from Contractor, the person designated by WVPPA in [Section A5](#) shall provide Contractor with a copy of the version of WVPPA's PCP which WVPPA makes available on a public basis.

9.6 Contractor is responsible for ensuring that its subcontractors and agents maintain and engage in appropriate pandemic contingency planning and response.

9.7 The outbreak of pandemic diseases among the employees of Contractor shall be considered to be a Force Majeure event; however, notwithstanding the foregoing, the failure by Contractor to comply with the provisions of this [Subsection 5.9](#) shall constitute a material breach of this Agreement.

9.8 In the event that Contractor encounters any situation affecting the ability of Contractor to provide full services to its customers (whether the situation is pandemic or otherwise and regardless of whether the situation qualifies as a Force Majeure event), in allocating its remaining services between its customers Contractor must provide WVPPA with a level of service not less than the level of services provided by Contractor to the most favored of its customers— it being the intent of WVPPA and Contractor that Contractor shall reasonably attempt to provide WVPPA with all services required by this Agreement notwithstanding the pandemic situation.

Section 10: SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

West Virginia Public Port Authority
("WVPPA")

X
("Contractor")

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX **A**

(A1) WVPPA's intermodal facility called the "Terminal" in this Agreement is as follows:

Prichard, WV

(A2) Executive Director, West Virginia Public Port Authority

(A3) Mike Rutledge

(A4) Jeremy Carnell

(A5) Executive Director, West Virginia Public Port Authority

APPENDIX B

This Appendix will contain all additions and deletions of Equipment from the list of Equipment provided in [Subsection 1.1.](#)

B.1. Equipment Additions

TBD

B.2. Equipment Deletions

DRAFT

APPENDIX C

C.1. COVERAGE

Contractor will observe the same holidays and hours of operation observed by the Terminal.

It is the Contractor's responsibility, regardless of time of day or number of mechanics, to provide the manpower necessary to maintain the available lift equipment to meet WVPPA's operating requirements.

C.2. CONTRACTOR'S COMPENSATION

Contractor's compensation under Section 4.5 of the Agreement shall be as follows. All rates are net and are exclusive of costs such as sales taxes, special fees or permits.

First one-thousand (1000) containers lifted to/from a railcar each month: **\$[REDACTED] per month**

Each additional container lifted to/from a railcar: **\$[REDACTED] per lift**

For the first twelve (12) months of operation of the Facility, the Contractor shall be permitted to invoice WVPPA at cost for the following items, after which time the Compensation paid to Contractor under 4.1 shall be adjusted to include the average monthly expense for these items.

- (a) Performing required railcar inspections
- (b) Utility costs (sanitary sewer, potable water, electricity, and natural gas)

For the full term of the agreement, the Contractor shall invoice WVPPA, at cost for the following items.

- (a) Fuel for lift equipment and hostler trucks
- (b) Mowing and brush cutting services inside the Facility
- (c) Repairing lights and fences and maintaining facility equipment
- (d) Maintaining office equipment and components
- (e) Parts and outside services for lift machines

Maintaining and repairing lift equipment and hostler trucks shall be included in the flat rate per month to operate the facility.

Based on WVPPA's published gate hours, Contractor to provide [REDACTED] full time equivalents (FTE) for Gate Operation, at a rate per FTE of \$[REDACTED] per month.

Regular Operations will be a daytime operation with a schedule of 7:00 a.m. to 3:00 p.m., Monday thru Friday. Saturday operations will be

7:00 a.m. to 12:00 p.m. Gate hours are subject to change. Expected gate hours at opening, October 1, 2015 are:

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Open	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	7:00 a.m.	Closed
Close	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	12:00 p.m.	Closed

Lifts are defined as those lifts to or from a rail car, as reported in WVPPA's terminal operating system.

This consideration to Contractor is WVPPA's full compensation to Contractor for the maintenance of Equipment at the Terminal as outlined in [Appendix A](#), with the exclusions addressed in [Subsection C.4](#), [Subsection C.5](#), and [Subsection C.9](#) below.

WVPPA shall provide Contractor with a verified count of Lifts for the prior month by the 10th day of each month.

Contractor shall invoice WVPPA by the 15th day of each month for Contractor's compensation due for the prior month.

C.3. RATE ADJUSTMENTS

The rates outlined above shall be effective for two years. Effective October 1, 2017 and each successive October 1st anniversary date for the term of the agreement, the rates described above shall be adjusted by 70% of the change in the AVERAGE CPI - South (Index ID: CWUR0300SA0) from the most recent September to August period and the AVERAGE CPI - South (Index ID: CWUR0300SA0) from the baseline period September 2015 through August 2016 and the baseline rates effective October 1, 2016. PROVIDED; however, that this annual CPI rate adjustment cannot result, in a reduction in the then current rates. It would be calculated as outlined in the following example:

By way of example only, an AVERAGE CPI-South from September 2016 through August 2017 of 212.15 and an AVERAGE CPI-South from September 2015 through August 2016 of 222.17:

Average CPI South September 2016 through August 2017: 212.15
Average CPI South September 2015 through August 2016: 222.17

$$\text{CPI Adjustment} = .70 \times \frac{(\text{Avg CPI } 09/15-08/16 - \text{Avg CPI } 09/16-08/17)}{\text{Avg CPI } 09/15 - 08/16} = 0.3301615$$

Rate	October 1, 2016	Adjustment	October 1, 2017
First 1,000 Lift	\$20,000	.03301615	\$20,660.32 per month
Per Lift Basis	\$25.00	.03301615	\$25.82 per lift

C.4. ACCIDENTS AND OPERATOR DAMAGES

Contractor will provide to WVPPA documentation of all work necessary to repair any damage to Equipment as a result of any accident or operator damage. Such documentation will include at a minimum:

- A. Out of service report as required under [Subsection 2.5](#);
- B. Photographs to document damages and repairs thereto;
- C. Documentation of overtime hours, if any, for each mechanic involved in the repair;
- D. Documentation of parts used, including a breakdown of contractor's costs, including freight, for all parts that the Contractor supplied to repair the damage(s).

Contractor will bill the party responsible for the damage to the Equipment, at a labor rate of **\$XX.XX** per Contractor straight-time labor hour and **\$ XX.XX** per Contractor over-time labor hour and a maximum **XXXXX%** markup on Contractor supplied parts and outside vendor charges for materials or services.

