

A G E N D A

FORT SMITH PORT AUTHORITY

MEETING – Monday, April 22, 2013
Fort Smith Administrative Offices
623 Garrison Ave, Rm #326
Fort Smith, Arkansas

TIME: 12:00 Noon

1. Call to order – Larry Combs, Chair
2. Roll Call and Introduction of new member: Dustin Collyge
3. Approve minutes of meeting of January 17, 2013
4. Reports:
 - a. Tonnage Report, Previous Quarter Activity
 - b. Financial Report
 - c. Operator's Report: Projects, operations, customers, issues, requests, etc.
5. Unfinished Business:
 - a. None
6. New Business:
 - a. Consider Resolution recognizing extension of Operator Agreement with Five Rivers Distribution, LLC.
7. Other discussion items.
8. Next meeting: July 18, 2013
9. Adjourn

City of Fort Smith
Port Authority Meeting
11:30 a.m. Thursday, January 17, 2013
City of Fort Smith Administrative Offices
623 Garrison Avenue, Fort Smith, Arkansas

MINUTES

The Fort Smith Port Authority held its regular quarterly meeting at 11:30 a.m. on January 17, 2013 at the City of Fort Smith's Administrative Offices, Room 326, 623 Garrison Avenue, Fort Smith, Arkansas.

The meeting was called to order, and a quorum was noted present. Port Authority members present were Eddie Norman, Larry Combs, Bob Worley and Jeff Taake. Others present were Marty Shell and Wesley Daniels of Five Rivers Distribution, and Jeff Dingman of the City of Fort Smith.

Due to the resignation of the Chair, Larry Combs was elected Chairman of the Port Authority by unanimous vote. Mr. Dingman noted that the vacancy would be addressed at the February 19 Board of Directors meeting. Mr. Worley moved approval of the minutes of the October 18, 2012 meeting. Mr. Norman seconded and the motion carried by unanimous vote.

Mr. Shell of Five Rivers Distribution delivered the tonnage report for the Fourth Quarter of 2012. Mr. Shell reviewed materials and tonnage reports for October, November, and December through the Ports of Fort Smith and Van Buren as provided to the members in their meeting packet. A total of 54,708 tons of product moved through the Ports of Fort Smith and Van Buren in the Fourth Quarter 2012, compared to 50,383.04 tons during the same period last year. Mr. Shell noted that business by rail was increasing, and attributed the increase to recent street crossing improvements. Mr. Shell also noted that December business took a hit due to a 3 week period when the Montgomery Point Lock & Dam was down for maintenance. Annual comparison of total tonnage was 285,868 for 2012 compared to 364,766 for 2011. Mr. Worley moved acceptance of the tonnage report, Mr. Norman seconded and the motion carried by unanimous vote.

Mr. Dingman reviewed the financial report for the Fourth Quarter, showing the summary of tonnage indicated above and associated revenues (from rent & royalties) and expenses to date. To date, the Port Authority has cash on hand of \$13,789.46. Mr. Dingman also reviewed the accounting of capital investment made by Five Rivers and associated reimbursement by the Port Authority. To date, Five Rivers has invested \$114,111.76 in improvements to the port facility. The Port Authority has reimbursed \$35,370.11 to date, and still owes Five Rivers \$78,741.65. Mr. Norman moved acceptance of the financial report, Mr. Taake seconded and the motion carried unanimously.

The Chair asked Mr. Shell for the operator's report. Mr. Shell revisited recent discussions the erosion of the bank of the Poteau River and the condition of the railroad track on the port property. Five Rivers' staff is keeping an eye on both situations and doing what they can to mitigate further deterioration of both, realizing that neither the City of Fort Smith nor the Port Authority has the funds to address either problem sufficiently. Mr. Shell noted that with the completion of the street crossing improvements last fall, the off-property track and bridge were in good condition, but that track on the port property, laid in the early 1970's, may need to be improved at some point in the future. No immediate problems are known, but the railroad has the discretion to take the track out of service at any time if it feels it isn't adequate.

Mr. Shell noted that the Port of Fort Smith did over 100,000 tons of business in 2012, the most it has done in a long time. Although Trane and Whirlpool are gone as customers, Rheem continues to be a stable customer at the port, at least for the foreseeable future. The port operator is trying to diversify its operation as much as possible and focusing on various bulk materials and storage capacity, and it was noted that a lumber company has recently become a frequent customer. At some point, it would be good to add a warehouse for bulk storage on the port property, but that likely won't happen without a considerable economic development incentive or necessity.

Mr. Worley asked whether the ports of Fort Smith and Van Buren had adequate space. Mr. Shell noted that neither port is at capacity, nor is his competitor in Van Buren. All three locations have the ability to handle more traffic than they are seeing currently, and so are actively seeking additional business.

Mr. Shell noted the recent letter from the Mayor of Tulsa to Mayor Sanders supporting efforts to certify a twelve foot channel in the Arkansas River. Mr. Shell and Mr. Dingman both relayed that the initiative to accomplish the twelve foot channel certification was ongoing.

In Unfinished Business, Mr. Combs asked for an update on the questions of real estate taxes on the public port property. Mr. Dingman recounted that the Sebastian County Court has deemed the property exempt from real estate taxes, even though it is operated by a private contractor. In addition to being exempt from taxes for 2012 and beyond, the decision applies retroactively and the delinquent taxes for 2011, 2010, and 2009 have been forgiven.

There was no New Business noted on the agenda. The next meeting of the Port Authority will be held April 18, 2013 at the City of Fort Smith Administrative Office, 623 Garrison Avenue. There being no further business, the meeting adjourned at approximately 12:15 p.m.

Respectfully submitted,



Jeff Dingman
Deputy City Administrator
City of Fort Smith, Arkansas

**FIVE RIVERS DISTRIBUTION - PORT OF FORT SMITH
TONNAGE REPORT**

Date: January 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	
RECEIVED VIA TRUCKS						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Steel	Truck	2,397,454	1,198.7270	141.21
TOTALS						141.21
RECEIVED VIA TRUCKS						RATE (\$.0522 PNT)
FSPT	01/01-31/13	Corn	Truck	860,500	430.2500	22.46
TOTALS						22.46
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Steel	Rail Cars	1,179,615	589.8075	69.48
TOTALS						69.48
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Lumber	Rail Cars	0	0.0000	0.00
TOTALS						0.00
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	01/01-31/13	Phosphate	Rail Cars	1,597,200	798.6000	41.69
TOTALS						41.69
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	01/01-31/13	DDG	Rail Cars	0	0.0000	0.00
TOTALS						0.00
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Scrap Iron	Rail Cars	1,090,580	545.2900	64.24
TOTALS						64.24
SHIPPED VIA BARGE						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Scrap Iron	Barge	5,841,668	2,920.8340	344.07
TOTALS						344.07
SHIPPED VIA RAIL						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Rock	Rail Cars	0	0.0000	0.00
TOTALS						0.00
RECEIVED VIA TRUCKS						RATE (\$.1178 PNT)
FSPT	01/01-31/13	Alloys	Trucks	752,220	376.1100	44.31
TOTALS						44.31
RECEIVED/SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	01/01-31/13	Wheat	Barge	0	0.0000	0.00
FSPT	01/01-31/13	Mag. Oxide	Barge	0	0.0000	0.00
FSPT	01/01-31/13	Magnachem Ore	Barge	0	0.0000	0.00
FSPT	01/01-31/13	DDG	Barge	0	0.0000	0.00
TOTALS						0.00
SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	01/01-31/13	Coal	Barge	0	0.0000	0.00
TOTALS						0.00

