

OPERATING AGREEMENT

PORT OF ANACORTES/FRONTIER INDUSTRIES, INC.

This Operating Agreement, made as of March 16, 1989, 1989, by and between the PORT OF ANACORTES, a Washington municipal corporation, hereinafter referred to as "the Port", and FRONTIER INDUSTRIES, INC., a Washington corporation, hereinafter referred to as "F.I."

WHEREAS, the Port desires F.I. to perform certain work for the Port pursuant to the terms and conditions of this Operating Agreement, and F.I. desires to perform certain work for the Port pursuant to the terms and conditions of this Operating Agreement;

NOW, THEREFORE, in consideration of the mutual promises and conditions herein, the parties agree as follows:

1. Duties and Services

F.I. shall be responsible for the processing of all logs delivered to the Port's sorting yards and shall perform the unloading, tagging, marking, tallying, sorting and cold decking of logs into piles. F.I. shall be responsible for

providing the Port in advance with proposed vessel loading lines^{UPS} and shall cooperate with the Port in establishing final vessel loading lines^{UPS}. The processing described above shall be termed the "basic operation". It is recognized by

the parties that additional operations may also be required.

These additional operations include, but are not limited to,

dumping logs to water, rafting, banding, removing rafts from

water to skids, loading logs to trucks and moving logs

between piles and log yards and supplying all equipment required for rafting and removing rafts from water. F.I. shall, in performing the operations hereinabove described be responsible for; efficient management of the sorting and log yards and informing the Port of needed maintenace to the same; providing the Port with an accurate accounting and weekly reporting of log inventories; periodic watering of the log yards for dust control purposes; the scraping up, loading of, and accountability for all log yard waste bark removed from both the main and satellite log yards; and the proper management of log movements from the Port's satellite yard to Pier #2. In addition, F.I. shall be responsible for the operation of the Port's log debarking facility, and shall provide the Port in advance with proposed debarking lines and shall cooperate with the Port in establishing final debarking lines. Additional duties, responsibilities, and services provided by F.I. to the Port and compensation by the Port to F.I. for services provided are set forth in Appendix "A". Performance of all duties and services by F.I. shall be under the direct supervision of Mike Johnson.

2. Term

The term of this Agreement shall be from March 1, 1989 through February 28, ¹⁹⁹¹ ~~1990~~. ~~For good cause, which need not be mutually beneficial,~~ either party shall have the right to terminate this Agreement during the term hereof on one hundred twenty (120) days written notice to the other party or upon any breach of the provisions hereof.

3. Independent Contractor

Each party's performance herein is that of an independent contractor and not as an employee, agent, partner or joint venturer with the other party. F.I. acknowledges that it shall employ and supervise all persons necessary to perform the work required of F.I. F.I. also acknowledges it shall supply all tools and supplies necessary to perform its operations in a prompt and workmanlike manner.

4. Contractor's Responsibility

F.I. shall be responsible for paying all of its employees' wages, including withholding and other payroll taxes, industrial insurance, and any fringe benefits which may be required by law, by employment contract, or by any liens or encumbrances to be filed as a result of failing to pay wages or any other obligations.

5. Equipment and Maintenance of Equipment

F.I. shall operate equipment owned and provided by the Port, except equipment such as watercraft (boat) required for rafting and removal of rafts from water which shall be supplied by F.I., in a responsible manner in performance of its work. All equipment supplied by the Port to F.I. must be properly used by F.I. and not subjected to abuse and more than normal wear and tear. If any such abuse results, F.I. shall pay for repairs to or replacement of equipment. The Port shall be responsible for maintenance of said equipment insofar as normal wear and tear is concerned and daily operations require, and for costs of all labor and parts subject to the terms and conditions of the

MAINTENANCE AGREEMENT BETWEEN PORT OF ANACORTES AND FRONTIER INDUSTRIES dated the 16 day of March, 1989. F.I. shall cooperate with the Port in maintaining an inventory of parts on hand as authorized by the Port and shall maintain records of all parts taken from or replaced to inventory that are already in ownership of the Port or purchased by the Port and/or F.I. at the time such parts are needed. The Port shall be responsible for costs of fuel used in Port owned equipment.

6. Productivity and Utilization

F.I. shall in performance of its obligations herein referenced cooperate with the Port to meet productivity goals of the Port and in efforts to improve productivity, efficiency and utilization of the Port's log debarker facility, log yards and terminal, including developing and implementing programs to improve operating efficiency, productivity and utilization.

7. Hold Harmless

For and in consideration of the privilege of conducting commercial operations on or about Port property, F.I. hereby covenants and agrees:

To protect, indemnify, defend and to hold and save harmless the Port, its elected officials, agents and employees, their successors and assigns, heirs, executors, and administrators from and against all liabilities, obligations, and fines, claims, claims for mechanics' liens, damages, penalties, causes of action, costs and expenses

(including without limitation attorney's fees and expenses), and any and all claims by or on behalf of any person or persons, firm or corporation, in connection with any such items of actual or alleged injury or damage,

- arising out of acts of omissions of F.I., its servants, agents, invitees, guests and employees on or about Port property, or
- arising out of the use of Port property or any part thereof, including but not limited to, floats, docks or piers, ramps and approaches, buildings, sidewalks, curbs, parking lots, streets or ways, or
- due to or arising out of any failure on the part of F.I. to perform or comply with any rule, ordinance, or law to be kept and performed.
- F.I. HEREBY WAIVES (GIVES UP) ITS IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT RCW TITLE 51 AND/OR THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.
- F.I. HEREBY AGREES TO INDEMNIFY THE PORT FOR THE CONCURRENT NEGLIGENCE OF THE PORT AND F.I.