In the event that Contractor invoices a third party for damages or repairs and the third party does not pay the invoice within 90 days, WVPPA shall be responsible for the invoice.

C.5 MODIFICATIONS AND UPGRADES.

All pricing for Contractor work to perform modifications and upgrades to the Equipment is to be agreed to by WVPPA in advance of any Contractor work being performed.

C.6. EXPEDITED DELIVERY.

WVPPA reserves the right to require expedited delivery of parts if, in WVPPA's sole opinion, expedited delivery is required to support the operation of the Terminal.

C.7. INVOICING.

Payment terms shall be NET 30 days as outlined in the Uniform Commercial Code.

DRAFT

APPENDIX D

This Appendix will contain a description of specific tools and equipment required to be maintained in the Terminal by the Contractor at no cost to WVPPA for support of the mechanics.

Yard vehicle - 1

Man-lift and or boom truck required at all locations

Welder - 1

*Pressure Washer (WVPPA does not provide one suitable for Contractor's needs)

*Air Compressor (If WVPPA does not provide one suitable for Contractor's needs)

Oil containment trailer - (If WVPPA does not provide sufficient suitable storage tanks)

Diagnostic tools

Hand tools

Computer with email and internet capability

Digital camera

Fax machine (WVPPA to supply telephone service)

Hydraulic hose making equipment (for hoses up to size 20)

NOTE: This list is not to be considered exhaustive of the tools and equipment required by the WVPPA to be maintained by the Contractor in support of the mechanics.

APPENDIX E

Contractor to maintain in inventory at the Terminal all greases, fluids, and shop supplies required to maintain the Equipment in proper working order.

Contractor to maintain in inventory at the Terminal all flexible hoses, pre-made and ready for installation, that Contractor cannot make as the need arises at the terminal with Contractor's hose-making equipment.

Contractor to maintain in inventory at the Terminal all parts recommended by the OEMs for maintenance of the Equipment, excluding only those items whose replacement is not typically associated with damage and which are not addressed in any of the OEM recommended periodic inspections due within the next 30 days.

APPENDIX F

- F.1. Contractor will schedule all Outside Vendor work to minimize disruption to WVPPA's operation and will observe the Outside Vendor personnel while they are on the Terminal to ensure that their work is done in a safe and professional manner.
- F.2. Contractor will instruct Outside Vendor personnel to discontinue any action that, in Contractor's sole opinion, is not being done in a safe and professional manner, reporting any such action immediately to the person designated by WVPPA in Section A3 of [Appendix A](#).

APPENDIX G

WVPPA ENERGY CONTROL PROGRAM - LOCKOUT/TAGOUT

FIVE POINT ACTION PLAN FOR THE CONTROL OF HAZARDOUS ENERGY

1. PREAMBLE

WVPPA is committed to the principle that safety is good business. No one should be exposed to unnecessary hazards and risks. Therefore, lockout, tagout, blockout and bleeding of systems prior to working on machinery and equipment are critical safety practices. WVPPA's Lockout/Tagout Program provides instructions for all employees to comply with in order to ensure that all machinery will be effectively locked and/or tagged out prior to maintenance and servicing (except in those instances where the machine/equipment must be energized to properly service or check its operation) so that no employee working in or around the area of a machine which is being serviced or repaired will be exposed to the potential hazards and risks from the release of stored energy. Questions concerning the content and interpretation of this program should be directed to the executive director, WVPPA.

1.

2. OVERVIEW OF THE LOCKOUT/TAGOUT PROGRAM

- 2.1. SCOPE. The Lockout/Tagout Program is designed to prevent needless injuries and fatalities that result from the inadvertent movement or start up of machines/equipment while they are being serviced or repaired. When locking out a machine, a lock is installed on an energy isolating device such as a disconnect switch so that the equipment cannot be restarted until the lock is removed. Tagout refers to tags that are attached to an isolating device as a warning to others not to restore energy. In addition to locks and tags, some equipment requires the blocking or releasing of stored and potential energy.

THE LOCKOUT/TAGOUT PROCEDURES MUST BE FOLLOWED:

1.

2.

2.1.

- 2.1.1. Any time a machine which contains stored pneumatic, hydraulic, electrical, mechanical, chemical, thermal energy, or other residual energy sources is serviced and/or maintained;

AND

- 2.1.2. There is the potential for the energization or startup of machines or equipment or the release of stored energy which could cause injury to employees;

AND

- 2.1.3. An employee is required to remove or bypass a guard or other safety device;

OR

- 2.1.4. An employee is required to place any part of his or her body into an area on a machine or a piece of equipment where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operation cycle.

THE LOCKOUT/TAGOUT PROGRAM DOES NOT APPLY TO:

Minor tool changes and adjustments, and other minor servicing activities, which take place during normal production operations, that are rounding, repetitive, and integral to the use of equipment for production, provided that the work is performed using alternative measures which provided effective protection.

2.2. THE ENERGY CONTROL PROCEDURE

At each location where the lockout/tagout procedure applies there will be a written:

- 2.2.1. Specific statement of the intended use of the procedure for all machines and equipment covered by this standard;
- 2.2.2. Identification of the energy type(s) of source(s) for all machines and equipment;
- 2.2.3. Identification of authorized and affected employees for specific machines or equipment;
- 2.2.4. Specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;
- 2.2.5. Specific procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them;
- 2.2.6. Specific requirements for testing a machine or equipment to determine and verify the effectiveness of lockout devices, tagout devices, and other energy control measures; and

- 2.2.7. Specific procedural steps and requirements for restoring equipment to service when the maintenance and servicing work is completed.

2.3. LOCKS AND TAGS

Lockout is the preferred method of controlling stored energy. An energy isolating device is capable of being locked out if it has a hasp or others means of attachment through which a lock can be affixed. Other energy isolating devices are capable of being locked out if lockout can be achieved without the need to dismantle, rebuild, or replace the energy isolating device or permanently alter its energy control capability. Where it is not possible to lock out a machine, tags must be affixed to energy isolating devices in order to warn employees not to restore energy (i.e., Do Not Start, Do Not Open, Do Not Close, Do Not Energize, Do Not Operate). Both locks and tags must be:

- 1.
2.
 - 2.1.
 - 2.2.
 - 2.3.
 - 2.3.1. Durable
 - 2.3.2. Standardized
 - 2.3.3. Substantial; and
 - 2.3.4. Able to identify the employee who uses them.