01/31/13 TOTAL DUE CITY OF FORT SMITH FOR FSPT TONNAGE 727.45

**FIVE RIVERS DISTRIBUTION - PORT OF FORT SMITH
TONNAGE REPORT**

Date: February 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	
RECEIVED VIA TRUCKS						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Steel	Truck	1,741,314	870.6570	102.56
TOTALS						102.56
RECEIVED VIA TRUCKS						RATE (\$.0522 PNT)
FSPT	02/01-28/13	Corn	Truck	304,080	152.0400	7.94
TOTALS						7.94
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Steel	Rail Cars	768,230	384.1150	45.25
TOTALS						45.25
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Lumber	Rail Cars	0	0.0000	0.00
TOTALS						0.00
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	02/01-28/13	Phosphate	Rail Cars	1,801,200	900.6000	47.01
TOTALS						47.01
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	02/01-28/13	Grain Screening	Rail Cars	331,860	165.9300	8.66
TOTALS						8.66
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Scrap Iron	Rail Cars	680,380	340.1900	40.07
TOTALS						40.07
SHIPPED VIA BARGE						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Scrap Iron	Barge	0	0.0000	0.00
TOTALS						0.00
SHIPPED VIA RAIL						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Rock	Rail Cars	0	0.0000	0.00
TOTALS						0.00
RECEIVED VIA TRUCKS						RATE (\$.1178 PNT)
FSPT	02/01-28/13	Alloys	Trucks	0	0.0000	0.00
TOTALS						0.00
RECEIVED/SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	02/01-28/13	Prilled Urea	Barge	6,111,358	3,055.6790	159.51
FSPT	02/01-28/13	Mag. Oxide	Barge	0	0.0000	0.00
FSPT	02/01-28/13	Magnachem Ore	Barge	0	0.0000	0.00
FSPT	02/01-28/13	DDG	Barge	0	0.0000	0.00
TOTALS						159.51
SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	02/01-28/13	Coal	Barge	43,243,012	21,621.5060	1,128.64
TOTALS						1,128.64
02/28/13 TOTAL DUE CITY OF FORT SMITH FOR FSPT TONNAGE						1,539.64

**FIVE RIVERS DISTRIBUTION - PORT OF FORT SMITH
TONNAGE REPORT**

Date: March 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	
RECEIVED VIA TRUCKS						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Steel	Truck	1,665,820	832.9100	98.12
					TOTALS	98.12
RECEIVED VIA TRUCKS						RATE (\$.0522 PNT)
FSPT	03/01-31/13	Corn	Truck	0	0.0000	0.00
					TOTALS	0.00
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Steel	Rail Cars	886,840	443.4200	52.23
					TOTALS	52.23
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Lumber	Rail Cars	230,000	115.0000	13.55
					TOTALS	13.55
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	03/01-31/13	Phosphate	Rail Cars	1,787,200	893.6000	46.65
					TOTALS	46.65
RECEIVED VIA RAIL						RATE (\$.0522 PNT)
FSPT	03/01-31/13	Grain Screening	Rail Cars	0	0.0000	0.00
					TOTALS	0.00
RECEIVED VIA RAIL						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Scrap Iron	Rail Cars	2,284,980	1,142.4900	134.59
					TOTALS	134.59
SHIPPED VIA BARGE						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Scrap Iron	Barge	5,788,840	2,894.4200	340.96
					TOTALS	340.96
SHIPPED VIA RAIL						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Rock	Rail Cars	0	0.0000	0.00
					TOTALS	0.00
RECEIVED VIA BARGE						RATE (\$.1178 PNT)
FSPT	03/01-31/13	Alloys	Trucks	3,293,480	1,646.7400	193.99
					TOTALS	193.99
RECEIVED/SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	03/01-31/13	Prilled Urea	Barge	5,933,132	2,966.5660	154.85
FSPT	03/01-31/13	Mag. Oxide	Barge	0	0.0000	0.00
FSPT	03/01-31/13	Magnachem Ore	Barge	0	0.0000	0.00
FSPT	03/01-31/13	DDG	Barge	0	0.0000	0.00
FSPT	03/01-31/13	Corn	Barge	3,409,480	1,704.7400	88.99
					TOTALS	243.84
SHIPPED VIA BARGE						RATE (\$.0522 PNT)
FSPT	03/01-31/13	Coal	Barge	0	0.0000	0.00
					TOTALS	0.00

03/31/13 TOTAL DUE CITY OF FORT SMITH FOR FSPT TONNAGE 1,123.92

FIVE RIVERS DISTRIBUTION - VAN BUREN TONNAGE REPORT

Date: January 1-31, 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	PAY
RECEIVED VIA TRUCKS (Rate \$.1178 PNT)						
VB	01/01-31/13	Electrical Coils	Trucks	1,269,082	634.5410	74.75
VB	01/01-31/13	Steel Coils	Trucks	0	0.0000	0.00
VB	01/01-31/13	Tinplate Coils	Trucks	0	0.0000	0.00
VB	01/01-31/13	Wire Rods	Trucks		0.0000	0.00
VB	01/01-31/13	Proppants	Trucks	0	0.0000	0.00
TOTALS				1,269,082	634.5410	74.75
RECEIVED VIA RAIL (Rate \$.1178 PNT)						
VB	01/01-31/13	Lumber	Rail Cars	0	0.0000	0.00
VB	01/01-31/13	Ingots	Rail Cars	729,707	364.8535	42.98
VB	01/01-31/13	Tinplate Coils	Rail Cars	0	0.0000	0.00
VB	01/01-31/13	Wire Rods	Rail Cars	0	0.0000	0.00
TOTALS				729,707	364.8535	42.98
RECEIVED VIA RAIL (Rate \$.0522 PNT)						
VB	01/01-31/13	Oxane	Rail Cars	0	0.0000	0.00
VB	01/01-31/13	Sand	Rail Cars	0	0.0000	0.00
TOTALS				0	0.0000	0.00
RECEIVED VIA BARGE (Rate \$.1178 PNT)						
VB	01/01-31/13	Wire Rods	Barges	23,662,097	11,831.0485	1,393.70
VB	01/01-31/13	Tinplate	Barges	0	0.0000	0.00
VB	01/01-31/13	Steel Coils	Barges	0	0.0000	0.00
TOTALS				23,662,097	11,831.0485	1,393.70
RECEIVED VIA BARGE (Rate \$.0522 PNT)						
VB	01/01-31/13	Feed Pellets	Barges	0	0.0000	0.00
VB	01/01-31/13	Corn Screenings	Barges	0	0.0000	0.00
VB	01/01-31/13	Phosphate	Barges	0	0.0000	0.00
VB	01/01-31/13	Magnachem Ore	Barges	0	0.0000	0.00
VB	01/01-31/13	Magnesium	Barges	0	0.0000	0.00
TOTALS				0	0.0000	0.00
RECEIVED VIA TRUCK (Rate \$.0522 PNT)						
VB	01/01-31/13	Corn	Trucks	221,360	110.6800	5.78
TOTALS				221,360	110.6800	5.78
SHIPPED VIA BARGE (Rate \$.0522 PNT)						
VB	01/01-31/13	Phosphate	Barges	0	0.0000	0.00
TOTALS				0	0.0000	0.00

01/31/13 TOTAL DUE CITY OF FORT SMITH FOR VB TONNAGE

1,517.20

FIVE RIVERS DISTRIBUTION - VAN BUREN TONNAGE REPORT

Date: February 1-28, 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	PAY	
RECEIVED VIA TRUCKS (Rate \$.1178 PNT)							
VB	02/01-28/13	Electrical Coils	Trucks	46	1,013.8360	119.43	
VB	02/01-28/13	Steel Coils	Trucks	0	0.0000	0.00	
VB	02/01-28/13	Tinplate Coils	Trucks	0	0.0000	0.00	
VB	02/01-28/13	Wire Rods	Trucks		0.0000	0.00	
VB	02/01-28/13	Proppants	Trucks	0	0.0000	0.00	
				TOTALS	46	1,013.8360	119.43
RECEIVED VIA RAIL (Rate \$.1178 PNT)							
VB	02/01-28/13	Lumber	Rail Cars	0	0.0000	0.00	
VB	02/01-28/13	Ingots	Rail Cars	6	548.2095	64.58	
VB	02/01-28/13	Tinplate Coils	Rail Cars	0	0.0000	0.00	
VB	02/01-28/13	Wire Rods	Rail Cars	0	0.0000	0.00	
				TOTALS	6	548.2095	64.58
RECEIVED VIA RAIL (Rate \$.0522 PNT)							
VB	02/01-28/13	Oxane	Rail Cars	0	0.0000	0.00	
VB	02/01-28/13	Sand	Rail Cars	0	0.0000	0.00	
				TOTALS	0	0.0000	0.00
RECEIVED VIA BARGE (Rate \$.1178 PNT)							
VB	02/01-28/13	Wire Rods	Barges	10	13,860.5665	1,632.77	
VB	02/01-28/13	Tinplate	Barges	0	0.0000	0.00	
VB	02/01-28/13	Steel Coils	Barges	0	0.0000	0.00	
				TOTALS	10	13,860.5665	1,632.77
RECEIVED VIA BARGE (Rate \$.0522 PNT)							
VB	02/01-28/13	Feed Pellets	Barges	0	0.0000	0.00	
VB	02/01-28/13	Corn Screenings	Barges	0	0.0000	0.00	
VB	02/01-28/13	Phosphate	Barges	0	0.0000	0.00	
VB	02/01-28/13	Magnachem Ore	Barges	0	0.0000	0.00	
VB	02/01-28/13	Magnesium	Barges	0	0.0000	0.00	
				TOTALS	0	0.0000	0.00
RECEIVED VIA TRUCK (Rate \$.0522 PNT)							
VB	02/01-28/13	Corn	Trucks	0	0.0000	0.00	
					0	0.0000	0.00
SHIPPED VIA BARGE (Rate \$.0522 PNT)							
VB	02/01-28/13	Coal	Barges	13	20,768.1640	1,084.10	
				TOTALS	13	20,768.1640	1,084.10

02/28/13 TOTAL DUE CITY OF FORT SMITH FOR VB TONNAGE

2,900.88

FIVE RIVERS DISTRIBUTION - VAN BUREN TONNAGE REPORT

Date: March 1-31, 2013

Pay to: City of Fort Smith

PORT	DATE RECD.	COMMODITY	RECD. VIA	LOAD WT	TONS	PAY
RECEIVED VIA TRUCKS (Rate \$.1178 PNT)						
VB	03/01-31/13	Electrical Coils	Trucks	1,086,147	543.0735	63.97
VB	03/01-31/13	Steel Coils	Trucks	0	0.0000	0.00
VB	03/01-31/13	Tinplate Coils	Trucks	0	0.0000	0.00
VB	03/01-31/13	Wire Rods	Trucks		0.0000	0.00
VB	03/01-31/13	Proppants	Trucks	0	0.0000	0.00
TOTALS				1,086,147	543.0735	63.97
RECEIVED VIA RAIL (Rate \$.1178 PNT)						
VB	03/01-31/13	Lumber	Rail Cars	0	0.0000	0.00
VB	03/01-31/13	Ingots	Rail Cars	353,144	176.5720	20.80
VB	03/01-31/13	Tinplate Coils	Rail Cars	0	0.0000	0.00
VB	03/01-31/13	Wire Rods	Rail Cars	0	0.0000	0.00
TOTALS				353,144	176.5720	20.80
RECEIVED VIA RAIL (Rate \$.0522 PNT)						
VB	03/01-31/13	Oxane	Rail Cars	0	0.0000	0.00
VB	03/01-31/13	Sand	Rail Cars	0	0.0000	0.00
TOTALS				0	0.0000	0.00
RECEIVED VIA BARGE (Rate \$.1178 PNT)						
VB	03/01-31/13	Wire Rods	Barges	36,020,368	18,010.1840	2,121.60
VB	03/01-31/13	Tinplate	Barges	0	0.0000	0.00
VB	03/01-31/13	Steel Coils	Barges	6,285,842	3,142.9210	370.24
TOTALS				42,306,210	21,153.1050	2,491.84
RECEIVED VIA BARGE (Rate \$.0522 PNT)						
VB	03/01-31/13	Feed Pellets	Barges	0	0.0000	0.00
VB	03/01-31/13	Corn Screenings	Barges	0	0.0000	0.00
VB	03/01-31/13	Phosphate	Barges	0	0.0000	0.00
VB	03/01-31/13	Magnachem Ore	Barges	0	0.0000	0.00
VB	03/01-31/13	Magnesium	Barges	5,963,756	2,981.8780	155.65
TOTALS				5,963,756	2,981.8780	155.65
RECEIVED VIA TRUCK (Rate \$.0522 PNT)						
VB	03/01-31/13	Corn	Trucks	0	0.0000	0.00
				0	0.0000	0.00
SHIPPED VIA BARGE (Rate \$.0522 PNT)						
VB	03/01-31/13	Phosphate	Barges	0	0.0000	0.00
TOTALS				0	0.0000	0.00

03/31/13 TOTAL DUE CITY OF FORT SMITH FOR VB TONNAGE

2,732.26

Port Authority Tonnage Reports
Capital

Five River Distribution, LLC
Repair Reserve - Fort Smith Port

	2012		\$	
6/25/2008 Riverside furniture (rail stop)			500.00	
8/1/2008 American Track Generations (rail track repairs)			2,500.00	
7/1/2008 Modern Fence (fence repairs)			11,142.49	
10/30/2008 Arkoma Services (rebuild rail bridge)			38,660.00	X
2009 Hang Tin WH 1			4,698.37	-
2009 Pant & Thinner for WH 1			1,130.71	X
2009 Hang Tin WH 2			1,587.41	X
2/5/2010 Home Depot (supplies for new office floor)			48.18	X
2/7/2010 Home Depot (supplies for new office floor)			5.42	X
2/11/2010 Alford's House of Carpets (floor for office)			2,773.73	X
2/15/2010 Yeagers (supplies for new office floor)			16.87	X
9/13/2010 American Track Generations (rail track repairs)			1,516.64	X
9/28/2010 American Track Generations (rail track repairs)			4,365.77	X
3/14/2011 American Track Generations (rail bridge repairs)			5,277.00	X
7/21/2011 PA approved office improvements			11,410.97	X
10/20/2011 PA approved warehouse door/floor improvements			9,572.12	X
1/19/2012 Masonry Repair to NW corner wall, WH 2			2,350.00	X
1/19/2012 Tube City IMS (hauled slag)			1,018.35	X
1/19/2012 Larry Osborne (hauled slag)			1,050.00	X
5/16/2012 Grace Railroad Contractors (rail track repairs)	rotten ties		3,896.00	X
6/13/2012 Grace Railroad Contractors (rail track repairs)	replace add'l rotten ties		4,296.00	X
6/19/2013 APAC (rail track repairs)			363.55	
6/19/2013 APAC (rail track repairs)			392.55	
8/20/2012 Replace Air Conditioner in Port Office			3,795.00	X
10/4/2012 Remove/install new DLM dock leveler			2,500.73	X