3. EDUCATION

All authorized and affected employees must be trained by designated personnel according to the following lockout/tagout procedures. Authorized employees are those who directly perform the lockout/tagout of machines. Affected employees are those who work in the vicinity where machines will be locked/tagged out. The employer must certify that employee training has been accomplished. Certification must include the names of all employees participating and the date of training.

- 1.
- 2.
3.
 - 3.1. TRAINING.

All authorized and affected employees must be trained to:

- 3.1.1. Recognize hazardous energy sources, the type and magnitude of energy in the workplace, and the methods of isolating and controlling energy
- 3.1.2. Understand that attempting to restart or re-energize locked or tagged-out machines is prohibited.
- 3.1.3. Understand that only authorized personnel may remove tags.

All authorized employees must be trained to:

- 3.1.4. Notify all affected employees before applying lockout and tagout devices.
- 3.1.5. Shut down the machine.
- 3.1.6. Locate and operate all energy control devices required to isolate the machine from its energy source.
- 3.1.7. Lock and tag each energy control device in a "safe" or "off" position. The tag must clearly indicate that operating or moving the energy-isolating devices is prohibited. If the tag cannot be applied directly to the energy-isolating device, it must be located as close as possible to the energy-isolating device in a position that will be immediately obvious to anyone attempting to operate the device.
- 3.1.8. Render all stored or residual energy safe. If stored energy can re-accumulate to a hazardous level, the authorized employee must be able to continually verify throughout the servicing and maintenance that no energy can get to the machine.
- 3.1.9. Verify that the machine has been isolated from the energy source and has been de-energized.
- 3.1.10. Before removing the lock and tag, ensure that all nonessential items have been removed and that the machine is operationally intact, check that all employees are safely positioned, and notify all affected employees that these devices have been removed. Except in emergencies, locks and tags must be removed from each energy source only by the employee(s) or person in charge of the work group who applied them.

3.2. RETRAINING

Both authorized and affected employees must be retrained:

- 1.

2.

3.

3.1.

3.2.

3.2.1. Whenever there is a change in their job assignments, a change in machines, equipment or processes that present a new hazard;

OR

3.2.2. Whenever the employing officer or supervisor believes there are deviations from the energy control procedures, or inadequacies in employee's knowledge on use of the energy control procedures.

4. ADDITIONAL REQUIREMENTS

4.1. CONTRACTORS

Whenever outside contractors are to be engaged in activities within the scope of this program, the on-site employing officer and outside contractor must inform each other of their respective procedures. The contract personnel must understand and comply with the lockout/tagout procedures.

4.2. GROUPS OF EMPLOYEES

When servicing and maintenance are performed by a group of employees, primary responsibility must be vested in one authorized employee for a set number of employees under the protection of a group lockout device. This device must allow each authorized employee to affix his/her own personal lockout or tagout device to the group lockout device or group lock box when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.

4.3. SHIFT CHANGES

Specific procedures shall be utilized during shift changes to ensure continuity of lockout/tagout protection, including provision for the orderly transfer of lockout/tagout device protection between off-going and on-coming employees to prevent exposure to hazards from the unexpected energization or start-up of the machine or equipment, or the release of stored energy.

5. ENFORCEMENT

In addition to training all authorized and affected employees, the employer shall conduct a periodic inspection of the energy control procedure at least annually to ensure that the procedure and the requirements of this program are being followed.

- 5.1. The periodic inspection shall be performed by an authorized employee other than the ones utilizing the energy control procedure being inspected.
- 5.2. The periodic inspection is conducted to correct any deviations or inadequacies identified.
- 5.3. Where lockout is used, the periodic inspection includes a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected.
- 5.4. Where tagout is used, the periodic inspection shall include a review, between the inspector and each authorized and affected employee, of each employee's responsibilities under the energy control procedure being inspected and the limitations of tagout systems and tags.
- 5.5. The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine or equipment on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection, and the person performing the inspection.
- 5.6. Where employees are found to be not in compliance with those procedures, appropriate corrective action is to be taken.

E-Railsafe Subscriber Agreement

1. ACCESS TO THE e-VERIFILE.COM WEBSITE AND THE REPORTS. e-VERIFILE.COM has entered into agreements with one or more railroad companies subject to regulations promulgated by the Federal Railroad Administration (individually the "**Railroad**") to perform background screening regarding certain employees of CUSTOMER and to provide such information to the Railroad for the purpose of ensuring and maintaining the security of the properties and operations of Railroad. CUSTOMER either performs or would like to perform work for the Railroad and is required by the Railroad to have CUSTOMER'S employees screened by e-VERIFILE.COM. e-VERIFILE.COM grants to CUSTOMER a nontransferable, nonexclusive license to access the website of e-VERIFILE.COM for the purposes set out in this Agreement. e-VERIFILE.COM grants to CUSTOMER a nontransferable, nonexclusive license to access its website and the background consumer reporting information included therein (the "**Reports**") during its normal hours of operation solely for the purpose of performing research and related work in the regular course of CUSTOMER's business. All services will be requested using the web based e-VERIFILE.COM system. The criminal report will be made available online. If employees of CUSTOMER meet certain screening criteria, e-VERIFILE.COM will issue to CUSTOMER an identification badge (the "**Badge**") to be worn by such employees while such employees are on the property of the Railroad. The Badge will be delivered to CUSTOMER using a delivery company which employs technology to track delivery conformation. CUSTOMER will be responsible for proving Badges to its employees.

CUSTOMER understands and agrees that its use of the Reports is subject to restrictions imposed by e-VERIFILE.COM's data suppliers as well as federal and state laws. CUSTOMER agrees to comply with all such restrictions of which it receives notice, whether such notice is provided in writing or given online, and such restrictions are incorporated herein by reference. In the event of any conflict between this Agreement and such additional restrictions, the additional restrictions will control. e-VERIFILE.COM reserves the right at any time and without prior notice to limit CUSTOMER's access to its website in order to perform repairs, make modifications or as a result of circumstances beyond e-VERIFILE.COM's reasonable control.