114,867.86

5/6/2010 City reimbursement (for floor expense)	From unencumbered Port cash	2,844.20	
1/12/2011 For 4Q 2010	25% deduct from Qtrly royalty payment	1,675.16	
1/12/2011 City reimbursement	From unencumbered Port cash	671.82	
7/20/2011 City reimbursement	From unencumbered Port cash	1,967.94	
7/20/2011 For 1Q 2011 - Corrective adjustment	\$750 kept by Port	750.00	
7/20/2011 For 2Q 2011 - Corrective adjustment	\$750 kept by Port	750.00	
9/8/2011 City reimbursement (office improvements)	From unencumbered Port cash	11,410.97	
10/18/2011 For 3Q 2011	25% deduct from Qtrly royalty payment	753.91	
12/22/2011 City reimbursement (warehouse floor)	From unencumbered Port cash	3,500.00	
1/19/2012 For 4Q 2011	25% deduct from Qtrly royalty payment	578.45	(corrected)
1/6/2012 City reimbursement (overhead door replacement)	From unencumbered Port cash	4,521.00	
1/6/2012 City reimbursement (overhead door repairs)	From unencumbered Port cash	1,551.12	
4/18/2012 For 1Q 2012	25% deduct from Qtrly royalty payment	935.02	
7/26/2012 For 2Q 2012	25% deduct from Qtrly royalty payment	1,752.14	
10/18/2012 For 3Q 2012	25% deduct from Qtrly royalty payment	881.11	
1/17/2013 For 4Q 2012	25% deduct from Qtrly royalty payment	959.11	
4/22/2013 For 1Q 2013	25% deduct from Qtrly royalty payment	1,885.34	

Port Has Reimbursed Five Rivers 37,387.29

Port Still Owes Five Rivers, as of: 77,480.57

4/17/2013

In contract signed in 2008, Five Rivers agreed to spend \$60,000 on improvements the first five years of the lease.

X Mitzi Kimbrough and/or Jeff Dingman examined invoice and agree with amount.

City of Fort Smith - Port Authority
 Five Rivers Distribution, LLC

	January	February	March	1st Qtr Total	
				2013	2012
Steel/other					
Van Buren	12,830.44	15,422.61	21,872.75	50,125.81	40,722.79
Fort Smith	5,630.77	1,594.96	7,074.98	14,300.71	14,666.21
subtotal	18,461.21	17,017.57	28,947.73	64,426.52	55,389.00
Rate	0.1178	0.1178	0.1178		
	2,174.73	2,004.67	3,410.04		
Coal or sand					
Van Buren	110.68	20,768.16	2,981.88	23,860.72	1,733.30
Fort Smith	1,228.85	25,895.76	5,564.91	32,689.51	2,390.38
subtotal	1,339.53	46,663.92	8,546.78	56,550.23	4,123.68
Rate	0.0522	0.0522	0.0522		
	69.92	2,435.86	446.14		
total	2,244.65	4,440.53	3,856.18		
Monthly Rent (covers ins/adv costs in City budget)	1,000.00	1,000.00	1,000.00		
				120,976.75	59,512.68
Excess Rent due (divided operator/Port for improvements)	1,244.65	3,440.53	2,856.18		
Total minimum rent			3,000.00		
Total excess rent			7,541.37		
Total Royalty Due			10,541.37		
25%					
of excess rent paid to operator by agreement	311.16	860.13	714.05		
Total earned by Operator this period			1,885.34		
50%					
of excess rent held by Port Auth for improvements (a)	622.33	1,720.26	1,428.09		
25%					
of excess rent available to reimb Port Auth (a)	311.16	860.13	714.05		
75% paid to Port Auth by agreement	933.49	2,580.40	2,142.14		
Total Earned by Port Authority this period		(b)	5,656.02		
Additional to be kept by operator			-		
Unencumbered Reserve (from previous quarter)		(b)	14,184.96		
Reserve for spending current quarter		sum (b)	19,840.99		
Expended from Reserve					
Unencumbered Reserve				19,840.99	

CITY OF FORT SMITH PORT AUTHORITY

RESOLUTION NO. 2013-01

A RESOLUTION OF THE CITY OF FORT SMITH PORT
AUTHORITY RECOGNIZING RENEWAL OF A LEASE AND
OPERATING AGREEMENT WITH FIVE RIVERS DISTRIBUTION
THROUGH JUNE 30, 2018

WHEREAS, the City of Fort Smith Port Authority (the “Port Authority”) and Five Rivers Distribution, LLC (the “Operator”) entered into a Poteau River Port Lease and Operating Agreement (the “Operating Agreement”) effective June 16, 2008 for the operation of the Port Authority’s port property; and

WHEREAS, said Operating Agreement carried an initial five-year terms, to expire June 30, 2013, and two subsequent five-year Operator options for renewal, provided the Port Authority find the Operator in good standing; and

WHEREAS, the Operating Agreement carried formal notice requirements of the Operator’s intent to exercise its option, as well as a provision that tonnage through the Port of Fort Smith for the year 2012 must equal or exceed total tonnage for the year 2008.

WHEREAS, the Operator has indicated its intent to exercise its first five year renewal option, to be effective July 1, 2013 through June 30, 2018.

NOW, THEREFORE, BE IT RESOLVED by the Port Authority Commission of the City of Fort Smith Port Authority that formal notice requirements for intent to exercise the renewal option are hereby waived, and that the Operator made reasonable effort to increase the tonnage handled through the leased premises during the period from 2008 through 2012.

BE IT FURTHER RESOLVED by the Port Authority Commission of the City of Fort Smith Port Authority that Five Rivers Distribution, LLC is determined to be in good standing as Port Operator, and that the Operator’s exercise of its five year renewal option through June 30, 2018 is hereby acknowledged and approved.

Adopted this 22nd day of April, 2013.

APPROVED:

Larry Combs, Chair

Memo



To: City of Fort Smith Port Authority
From: Jeff Dingman, Deputy City Administrator
Date: 4/16/2013
Re: Operator Agreement Extension

The Port Authority approved a five year operating agreement with Five Rivers Distribution, LLC in June of 2008. That agreement included two five year operator options for extension, provided that the operator make reasonable efforts to increase business/traffic through the port and provide notice of its intent to exercise its option.

I have attached the 2008 agreement (and its 2009 amendment) for your information/review.

Marty Shell notified me by phone about a month or so ago that Five Rivers intends to exercise its first five year option to serve as port operator of the facility, which would be effective from July 1, 2013 through June 30, 2018. The original agreement provided that the operator show that tonnage in 2012 exceeded tonnage in 2008, which the operator has done. According to tonnage reports provided by the operator, I show that 2008 tonnage totaled 149,514 tons of material. 2012 tonnage totaled 292,282 tons of material.

Mr. Shell's telephone notification didn't exactly meet the renewal notice requirements of the agreement, that it be in writing at least 180 days prior to the end of the term, but the Port Authority can waive the formal requirements if it so chooses.

I have prepared and attached a resolution for the Port Authority's consideration that waives formal renewal requirements, recognizes the Operator's reasonable efforts to increase business at the property, determines Five Rivers to be in good standing as port operator, and acknowledges/approves Five Rivers' exercise of its first renewal option effective July 1, 2013 through June 30, 2018.

Please contact me (via email or at 784-2202) if you have questions regarding this agenda item.

POTEAU RIVER PORT LEASE AND OPERATING AGREEMENT

Between

CITY OF FORT SMITH PORT AUTHORITY

And

FIVE RIVERS DISTRIBUTION LLC.