2. PASSWORDS. e-VERIFILE.COM will assign CUSTOMER username(s) and password(s) for CUSTOMER's personnel who are authorized to obtain Reports from e-VERIFILE.COM. CUSTOMER is responsible for, and will be billed for, all Reports purchased using the usernames assigned to it. If CUSTOMER learns or suspects that unauthorized use of its account is taking place, or if the user's (employee) employment is terminated by CUSTOMER, then CUSTOMER shall immediately notify e-VERIFILE.COM in writing and e-VERIFILE.COM will replace the username and password.

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delivered to any third party. Notwithstanding the foregoing, CUSTOMER agrees and authorizes e-VERIFILE.COM to permit Railroad access the Reports and/or information in and from the Reports and further agrees that Railroad may in its discretion share such information with other railroads and federal and state authorities.

4. FCRA USER REQUIREMENTS. With respect to all consumer reporting information embodied in any Reports it obtains from e-VERIFILE.COM, CUSTOMER warrants and agrees that it has complied and will continue to comply with all provisions of the Fair Credit Reporting Act, as amended (15 USC § 1681b) (the "FCRA") (www.ftc.gov/os/statutes/050131fcra.pdf), and any other applicable State or Federal laws. CUSTOMER warrants and agrees that it has a "permissible purpose" (as defined by Section 604 of the FCRA) for obtaining the consumer reporting information embodied in the Reports, such as 1) establishing a consumer's eligibility for employment purposes or the issuance of new or continued insurance, 2) consumer identification verification, 3) consumer report screening, or 4) otherwise in connection with a legitimate business need related to a business transaction involving the consumer. CUSTOMER warrants and agrees that it has filed all necessary "certification of use" documents required by individual states and that it maintains signed releases (where required) on file in its office. CUSTOMER acknowledges its responsibilities and obligations stipulated in the FCRA and the penalties for obtaining consumer reporting information under false pretenses. CUSTOMER shall make its employees aware of such requirements.

5. AUDIT RIGHTS. CUSTOMER authorizes either e-VERIFILE.COM and/or any Railroad to audit CUSTOMER'S systems, procedures and use of the Reports and any other e-VERIFILE.COM products or services to assure compliance with the terms of the Agreement, the FCRA and other applicable laws, regulations, policies or procedures. CUSTOMER shall cooperate fully in connection with any such audit and will provide, or obtain, access to such systems properties, records and personnel as e-VERIFILE.COM may reasonably require for such audit purpose.

6. INDEMNIFICATION. CUSTOMER agrees to indemnify and hold harmless e-VERIFILE.COM and its officers, directors, employees and shareholders from (a) any and all damages, costs, expenses, or penalties (including reasonable attorneys fees) suffered by e-VERIFILE.COM from third party claims that arise out of this Agreement and that result from the neglect or intentional misconduct of CUSTOMER, and (b) any and all damages, costs, expenses, or penalties (including reasonable attorneys fees) and any other liabilities imposed by local, state, or federal laws or regulations or claimed by any third party that result from or arise out of (i) any breach by CUSTOMER of any warranty or agreement contained herein, or (ii) any misuse of any Report provided by e-VERIFILE.COM hereunder.

7. PAYMENT. The current prices for the Reports, and other products and services, are posted at the e-VERIFILE.COM website. CUSTOMER

agrees to pay, by credit card (only Visa or MasterCard) or by company check, for all Reports, and other products and services, it orders from e-VERIFILE.COM under the CUSTOMER's account number. If payment cannot be processed, e-VERIFILE.COM will invoice CUSTOMER, and the invoice will be due upon receipt. Invoices not paid in full by CUSTOMER within 30 days of the invoice date are subject to a late fee of 1.75% per month (or the maximum fee allowable by law, if this is less), plus all costs of collection, including reasonable attorneys' fees. CUSTOMER acknowledges and agrees that e-VERIFILE.COM may suspend access privileges to the Reports without notice if payment cannot be processed. CUSTOMER will assume responsibility for and pay all applicable state, local, federal or other taxes (exclusive of taxes based on e-VERIFILE.COM's net income) which result from this Agreement or the products and services provided hereunder.

8. TERMINATION. This agreement may be terminated by either party at any time upon notice. CUSTOMER agrees, however, to pay for all requests received by e-VERIFILE.COM prior to termination.

9. DISCLAIMERS AND LIMITATION OF LIABILITY. THE REPORTS AND PRODUCTS PROVIDED UNDER THIS AGREEMENT BY e-VERIFILE.COM ARE SUPPLIED BY VARIOUS SERVICE BUREAUS. THE REPORTS ARE PROVIDED "AS IS" AND NEITHER e-VERIFILE.COM NOR ITS SERVICE BUREAUS IN ANY WAY WARRANTS OR ASSUMES ANY LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION, PRODUCTS OR SERVICES PROVIDED BY e-VERIFILE.COM TO CUSTOMER AND e-VERIFILE.COM SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES. e-VERIFILE.COM MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PERFORMANCE, TIMELINESS, CURRENCY, ACCURACY, ADEQUACY, OR COMPLETENESS OF ITS WEBSITE AND e-VERIFILE.COM SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES.

CUSTOMER ACKNOWLEDGES THAT EVERY BUSINESS DECISION INVOLVES THE ASSUMPTION OF A RISK AND THAT e-VERIFILE.COM DOES NOT AND WILL NOT UNDERWRITE THAT RISK IN ANY MANNER WHATSOEVER. If e-VERIFILE.COM is found liable for any cost or damage suffered by CUSTOMER, its liability is hereby limited to the sum Twenty Five Thousand dollars (\$25,000.00). The remedies set forth in this paragraph and termination of this Agreement are CUSTOMER's exclusive remedies for claims or damages arising out of or relating in any way to this Agreement or the Reports, products or services provided hereunder. IN NO EVENT SHALL e-VERIFILE.COM OR ANY SERVICE BUREAU OR OTHER DATA SUPPLIER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES.