THIS POTEAU RIVER PORT LEASE AND OPERATING AGREEMENT, hereinafter “Operating Agreement,” made and entered into this 16th day of June, 2008, by and between the City of Fort Smith Port Authority created by City of Fort Smith Ordinance No. 2736, dated May 19, 1969, hereinafter sometimes referred to as the “Port Authority,” and Five Rivers Distribution LLC, hereinafter sometime referred to as the “Operator.”

In exchange of the mutual considerations set forth herein, the Port Authority and the Operator agree as follows with reference to the leased premises identified in Paragraph 3 below.

1. Exhibits. The exhibits attached to this Operating Agreement are incorporated into this Operating Agreement by this reference and are to be construed as an integral part of this Operating Agreement.

2. Definitions. Certain terms used in this Operating Agreement are defined hereinafter in those sections in which the same are mentioned.

3. Leased Premises. The real property that constitutes the leased premises is described on the attached Exhibit “A” (legal description and plat). The Port Authority states that it believes that it owns or has the right as a lessee from the City of Fort Smith, subject to the City

of Fort Smith's recorded easements and the rights of ingress and egress to the City's property utilized for utility purposes immediately north of the northern most warehouse located on the leased premises, to lease the premises to the Operator for the purposes of this Operating Agreement. The Port Authority makes no warranty of title with reference to the leased premises. The Operator acknowledges the easement and access rights of the City of Fort Smith to the described properties.

The improvements on the leased premises are identified in the attached Exhibit "B." The described real property together with all improvements thereon and appurtenances there unto belonging constitute the "leased premises."

4. Term.

A. The Port Authority leases to the Operator and the Operator rents and takes from the Port Authority the leased premises, for the rental and upon the terms hereinafter set forth, for an initial term of five (5) years and 15 days commencing on June 16, 2008, and continuing through the date of June 30, 2013.

B. The Operator shall have two (2) options to extend the term of this Operating Agreement according to the provisions hereof.

(i) Option 1. If the Operator is then in good standing under the terms of the Operating Agreement, and the Operator provides at least one hundred and eighty (180) days but not more than three hundred and sixty (360) days advance written notice of its intent to exercise its first option to the Port Authority, the Operator shall have the option of renewing the Operating Agreement for an additional five (5) year term commencing on July 1, 2013, and continuing through June 30, 2018.

(ii) Option 2. If the Operator exercises the first option to renew, and if the Operator is then in good standing under the terms of this Operating Agreement, and if the Operator provides at least one hundred and eighty (180) days but not more than three hundred and sixty (360) days advance written notice of its intent to exercise its second option to the Port Authority, the Operator shall have the option of renewing the Operating Agreement for an additional five (5) year term commencing on July 1, 2018, and continuing through June 30, 2023.

The Operator's options described herein shall be subject to the condition that the Operator will make reasonable efforts to increase the tonnage being handled through the leased premises. Specifically, the Operator's option described in paragraph 4.B.(i) is subject to the condition that the total tonnage calculated pursuant to paragraph 6 below for the time period of January through December, 2012, must equal or exceed the total tonnage for the time period of January through December, 2008, unless the Port Authority waives the condition pursuant to a written request by the Operator based on significantly abnormal weather conditions, a catastrophe damaging some or all of the total port facilities, or wartime/adverse, abnormal, and unanticipated economic conditions in the 2012 time period. Likewise, the Operator's option described in paragraph 4.B.(ii) is subject to the same condition based on a comparison of the total tonnage in the time period of January through December, 2022, as compared to the time period of January through December 2018.

5. Delivery of Possession. Possession was delivered to Operator on the effective date of this Operating Agreement.

6. Rent Determination and Method of Payment.

A. Total port facilities and total tonnage. In addition to the leased premises, the Operator operates port terminal facilities located in Van Buren, Crawford County, Arkansas. In order to avoid questions regarding the handling of commodities at one port facility as compared to the other port facilities (those in Van Buren or the leased premises), the parties have agreed that the Operator will treat all facilities currently operated by Operator in either Crawford County or Sebastian County as one facility for the payment of rent (the combined facilities are hereby referred to as the “total port facilities”) and all tonnage of all commodities handled at any of the total port facilities shall be the basis for the payment of rent under this Operating Agreement (the combined tonnage shall be referred to by the phrase “total tonnage”).

B. The Operator shall furnish to the Port Authority, on a quarterly basis, statements of commodities handled through the total port facilities classified in accordance with this Paragraph. Each quarterly statement shall be certified as to correctness by a representative of Operator. Said quarterly statements shall be furnished to the Port Authority by the twentieth (20th) day of the calendar month following the end of each quarter (the first report being due for the period of June 16 through September, 2008). The Port Authority, at reasonable times, shall have the right, through its duly appointed agents, to inspect the books and records of the Operator for the purpose of verifying the commodities handled and the correctness of the rental paid.

C. All rentals earned during any quarterly period during the term of this Operating Agreement shall be paid to the Port Authority by the twentieth (20th) day of the calendar month following the end of each quarter.

D. Any rental payments made later than the twentieth (20th) day of the calendar month following the end of any quarterly period during the term of this Operating Agreement

shall bear interest at the maximum lawful rate permitted in the State of Arkansas and, in the absence of a maximum lawful rate, at the rate of ten percent (10%) per annum, until such earned rental payments are received by the Port Authority.

E. During the period beginning on June 8, 2008, and ending on June 30, 2009, the Operator agrees to pay to the Port Authority as rental the following sums:

(i) Quarterly Rental. The Operator agrees to pay to the Port Authority as quarterly rental the following sums based upon total tonnage of material transported into or out of the total port facilities (whether by barge or means other than barge):

(a) All commodities except coal - Eleven and twenty-nine one hundredths cents (\$.1129) per ton;

(b) Coal – five cents (\$0.05) per ton.

(ii) Minimum Quarterly Rental. Irrespective of total tonnage, the Operator agrees to pay to the Port Authority a minimum quarterly rental of three thousand dollars (\$3,000.00), payable one thousand dollars (\$1,000.00) per month by the tenth (10th) day of the month (the initial payment being due in July, 2008).

(iii) The foregoing rental rates established in (i) shall apply through June 30, 2009, and, thereafter, shall be adjusted annually based on the All Urban Consumers (All Items) Consumer Price Index published by the U.S. Department of Labor. The formula to be used for the calculation of each rental in subsequent annual periods (the initial subsequent annual period shall be from July 1, 2009 through June 30, 2010) shall be:

$$\text{initial rental} \times \frac{\text{index for January of subsequent year}^*}{211.080} = \text{new rental}$$

*the initial subsequent year shall be January 2009

For example, the rental for the E(i)(a) category of commodities beginning July 1, 2009, shall be calculated by multiplying \$.1129 by a fraction the denominator of which is 211.080 and the numerator of which is the January 2009 index factor from the Consumer Price Index – All Urban Consumers (All Items) published by the U.S. Department of Labor.

(iv) The minimum rental provided for by subparagraph (ii) above shall remain constant throughout the term of this Agreement, including option periods, unless the Port Authority gives written notice to the Operator of an adjustment to the minimum rental based on the following factor. In the event that the cost to the Port Authority (through the City of Fort Smith) of property storm, fire and casualty insurance for the leased premises plus twenty percent (20%) of that insurance cost exceeds the sum of One Thousand Dollars (\$1,000.00) per month, then the Port Authority has the right to adjust the minimum quarterly rental to an amount which is equal to the quarterly insurance cost plus twenty percent (20%) of the insurance cost.

7. Operation.

A. The Operator agrees to operate the leased premises as a public port facility in a good and workman like manner providing for the prompt and expeditious handling of freight for the public.