10. GENERAL PROVISIONS. This Agreement is governed by Georgia law. This Agreement may not be assigned by CUSTOMER or by operation of law without the prior written consent of e-VERIFILE.COM. All notices required or permitted hereunder shall be in writing and shall be mailed, e-mailed, faxed or hand delivered to the other party. Performance by e-VERIFILE.COM is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, government, weather, fire, power or telecommunications failure,

inability to obtain supplies, or breakdown of equipment. The terms and conditions set forth in this Agreement constitute the entire agreement of the parties, and any additional or different terms or conditions set forth in any other document shall be of no effect. CUSTOMER AGREES THAT A COPY OF THE SIGNED ORIGINAL OF THIS AGREEMENT TRANSMITTED BY TELECOPIER (OR FACSIMILE) TO e-VERIFILE.COM WILL BE BINDING ON CUSTOMER AND HAVE THE SAME FORCE AND EFFECT AS THE SIGNED ORIGINAL.

ACCEPTED AND AGREED:

CUSTOMER

(Organization Name) _____

Authorized Signature _____

Title _____

Name (Print) _____

Date _____

Address _____

e-VERIFILE.COM, Inc.

Authorized Signature _____

Title _____

Name (Print) _____

Date _____

Address _____

**NORFOLK SOUTHERN
OPERATING GUIDELINES
FOR CONTRACTORS**

EFFECTIVE August 9, 2004

CONTRACTOR SAFETY

Numbers to call to report conditions or obtain further information:

Norfolk Southern Police Command Dispatching Center Roanoke, VA (including highway crossing gate failures)	800-453-2530
Safety.Department Roanoke, VA	540-981-4865
Environmental Department (Spill Reports) Roanoke, VA	540-981-4059
Material Management Department Roanoke, VA	540-981-3883
Engineering Department Atlanta, GA	
Maintenance of Way & Structures (MW&S)	404-529-1470
Communications & Signals (C&S)	404-529-1216
Design & Construction (D&C)	404-529-1463
Transportation Department General Managers Office	
Western Region (Atlanta, GA)	404-529-1827
Eastern Region (Atlanta, GA)	404-529-1964
Northern Region (Harrisburg, PA)	717-541-2215
Mechanical Department Atlanta, GA	404-582-6725

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CONTRACTOR SAFETY STATEMENT OF POLICY SAFETY

Norfolk Southern Corporation and its corporate affiliates (hereinafter collectively called "Norfolk Southern") are committed to the principle that safety is good business.

Responsibility for safety and environmental stewardship cannot be transferred. Each contractor is held accountable for his/her actions on the job.

- 1 . All injuries can be prevented.
- 2 All exposures can be safeguarded.
3. Prevention of injuries and accidents is the responsibility of each contractor.
4. Training is essential for good safety performance.
5. Safety is a condition of continued contractual relations with Norfolk Southern Corporation.
6. Safety is good business.

*As used herein contractor refers to the contractor and his/her employees.

INTRODUCTION

THIS DOCUMENT WILL HELP YOU UNDERSTAND AND COMPLY WITH NORFOLK SOUTHERN SAFETY REQUIREMENTS: THESE SAFETY REQUIREMENTS APPLY TO YOU AND YOUR EMPLOYEES WHILE YOU ARE ON NORFOLK SOUTHERN PROPERTY. IT IS EXTREMELY IMPORTANT THAT YOU UNDERSTAND EACH OF THESE RULES WHILE YOU ARE WORKING ON NORFOLK SOUTHERN PROPERTY.

THE TERMS "CONTRACTOR" OR "CONTRACTORS", AS USED IN THE RULES WHICH FOLLOW, INCLUDE THE EMPLOYEES, AGENTS, AND SUBCONTRACTORS OF ANY CONTRACTOR.

CONTRACTORS ARE RESPONSIBLE TO KNOW THE APPLICABILITY OF GOVERNING LOCAL, COUNTY, STATE AND FEDERAL LAWS AND REGULATIONS, AND ANY SPECIAL PROVISIONS IMPOSED BY THE FEDERAL RAILROAD ADMINISTRATION (FRA) OR OTHER REGULATORY AGENCIES, INCLUDING BRIDGE FALL PROTECTION AND ROADWAY WORKER PROTECTION. CONTRACTORS ARE ENCOURAGED TO ASK ANY NORFOLK SOUTHERN SUPERVISOR FOR ASSISTANCE REGARDING QUESTIONS ON SAFETY.

THE SAFETY RULES CONTAINED IN THESE GUIDELINES ARE NOT AND CANNOT BE EXCLUSIVE. EACH CONTRACTOR MUST ADOPT AND ENFORCE SUCH ADDITIONAL RULES OR PRACTICES AS MAY BE NECESSARY FOR THE SAFE PERFORMANCE OF THE WORK.

REMEMBER: SAFETY IS A CONDITION OF WORKING ON NORFOLK SOUTHERN PROPERTY. RESPONSIBILITY FOR SAFETY CANNOT BE TRANSFERRED. EACH CONTRACTOR IS RESPONSIBLE, AND WILL BE HELD ACCOUNTABLE, FOR THE SAFE PERFORMANCE OF THE WORK HE/SHE HAS CONTRACTED TO DO. CONTRACTOR MUST TAKE APPROPRIATE STEPS TO ASSURE COMPLIANCE BY HIS/HER EMPLOYEES WITH THE SAFETY RULES APPLICABLE ON NORFOLK SOUTHERN PROPERTY.

QUESTIONS CONCERNING INTERMODAL OPERATIONS ARE COVERED IN THE NORFOLK SOUTHERN RAILWAY INTERMODAL OPERATIONS MANUAL, SAFETY SECTION PAGES 1-76.

THESE RULES DO NOT PROHIBIT CONTRACTORS FROM ADOPTING MORE RESTRICTIVE RULES AND INSTRUCTIONS FOR THE GOVERNMENT OF THEIR EMPLOYEES THAN THOSE CONTAINED HEREIN.

IF YOU HAVE ANY QUESTIONS REGARDING SAFETY OR SAFETY MATTERS CONTACT ANY DESIGNATED NS EMPLOYEE OR THE NORFOLK SOUTHERN SAFETY DEPARTMENT AT 540-981-4865.

GENERAL RULES FOR CONTRACTORS SAFETY

1.1 Contractors have the sole responsibility of controlling the means and manner of the work done by their employees, of insuring the compliance by their employees with the rules and procedures set forth in this manual, and for the safe performance of their employees during the time they are on or about the property or equipment of Norfolk Southern.