B. The Operator agrees to provide and furnish to waterway users port services typical of public ports operated on the Arkansas River, including but not limited to services for loading, unloading or transferring of freight from barge to transit shed to barge, from barge to truck, from truck to barge, from barge to barge, from barge to rail, from rail to barge and for the mooring, shifting and pumping of barges. Rates and charges for the aforesaid services shall apply indiscriminately to patrons who may desire to use the said facilities and services.

C. The Operator will provide at the Operator's expense all necessary merchandise and cargo handling equipment required for the modern, effective operation of a public port facility. Said personal property shall remain the property of the Operator.

D. (i) Rules, regulations, conditions and public tariff handling rates for each type of commodity handled and/or services rendered shall be published by the Operator, shall be filed with the City of Fort Smith Port Authority, and shall be the same for all customers, based on the following factors:

- (a) Cost of operations;
- (b) Relative rates at other ports for like services;
- (c) The effect of an increase or decrease on water-borne traffic; and,
- (d) A reasonable compensation for the Operator.

(ii) Such rules, regulations, conditions and rates may be published in conjunction with or as a part of bulletins or tariffs applicable to ports other than that owned by the Port Authority, but in such even the portions of such combined bulletins or tariffs as are applicable to the leased premises shall be clearly indicated. Periodically new rules, regulations, conditions and tariffs may be so published. During interim periods a reasonable rate for any item not listed in the previous published tariff shall be established based on the above factors and shall be the same for all customers.

(iii) Should any interested party or parties object to the rules, regulations, conditions or rates prescribed as herein provided, such party or parties shall have the right to protest to the Port Authority outlining in detail the basis of such protest. The Port Authority, the protesting party or parties, and the Operator, shall negotiate such protest. If in such negotiations the reasonableness of such rules, regulations, conditions or rates cannot be established and an

agreement reached, the Port Authority shall establish the subject rule, regulation, condition or rate, subject to the right of the Operator or interested party to pursue any lawful remedy to judicially challenge the established rule, regulations, condition or rate.

“Interest Party” as used herein shall be construed to include the City of Fort Smith Port Authority.

8. Operator Indemnity and Insurance.

A. The Operator will be fully responsible for the actions of itself and its agents and employees engaged in the operation on the leased premises. The Operator shall hold the Port Authority and the City of Fort Smith harmless from and indemnify the Port Authority and the City of Fort Smith, their officers, employees and agents, from any and all claims, demands, suits, actions and judgments resulting therefrom, including legal expenses and attorneys’ fees incurred in the defense thereof, arising from the operations of the Operator on the leased premises.

B. In keeping with the obligations of the Operator, the Operator shall maintain in full force and effect the following types of insurance and shall provide to the Port Authority certificates reflecting the effectiveness of the insurance at all times:

(i) Liability insurance for all of the Operator’s operations with minimum limits of \$ 1,000,000.00 ;

(ii) Except to the extent covered by the liability coverage mentioned in Paragraph (i) above, motor vehicle liability coverage in the minimum limits of \$ 1,000,000.00 ;

(iii) Insurance insuring Operator’s personal property to the extent Operator determines same to be necessary; and,

(iv) Workers compensation coverage in the limits provided for by Arkansas law.

9. Storm, Fire and Casualty Insurance of Improvements on Leased Premises. The Port Authority shall cause to be insured under a standard policy providing protection from storm, fire and casualty loss, the improvements located on the leased premises. The Operator shall have no claim to, or interest in, the proceeds from such insurance. The damage or destruction of any one or more of the improvements located on the leased premises shall not be a basis for an automatic abatement of rentals due under this agreement.

10. Anticipated Improvements to the Leased Premises.

The Port Authority and the Operator acknowledge that various improvements are needed to some of the structures located on the leased premises. The Operator agrees to operate the leased premises subject to the terms of this Agreement irrespective of the acknowledged need for the identified improvements and the anticipated methods of making those improvements.

A. The Port Authority and the Operator contemplate making the following improvements to described facilities on the leased premises at the anticipated costs:

- | | |
|---|--------------------|
| 1. Repair of rail facilities other than bridge - | \$50,000.00; |
| 2. Repairs of rail bridge - | \$50,000.00; |
| 3. Improvements to warehouse facilities other than roof - | \$125,000.00; and, |
| 4. Repair to warehouse roof facilities - | \$140,000.00. |

Total: \$365,000.00

B. The Operator agrees to expend at least \$60,000.00 of funds provided by the Operator in the initial five (5) year term of this Lease Agreement towards the improvements identified in subparagraph A. above.

C. The Port Authority (with the assistance of agents of the City of Fort Smith) and the Operator agree to jointly pursue third party contributions, insurance proceeds, proceeds from FEMA disaster relief, an EDA grant, or other available public funds for the additional financing of the improvements described in A. above. Other than the commitment of the Operator expressed in B. above, neither the Port Authority nor the Operator guarantee or warrant that any such funds will be made available.

D. Allocation of paid rent for described or other improvements to the leased premises. All rent paid by the Operator to the Port Authority in excess of the minimum quarterly rent ("excess rent") shall be held and used by the Port Authority as follows.

1. Fifty percent (50%) of the excess rent shall be held by the Port Authority in a fund for the purpose of making the improvements described in A. above or future improvements to the leased premises as determined by the Port Authority. The Operator may, at any time, make a request that accumulated funds be used for the described purposes.

2. In the event that the Port Authority (or the City of Fort Smith) advance any public monies for the improvements described in A. above or other improvements, twenty five percent (25%) of the excess rent shall be received by the Port Authority and held to reimburse the expenditure of said public monies, plus interest at a rate of four and a half percent (4.5%) per annum.

3. Twenty five percent (25%) of the excess rent shall be received and held by the Port Authority subject to the Operator's written request(s) for reimbursement to the Operator, without interest, of any portion of the sixty thousand dollars (\$60,000.00) of actual cash money previously contributed by the Operator to the construction of the improvements described in A. above. No such request shall be made prior to July 1, 2010. Upon approval by the Port

Authority, any such written request shall be paid from the funds accumulated pursuant to this sub-paragraph D.3.

4. After completion of the reimbursements authorized by subparagraphs 2. and 3., the indicated percentages of excess rent shall be held and used for purposes designated by the Port Authority.

11. Maintenance.

A. The Port Authority makes no warranty or representation concerning structural soundness of its facilities and makes no warranty regarding the period of time that the facilities may be usefully utilized for the purpose of this Operating Agreement.

B. The Operator shall be responsible for any damage to the port facilities on the leased premises which are caused by the negligence of the Operator or its agents, servants or employees, and in such even there will be no abatement of rent.

C. The Operator, at its expense, shall be responsible for the maintenance and normal repair of all of the leased premises occupied by and used by the Operator, including the ground area, roads, parking areas, driveways, railways, and all of the improvements and appurtenances listed on Exhibit "B."

D. The Operator shall keep the leased premises in a safe, clean and wholesome condition in accordance with local ordinances and other laws and governmental regulations affecting the said premises, and shall promptly remove at its cost any rubbish or waste material of any character whatsoever which may accumulate therein. Upon the termination of this Operating Agreement, by lapse of time or otherwise, the Operator shall remove within thirty (30) days all trash as well as all stocks of goods, materials, supplies, tools, and equipment belonging to the Operator, its agents or others.

E. The Operator shall provide observation of the Poteau River Channel for information regarding the minimum depth and the minimum width for the entire reach of the river from the Arkansas River Navigation Channel to the Poteau River Port. In the event the Operator's observations reasonably suggest a depth or width problem, the Operator shall call (in written form) the potential problem to the attention of the Port Authority and all governmental entities or agencies having jurisdiction.

F. The Operator agrees to return the leased premises above enumerated to the Port Authority at the termination of this Agreement in equally good condition as when received by the Operator, ordinary wear and usage and damage caused by strikes, riots, public enemy, fire not caused by Operator's negligence, acts of God, and other conditions beyond the control of the Operator, excepted.

12. Real Estate Taxes.

A. Except with reference to personal property taxes referred to in H below, the term "Taxes" shall mean any form of tax, assessment, lien, bond obligation, license fee, license tax, tax or excise on rent, or any other levy, charge or expense, together with any statutory interest thereon, imposed or required at any time by any federal, state, county, or city authority having jurisdiction, or any political subdivision thereof, or any school, agricultural, lighting, drainage or other improvements or special assessment district thereof [hereinafter individually a "Governmental Agency" and collectively "Governmental Agencies"], on any interest of the Port Authority in the leased premises.

B. The term "Taxes Applicable to the Premises" shall mean all taxes accruing during the term of this Operating Agreement solely with respect to the land and improvements comprising the leased premises.

C. As the leased premises are used for public purpose, it is not anticipated that the leased premises will be assessed taxes applicable to the premises. Nevertheless, to the extent that any such taxes are assessed, the Operator shall pay such taxes subject to Operator's right to challenge the validity of same.

D. With reference to taxes applicable to the premises, the Operator shall pay to the Port Authority all taxes applicable to the premises within thirty (30) days following receipt by the Operator of billing therefor from the Port Authority containing:

(i) The calculation for the taxes applicable to the premises; and

(ii) Evidence, e.g. the tax bill from the taxing authority, of the amount of the taxes due and payable.

E. The Port Authority agrees to reasonably notify the Operator of any assessment of taxes after receipt of the tax bill or other evidence of any proposed taxes, and the Operator shall have the right, unless the Port Authority shall in good faith agree to contest such tax increase, to contest or resist, in good faith and by appropriate proceedings, such taxes, or to contest the validity of the amount or rate of any increase or proposed increase in taxes, or any factor used in the calculation or determination of any increase or proposed increase in taxes. The Port Authority agrees to render to the Operator, all assistance reasonably necessary in connection therewith.

F. If the Operator contests any such tax assessment, the Operator shall pay to the Port Authority the costs and expenses paid or incurred by the Port Authority during each calendar year of the term of this Operating Agreement for professional or other services including, but not limited to, fees and expenses of consultants, attorneys, appraisers, and experts in connection with good faith efforts that

successfully resist taxes. The Operator shall pay such costs and expenses annually within thirty (30) days following receipt by the Operator of a statement therefor.

G. Any rebates, refunds or abatements of taxes received by the Port Authority subsequent to payment of the taxes by the Operator shall be refunded to the Operator within ten (10) days of receipt thereof by the Port Authority. Any such rebate, refund or abatement realized by the Port Authority prior to payment by the Operator shall result in an immediate reduction in the taxes then due to the Port Authority.

H. Operator shall be responsible for the payment of any personal property taxes assessed to the Operator with reference to Operator's equipment and personal property maintained on the leased premises.

13. Utilities and Services.

A. The Operator shall pay for all public and other utilities and related services rendered or furnished to the leased premises during the term of this Operating Agreement. The Operator shall be solely responsible for the performance of any and all repairs to all utility lines, pipes and other facilities to the leased premises.

B. The Port Authority shall not be liable to the Operator for any interruption of utility services to the leased premises.

14. Damage and Destruction of Port. In the event of the destruction of, or damage to, the port facilities or freight-handling equipment as to prevent proper operation of the port facilities due to strikes, riots, or public enemy not caused by the Operator's negligence, extraordinary conditions or unusual action of the river, acts of God or other conditions beyond the control of the Operator, the Operator will not be obligated to furnish the services required under Paragraph 7 of this Operating Agreement for a reasonable period of time for the repair or

restoration of the port facilities or freight-handling equipment. Such period of disruption shall not entitle the Operator to an extension of the term of this Operating Agreement.

15. Eminent Domain. In the event of any action of eminent domain by the City of Fort Smith or the Port Authority of the City of Fort Smith, this Operating Agreement shall be deemed to be void as to the portion of the leased premises involved in the action and the Operator shall have no right to claim compensation by reason of the eminent domain action. In the event of any action of eminent domain by another entity, both the Operator and the Port Authority or the City of Fort Smith shall have the right to individually present any asserted claim for just compensation or to otherwise defend such action.

16. Assignment. The Operator shall not assign, sublet or permit any transfer by operation of law or otherwise of all or any part of its interest in the premises and facilities leased under this Agreement without the prior written approval of the Port Authority.

17. Advertising. The Operator agrees not to place or permit to be placed in or upon or about the leased premises any advertising signs other than the direct advertising of the Operator. Direct advertising of the Operator shall not be placed on, in, upon or about the port premises without the prior written approval of the Port Authority.

18. Alterations. The Operator shall not make any structural alterations in the leased premises without prior written approval of the Port Authority and, if requested to do so by the Port Authority, the Operator at the expiration of this Agreement shall promptly remove any and all such alterations, and repair any damage resulting therefrom. The Operator shall not permit any mechanic's or materialman's lien to be placed upon or remain upon the leased premises.

19. Capital Improvements. In the even the Operator desires to make capital improvements and/or additions on the premises to improve or expand terminal operations, the

Operator may negotiate with the Port Authority regarding the costs involved, providing the Operator submits a detailed proposal to the Port Authority containing a description of the improvements together with detailed plans, specifications and a cost estimated, as well as a plan for repayment of the costs of such proposed improvements and/or additions. The terms of rental, duration of lease, terms of repayment, and other pertinent factors shall be agreed upon by both parties in writing prior to initiation of any work involved in the capital improvements.

20. Invalidation of Insurance. The Operator shall not suffer anything to be or remain upon or about the premises which will invalidate any policy of insurance which the Port Authority may hereafter have upon the port facilities and shall not suffer anything to be or remain upon or about the premises nor carry on nor permit upon the premises any trade or occupation or suffer to be done anything which may render an increased or extra premium payable for the insurance of the premises against fire, unless consented to in writing by the Port Authority and, if is so consented to, the Operator shall pay such increased or extra premium within ten (10) days after the Operator shall have been advised of the amount thereof.

21. Rights of Entry. The right is reserved by the Port Authority, by its duly appointed agent or agents, at reasonable times, to enter upon the port facilities herein referred to for the purpose of inspecting the premises leased under this agreement and for making any repairs or improvements which the Port Authority may desire to make.

22. No Waiver of Rights. Failure of the Port Authority to strictly and promptly enforce the terms and conditions of this Agreement shall not operate as a waiver of the Port Authority's rights, the Port Authority expressly reserving the right to enforce prompt payment of the amounts to be remitted by the Operator to the Port Authority under the terms of this Agreement by suit for

a cancellation of this Agreement, or otherwise; and the receipt by the Port Authority of any payments from Operator after the institution of any action for the cancellation of this Agreement shall not be considered as a waiver of any of the rights of the Port Authority.

23. Default.

A. In the event Operator during the term of this Operating Agreement shall

- (i) File a voluntary petition in bankruptcy;
- (ii) Make an assignment for the benefit of creditors;
- (iii) Be adjudicated a bankrupt;
- (iv) Be declared insolvent;
- (v) Abandon the premises; or
- (vi) Fail to substantially perform any provision of this Operating

Agreement and such default shall continue for thirty (30) days after the Port Authority gives notice of such default to the Operator, then and thenceforth, in any of said events, this lease may be forfeited and thereby become null and void at the option of the Port Authority, and said Port Authority may at any time thereafter reenter the leased premises, or any part thereof, and repossess and have the same and remove therefrom all goods and chattels not thereto properly belonging, and expel said Operator and all other persons who may be in possession of said leased premises or any part thereof.