1.2 Contractors whose duties are prescribed by these rules must be provided with a copy by Norfolk Southern Contract Services Department when a contract is consummated. Contractors are responsible for maintaining a copy of the rules and providing them to their employees.

1.3 When any person is injured as result of an accident, emergency medical assistance must be called if needed.

1.4 Contractors must immediately report all accidents and injuries to their supervisor and the designated Norfolk Southern employee (NOTE: "designated Norfolk Southern employee" or "designated railroad employee" means the project or work item supervisor or any other employee designated to have oversight responsibility related to the project or work being performed by the Contractor).

1.5 The report must include the name and address of each injured person and describe the extent of injury. Names and addresses of all persons at the scene are required, whether or not they admit knowledge of the accident.

1.6 Contractors must be conversant with and obey the rules and any special instructions issued to them by Norfolk Southern. If in doubt as to their meaning, contractors must consult with the designated Norfolk Southern employee for an explanation.

1.7 Accidents, defects in track, bridges, signals or highway crossing warning devices, fires on or near the right of way, or any unusual condition that may affect the safe operation of the railroad that becomes known to the contractor must be reported to the Norfolk Southern designated employee or any other railroad employee by the quickest means of communication.

1.8 A contractor who reports for duty under the influence of alcohol or other intoxicant, cannabis in any form, an amphetamine, a narcotic drug, a hallucinogenic drug, any controlled substance (as defined by federal law), or a derivative or combination of any of these, or who uses any of the foregoing while on duty, will not be allowed to remain on Norfolk Southern property. Possession of any of the foregoing while on duty, or possession, use, or being under the influence of any of the foregoing while on Company property or occupying facilities provided by the Company, is prohibited.

1.9 Firearms are not allowed on Norfolk Southern property unless given special permission in writing by the head of the Norfolk Southern Police Department.

1.10 In case of danger to, loss of, or damage to railroad property by fire, theft, or other causes, contractors must immediately notify the designated Norfolk Southern employee.

Unauthorized possession, removal, or disposal of any material from railroad property or property served by the railroad is prohibited.

All articles of value found on railroad property must be cared for and promptly reported to the designated Norfolk Southern employee.

1.11 Some platforms, bridges and other structures, switch stands and tunnels will not clear a person on the top or side of a car or engine. Contractors must become familiar with these and other places and protect themselves from injury.

1.12 Contractors must not do any work in a manner that will jeopardize their own safety or the safety of others. They must know that appliances, tools, supplies, and facilities used in performing their duties are in proper condition. If not, they must have them put in order before using them. It is the duty of every contractor to examine them to determine their condition.

1.13 Contractors must expect the movement of trains, engines or cars at any time, on any track, in either direction.

1.14 When equipment, tools, or appliances are involved in any way in an injury or death, on Norfolk Southern property, a report must be made promptly to the designated Norfolk Southern employee.

1.15 Photography on Company property without proper authority is prohibited.

1.16 Contractors must follow and observe all FHWA or FRA Regulations applicable to their operations.

GENERAL REGULATIONS

2.1 All rules and instructions apply equally to men and women. All words of gender used in the rules and instructions mean both genders.

2.2 All Contractors must follow Norfolk Southern safety guidelines and perform all duties efficiently and safely while on Norfolk Southern property.

2.3 Contractors must notify designated Norfolk Southern employee as to their whereabouts while performing work on company property,

2.4 Contractors are not expected to inspect passing trains but if a defect is noted or there are other reasons to stop a train the following methods can be used:

To give a STOP signal, move the hand, flag, lamp or fusee back and forth horizontally, at right angles to the track, until acknowledged by a short blast of the engine whistle or other response from the train crew.



If a dangerous condition is observed in a passing train and its crew cannot be notified to stop by hand signal, notify designated Norfolk Southern employee or nearest Norfolk Southern employee.

2.5 Contractors must not ride on rail equipment except when authorized and in the performance of duty.

2.6 Contractors must not sit, stand or step on any parts of railroad equipment except when authorized and in the performance of duty.

2.7 Contractors must not step on rails, guard rails, switches or frogs. Does not apply when loading, unloading, or installing rail or track material.

2.8 Contractors must not cross over between coupled cars unless duties require, then must maintain secure handhold and use a sill (end) platform if possible.

2.9 Contractors must not stand on track in front of closely approaching equipment, or step between coupled moving cars or engines, for any reason. They must not step between or immediately in front of standing cars or engines.

2.10 Contractors must keep premises and work areas subject to their control neat and clean. Buildings, facilities and equipment must not be defaced.

2.11 Contractors must exercise care to prevent loss by fires. Frequent inspections must be made of the work area, and fire hazards found must be promptly corrected or reported to the proper railroad officer. No burning, welding, heating or use of open flame is permitted without permission of designated Norfolk Southern employee.

2.12 The Company's communication facilities must not be used for personal calls and must be confined to emergencies and communication in connection with work being performed.

2.13 No steel tape or chain is to be allowed to cross or touch the rails without permission of the designated railroad employee.

2.14 Truck and tractor operators must reduce speed and sound alarm when approaching persons, doorways, passageways, corners or places where persons are likely to step out.

2.15 Posted speed restrictions must be observed.

GENERAL SAFETY RULES

3.1 Contractors must wear suitable clothing and footwear to perform their duties safely and as prescribed by government regulations.

3.2 Working in shorts is prohibited. Shirts must cover shoulders, upper arms, back and abdomen. Performing work -in oily, greasy, torn, loose or frayed clothing is not permitted. Exception: Underwater divers and other occupations approved by Norfolk Southern may be excepted from this rule.

3.3 Contractors who work around moving equipment, tracks or uneven ground will wear shoes that provide ankle support. Any footwear chosen must provide firm ankle support, prevent slipping and be of substantial construction.

3.4 Safety equipment such as hard hats, eye and hearing protection, protective footwear, steel insoles, ice creepers, belts, lanyards, protective clothing, gloves, spats, guards, full body harness, metatarsal protection, masks and respirators prescribed by Federal, and/or State regulations and Norfolk Southern practices and procedures must be worn in specified areas, jobs or conditions. Contractors should contact the Norfolk Southern designated employee to obtain copies of Norfolk Southern practices and procedures if needed.