B. The right of the Port Authority to terminate this Operating Agreement as herein set forth is in addition to and not in exhaustion of such other rights that the Port Authority has or causes of action that may accrue to the Port Authority because of the Operator's failure to fulfill, perform or observe the obligations, agreements or covenants of this lease, and the exercise

or pursuit by the Port Authority of any of the rights causes of action that the Port Authority might have shall not limit the Port Authority in the pursuit of other remedies.

C. Anything to the contrary herein notwithstanding, in the event of fires, accidents, strikes or other events, beyond the reasonable control of the Operator, which prevent the Operator from being able to fully fulfill its obligations as set forth in Paragraph 7 of this Operating Agreement, it is hereby agreed that the Port Authority shall have the right, as its option, to suspend this Agreement and to be placed in possession and control of all of the leased premises (which the Operator hereby agrees to return to the Port Authority promptly and without the necessity of any action at law or in equity to accomplish the same) and the Port Authority shall continue to be in control and possession of the leased premises until, in its judgment, the causes of the interruption of the service by the Operator has been eliminated. Upon its determination that the cause of the interruption of the service provided by the Operator has been eliminated, the Port Authority shall return the leased facilities to the Operator in accordance with the provisions of this Operating Agreement. The rental otherwise payable by the Operator to the Port Authority hereunder shall be suspended during such time as the Port Authority shall be in control of the leased facilities, and the assumption of control by the Port Authority hereunder shall not operate as an extension of the Lease or as a termination thereof. The Port Authority shall not be required to account in any manner to the Operator for receipts by the Port Authority during its control of the leased facilities, nor in any other respect whatsoever.

24. Covenant Not to Compete.

A. Operator agrees that any commodities that can come through or be handled by the total port facilities operated by the Operator will be handled through said facilities except as is expressly authorized in this Agreement.

B. Except for the Van Buren, Crawford County port facilities operated by the Operator, the Operator shall not, without the prior written permission of the Port Authority, manage, operate, own or be interested in the ownership or operation of any facility in the City of Fort Smith or within a twenty-five (25) mile radius of the City of Fort Smith that competes with the public port facilities.

C. Except for the Van Buren, Crawford County port facilities operated by the Operator, and except with the prior written permission of the Port Authority, the Operator shall not manage, operate or be interested in the ownership or operation of any port facility other than the leased premises operated by any private entity or any public entity located in or within a twenty-five (25) mile radius of the City of Fort Smith.

D. The provisions of this covenant not to compete shall continue for a period of two (2) years beyond the date of termination of this Operating Agreement.

25. Attorneys' Fees. The Operator agrees to pay all costs of collection, including reasonable attorney fees, if all or any part of the funds to be remitted by the Operator to the Port Authority are collected after maturity with the aid of an attorney. In the event it becomes necessary for either party to this Operating Agreement to employ an attorney to obtain compliance with any of the covenants or other terms of this Operating Agreement, the other party is subject to an award of reasonable attorney's fees by any supervising court of jurisdiction.

26. Accounting.

A. The Operator agrees to incur, at the Operator's expense, an independent auditing firm for the purpose of performing an independent annual audit to confirm the accuracy of all lease payments made by the Operator to the Port Authority. The annual audit performed by the independent auditing firm for the Operator shall be provided to the Port Authority and the

audit shall specifically confirm the accuracy of the lease payments made to the Port Authority pursuant to the terms of this Operating Agreement.

B. The Port Authority has access, at any and all reasonable times, to the leased premises and to the records of the Operator relevant to the rental and other obligations of this Agreement. The Port Authority may exercise its rights of access through any of its agents, including any of its appointed accountants or attorneys.

27. Notice. Any notice in writing given under this Operating Agreement, shall be sufficient if sent by mail, postage prepaid, and addressed as follows:

A. Notice to the Port Authority shall be sent to:

City of Fort Smith Port Authority
c/o City Administrator
Post Office Box 1908
Fort Smith, Arkansas 72902

B. Notice to the Operator shall be sent to:

Five Rivers Distribution LLC
Post Office Box 5606
2020 Riverfront Road
Van Buren, Arkansas 72957

28. Entire Agreement. The parties acknowledge that this Operating Agreement constitutes the entirety of the parties' agreement. All negotiations are merged herein.

29. Binding Effect of Operating Agreement. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend, bind and inure to the benefit of the parties hereto and their respective successors and assigns.

30. Memorandum of Operating Agreement. This Operating Agreement shall not be recorded. However, at the request of either party, the parties will prepare a memorandum of this Operating Agreement which, after execution, may be recorded by either party.


31. No Construction Against Preparer. This Operating Agreement has been prepared by the Port Authority and its professional advisors and reviewed by the Operator and its professional advisors. The parties believe that this Operating Agreement is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of either the Port Authority or the Operator or against either the Port Authority or the Operator merely because of their efforts in its preparation.

32. Number and Gender. The terms "Port Authority" and "Operator," wherever used herein, shall be applicable to one or more persons, as the case may be, and the singular shall include the plural and the neuter shall include the masculine and feminine and, if there be more than one, the obligations hereof shall be joint and several.

33. Authority to Execute. Each of the parties executing this Operating Agreement represents to the other its authority, without restriction, to execute this Agreement. Operator warrants that the execution of the Operating Agreement will not in any respect breach any covenants or obligations that the Operator has with banks or other entities financing the operations of the Operator.

THIS OPERATING AGREEMENT executed as of the date first set forth above by the following individuals who represent that they have the authority to bind the party for which they execute this Operating Agreement.

CITY OF FORT SMITH PORT AUTHORITY

By: 
Chairman

ATTEST:

Richard P. Pearce
Secretary

FIVE RIVERS DISTRIBUTION LLC

By: Nathan M. Sheel II

By: _____

**AMENDMENT #1 TO THE
POTEAU RIVER PORT LEASE AND OPERATING AGREEMENT**

Between

CITY OF FORT SMITH PORT AUTHORITY

And

FIVE RIVERS DISTRIBUTION LLC.

THIS AMENDMENT #1 TO THE POTEAU RIVER PORT LEASE AND OPERATING AGREEMENT, hereinafter (“Amendment #1 to Operating Agreement,”) made and entered into this 21 day of May, 2009, by and between the City of Fort Smith Port Authority (“Port Authority”) and Five Rivers Distribution LLC, hereinafter sometime referred to as the (“Operator.”)

In exchange of the mutual considerations set forth herein, the Port Authority and the Operator agree to the adoption of this Amendment #1 to the Operating Agreement.

1. Paragraph 6E(i)(a) and (b) of the Operating Agreement dated June 16, 2008, are hereby amended to read as follows:

(a) All commodities except those provided for in (b) below - Eleven and twenty-nine one hundredths cents (\$.1129) per ton;

(b) Coal – five cents (\$0.05) per ton. For the period beginning January 1, 2009, and continuing through December 31, 2010, five cents (\$0.05) (subject to the adjustment provided for in (iii) below), per ton for sand, dry distillers grain and magnesium oxide.

2. Except as amended by paragraph 1 of this Amendment #1 to Operating Agreement, the Operating Agreement entered into on June 16, 2008, between the parties shall continue in full force and effect.

THIS FIRST AMENDMENT TO OPERATING AGREEMENT executed on the date first stated above by the following individuals who represent that they have the authority to bind the party for which they execute this First Amendment to Operating Agreement.

CITY OF FORT SMITH PORT AUTHORITY

By: Alan Lee Farmer
Chairman

ATTEST:

Secretary

FIVE RIVERS DISTRIBUTION LLC

By: Nathan M. Shell

By: _____