3.5 Contractors are responsible for ensuring employees have proper protective equipment. They are responsible to see that it is kept in good order, properly fitted, and available for their use when needed.

3.6 Contractors who handle materials or work around machinery, cars or other equipment, must not wear rings and must not wear other adornments or clothing that may be snagged.

3.7 Contractors must comply with -all regulations pertaining to lockout tagout when working on electrical circuits, machinery, pressure lines, energy storing devices, etc.

3.8 Standing near or in line with a cable, rope or chain under tension when a pull is being made, or standing under a load, bucket or magnet handled by hoisting equipment, is prohibited. All machinery used to pull cables or chains must have safety shields.

3.9 Use of handrails on stairs where provided is required.

3.10 When practicable, equipment or material that would obstruct the view of the track must be left at least 100 feet from highway grade crossings.

3.11 Climbing or jumping over obstructions or across openings is prohibited. Use authorized paths or routes where provided.

3.12 Contractors are prohibited from passing over or under safety valves or automatic blow down valves on stationary boilers or steam generators under pressure.

3.13 Operating any type of internal combustion engine in an enclosed space without adequate ventilation is prohibited. Contractors must not enter confined spaces unless appropriate steps have been taken in accordance with Contractors and Norfolk Southern confined space entry program to ensure the safety of everyone.

3.14 Smoking is prohibited inside of Norfolk Southern buildings and is permitted only in designated areas.

3.15 Scuffling, horseplay, practical jokes, and conduct of a similar nature, while on Norfolk Southern property, is prohibited.

3.16 Running is prohibited in shop areas, buildings or on structures.

3.17 Contractors should warn those who handle trash for disposal when glass, sharp metal, or pointed- objects are placed in trash receptacles. Contractors whose responsibilities include emptying trash receptacles should wear work gloves and expect the presence of glass, sharp metal or pointed objects. Accordingly, contractors performing such work should either dump the receptacle or lift out the liner (if used).

WORKING ON OR ABOUT TRACKS

4.1 Contractors must not walk or stand between the rails of a track or foul a live track without proper authority.

4.2 Contractors working adjacent to a track upon which movements are being made must maintain vigilant lookout for approaching movements.

4.3 Contractors must not operate valves, controls or switches to energize power circuits or to cause equipment or machinery to move until they know that no one is in position to be injured.

4.4 Contractors who work in the foul of tracks (NOTE: working in the foul of tracks means working within a distance of 4 feet from the nearest rail) and who are under contract to the railroad must provide on-track safety

protection as required by FRA Roadway Worker Protection regulations. Contractors must ensure that all employees working in the foul of the track are trained in Roadway Worker Protection rules.

DERAILS AND SWITCHES

5.1 Contractors must not operate any switch or derail unless under the direction and supervision of the Norfolk Southern designated employee.

EQUIPMENT

6.1 Contractors must see that ladders are in good condition and of adequate length and meet all applicable laws and regulatory guidelines for their use and design. Contractors must see that scaffolds are properly constructed or assembled, are strong enough for the load, and the contractor is responsible to see that the scaffolding meets all applicable laws and regulatory guidelines. Only ladders, scaffolds, manlifts, etc. that meet applicable laws and regulatory guidelines should be used.

6.2 Except when a scaffold or ladder is used, a safety harness, belt, net, or guard rope must be used during work:

- A. Outside a window above ground level.
- B. On a steep pitched roof.
- C. On a steep hillside, cliff, or embankment.
- D. In dangerous positions when working on railroad bridge or other structures and as prescribed by FRA regulations.
- E. In any other situation specified by the contractor or Norfolk Southern.

6.3 Moving scaffolds or ladders from point to point while people are on them is prohibited.

6.4 Leaning out, or reaching out more than an arm's length from edge of ladder, scaffold, or elevated platform is prohibited.

6.5 Contractors must maintain adequate clearance between work equipment and energized power.

6.6 Scaffolds and ladders in use at locations where persons or vehicles could collide with them must be protected. Rope barriers or other means must be used to protect persons from falling objects.

6.7 Contractors will use fall-protection equipment in accordance with OSHA regulations when working on towers, masts, and FRA regulations when working on bridges.

6.8 No equipment is allowed within 25 feet of centerline of track without specific permission of the designated railroad employee.

6.9 Trucks, tractors, or other equipment is not to touch ballast line without specific permission of the designated railroad employee.

6.10 All operating equipment within 25 feet of nearest rail must halt operations when a train is passing. All other operating equipment may be halted by the designated railroad employee if such railroad employee views the operation of the equipment to be dangerous to the passing train.

6.11 While clearing and grubbing, no vegetation is to be removed from a railroad embankment with heavy equipment without permission of the designated railroad employee.

6.12 No equipment is to be parked or material stored on railroad property without permission of the designated railroad employee.

6.13 All unattended equipment left parked on railroad property is to be effectively immobilized so that it cannot be moved by unauthorized persons.

HANDLING MATERIAL

7.1 Material and equipment must be kept a safe distance from tracks, walkways, trucking spaces and edges of platforms, and must be secure against movement.

7.2 When unloading poles or similar lading, use caution to prevent lading from becoming dislodged unexpectedly. Tag lines must be used if conditions warrant.

7.3 Throwing, dropping or roughly handling loaded or empty oxygen, acetylene or other gas cylinders, or carboys, is prohibited.

7.4 Hoisting gas cylinders without prescribed cradle is prohibited. Gas cylinders must not be handled by a magnet.

7.5 Contractors are to supply the manufacturers material safety data sheet (MSDS), when handling chemicals, materials, or other substances that could cause irritation or illness.

7.6 Contractors are to warn their employees of the hazards of treated wood.

7.7 Overloading or unsafe loading of trucks and trailers is prohibited.

7.8 Contractors are prohibited from standing on or working from a platform on a forklift truck or similar device, unless the platform is in accordance with applicable laws and regulatory guidelines.

7.9 Always look in both directions before crossing platforms or trucking spaces. Crossing closely in front of moving trucks or tractors is prohibited.

7.10 Before a tractor or forklift enters a truck, trailer, or railway car, the operator must know that the equipment is secured against movement and that the floor is in safe condition.

7.11 Before leaving a forklift truck, tractor, or other equipment unattended for any reason, contractors must see that controls are neutralized, power is shut off, and brakes are set. If the truck or tractor is parked on an incline, wheels must be blocked. Trucks, tractors or other equipment must be left clear of tracks.

7.12 Contractors must take care that materials do not fall from scaffolds, locomotive running boards, end sills, tops of cars, or other elevations.

USING TOOLS AND MACHINERY

8.1 Contractors must not use tools, machinery or appliances that are improperly assembled, defective or improvised, nor use them for other than their intended purposes.

8.2 Tools, machinery and appliances not in use must be properly protected. Sharp points or edges must not be left exposed. Laying down a power tool with motor running is prohibited.

8.3 Operating machines or appliances without safety guards in proper position is prohibited.

8.4 Reaching between, going between, or touching moving belts, chains and cables, or shifting them by hand is prohibited.

8.5 Lockout-Tagout - Repairing or cleaning machinery while it is in motion is prohibited except for adjustments that require the machine to be running. If driven by individual motor, the motor must be stopped and control switch properly tagged before such work is performed. Mechanical locking devices, where provided, must be applied before adjusting or repairing machine. A machine in motion must not be oiled if a contractor could contact or be caught by moving parts.

8.6 Using pneumatic grinding tools not equipped with a speed governor in working and safe order is prohibited.

8.7 Pointing pneumatic hammers or other power-actuated tools at a person is prohibited.

8.8 Contractors must take care that tools do not fall from scaffolds, locomotive running boards, end sills, tops of cars, or other elevations.

ELECTRICAL AND LINE WORK, WELDING, AND CONFINED SPACE ENTRY

9.1 Only qualified contractors shall work on electric wires and apparatus, climb poles or towers, enter power plants or energized substation enclosures, perform welding, or perform work in confined spaces. Qualified contractors performing such work must comply with all federal, state and local regulations applicable to such work.

9.2 Before climbing a pole, tower or other structure, contractors must first examine and test it and know that it will support the weight of individuals working on the pole, tower, or structure. A defective pole must not be climbed until it has been made safe, either by pike poles or lashing it to a new pole in the event of replacement. A defective tower or other structure must be suitably reinforced before it is climbed. When ascending or descending wooden pole, observe the pole surface and avoid setting climbing gaffs where they come in contact with cracks, holes, knots, or any other obstacles that might cause gaffs to cut out. Before commencing work on wooden poles, assure that gaffs have been recently gauged and are in safe condition for climbing.

9.3 Contractors must not stand, sit, or lean on a crossarm while working on a pole until they are positive that the arm is strong enough to safely support their weight.

9.4 When working on or handling wire, rope, or cable, on curves or at comers, contractors must not place themselves in the inside angle of the curve or corner unless they are properly protected.

9.5 When cutting wire, contractors must take particular care to secure loose ends. Contractors must use care to prevent injury when removing insulation or metal sheeting from wire and cable.

9.6 Use both hands when ascending or descending ladders, poles, or structures. Body belts, shoulder straps, or pockets must be used to carry small tools or material. Hand lines must be used for heavier items.

9.7 Two or more contractors must not climb up or down the same pole at the same time. A contractor following another must wait until the preceding contractor is either in position on the pole with safety belt fastened around the pole, or in the clear at the bottom.

CRANES, PULLERS, HOISTS AND DERRICKS

10.1 Contractors must see that capacity of crane is not exceeded, that rail clamps and outriggers are properly used when required and that hooks, chains, cables, ropes and slings used for hoisting are of the proper size and in condition to handle the load safely. Note: Rail clamps are an appurtenance of on-track equipment.

10.2 Before using cranes, pullers, hoists, derricks, or similar equipment, the operator must know that the equipment is in safe condition.

10.3 Cables, chains, pulleys, drums, and hooks must be inspected as required by applicable laws and regulations, and brakes and limit switches must be tested periodically as required by applicable laws and regulations to ensure that they are in proper condition and operate as intended. The operator must know the lifting capacity of the equipment.

10.4 Warning must be given to alert anyone in or near the path of a moving load or load handling equipment. Movement must stop unless everyone is clear.

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10.5 No crane or boom equipment is allowed within 25 feet of nearest rail without specific permission of the designated railroad employee.

10.6 No crane or boom equipment is allowed to foul track or lift a load over the track without permission of the designated railroad employee.

10.7 All contractors are to stay with their machines when crane or boom equipment is pointed toward track.

10.8 All cranes and boom equipment under load (to include pile driving) and other operating equipment within 25 feet of nearest rail must stop work when a train is passing. All other operating equipment may be halted by the Norfolk Southern designated employee when a train is passing if such railroad employee views the operation of the equipment to be dangerous to the passing train.

10.9 Swinging loads must be secured to prevent movement while train is passing.

10.10 No loads are to be suspended above a moving train.

10.11 All contractor cranes and boom equipment is to be turned away from track after each work day or whenever equipment is unattended by operator.

USE OF FLAMMABLE GAS FLAMMABLE LIQUIDS AND FUELS

11.1 Smoking or open flames shall not be allowed within 25 feet of areas where fuel is being dispensed.

OFFICE SAFETY

12.1 Stand or walk clear of doors. Open doors slowly, Do not push on glass panels of doors. When opening or closing doors, use knob or handle, where provided, and keep hands off door edges and facing.

FIRE PROTECTION

13.1 ALARMS

- A. Know where the nearest fire alarm box is located.
- B. Know how to turn in an alarm.
- C. Know alarm, evacuation, and disaster signals for your area, along with the proper exit route.

13.2 EXTINGUISHERS

- A. Know where the nearest fire extinguisher is located.
- B. Know how to operate it. Know the type of fire on which it should be used. Check label.
- C. Return extinguishers for servicing promptly after use.

13.3 COMBUSTIBLES

- A. Combustible material must be kept away from steam lines, radiators, heaters, and service lines.
- B. Combustible material under or near welding and burning operations must be moved a safe distance away, or covered with fire retardant material. Where this is not possible, all sparks and slag must be contained in an approved spark catcher.

13.4 ORDERLINESS

Work areas must be orderly and maintained free of trash and scrap as necessary to help prevent fires.

13.5 REFUELING

Equipment must not be refueled while running or when hot.

13.6 SMOKING

Smoke in approved smoking areas only. Discard butts in approved containers, never in wastebaskets or trashcans.