This indemnify agreement does not apply when such damage or injury be caused solely by negligent or intentional acts of the Port, its elected officials, agents and/or employees.

8. Insurance

F.I. shall procure and maintain, at its own cost and expense, comprehensive liability insurance in full force and effect at all times while operating on or about Port property, insuring the Port from all claims, demands, and/or actions for injury and/or death of any person or persons

and/or for damage to property and/or cargo, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by F.I. or by others as a result of any condition or occurrence whatsoever related in any way to F.I.'s operation on or about Port property, in such amounts as to meet the minimum liability coverage specified below. Such insurance shall be placed with a reputable insurance company(s) or underwriter(s) satisfactory to the Port. The insurance policy or policies shall be for standard comprehensive general liability (with the watercraft exclusion deleted), including contractual liability coverage, or protection and indemnity coverage under marine insurance, or both, as solely determined by the Port, covering all operations of F.I. so that the risks of liability created by F.I. are covered. The Port shall be named as an additional insured by endorsement to the policy or policies. F.I. shall furnish the Port with appropriate documentation in form and content satisfactory to the Port evidencing the coverage required to be kept is in full force and effect. The coverage shall not be less than \$500,000.00 combined single limit for property damage, bodily injury or death. The insurance policy or policies shall not be subject to cancellation except after written notice to the Port at lease thirty (30) days prior to the date of such cancellation or material change. The insurance requirement under this section shall, amongst other things, provide coverage for the indemnitor undertakings in the preceding

section entitled "HOLD HARMLESS".

10. Labor Charges

It is expressly agreed and recognized by F.I. and the Port that when any labor services are required of F.I., the Port shall be charged a minimum of one quarter (1/4) hour, and all labor charges shall be in minimum increments of one quarter (1/4) hour.

11. Assignment

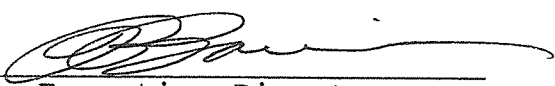
F.I.'s rights and obligations under this Agreement are non-assignable.

IN WITNESS WHEREOF the parties hereto have signed this Operating Agreement as of the day and year first above written.

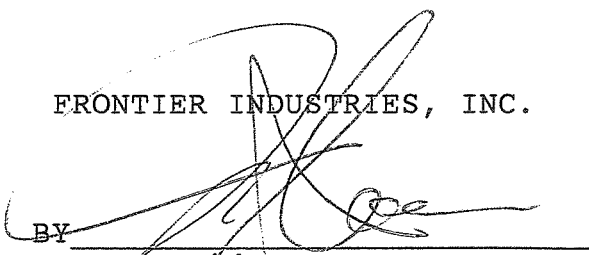
PORT OF ANACORTES

FRONTIER INDUSTRIES, INC.

BY


Executive Director

BY


President

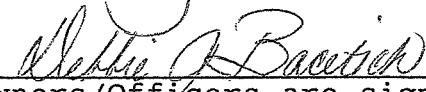
ATTEST:

ATTEST:

BY



BY


Owners/Officers are signing individually and as officers of the corporation as to responsibilities and obligations of performance herein recited.

APPENDIX "A"

I. BASIC OPERATION AND ADDITIONAL OPERATIONS.

The Port shall pay F.I. the rate of eight dollars and fifty cents (\$8.50) per 1000 board feet for the basic operation referred to in Paragraph 1 of the Operating Agreement. Gross scale will apply and log volumes processed shall be determined by scaling bureau summary sheets. This rate shall apply to export and domestic logs with loads, or bundles having ten (10) sorts or less. Rates compensating F.I. for services other than the basic operation are shown on Exhibit "A". These rates shall be effective for the term of this Agreement; unless amended by mutual agreement of the parties.

II. DUTIES, SERVICES, COMPENSATION AND RESPONSIBILITIES CONCERNING THE DEBARKER FACILITY.

A. DUTIES & SERVICES

F.I. shall be responsible for the operation of the Port's log debarking facility (the facility) which is located in the Port's main log yard. F.I.'s responsibilities shall include, but not be limited to, the following areas of operation: moving unprocessed logs to the facility from the log yards or incoming trucks; actual debarking of the logs; removal and storage of processed logs from the facility to the storage decks; daily accounting of processed logs; clean-up, loading of and accountability for all log yard waste bark; routine maintenance;

and overseeing the loading and maintaining an accounting of processed bark from the facility.

B. COMPENSATION

The Port shall pay F.I. the rate of eleven dollars (\$11.00) per hour for the facility operator. An overtime rate of "time and a half" shall only be applied to the facility operator's rate for hours of work in excess of forty (40) hours per week. For hours of work up to and including forty (40) hours per week at the facility, the Port shall pay F.I. the rate of \$.58 for the one (1) loader operator and \$.29 for the one (1) shovel operator per one thousand (1,000) board feet net Scribner for logs debarked. For hours of work in excess of forty (40) hours per week at the facility, the rate applying to the loader and shovel operators respectively shall be the same as the rate for hours of work up to forty (40) hours per week at the facility, plus an additional \$7.00 per hour each. F.I. shall not operate the facility so as to incur overtime rates without the advance approval of the Port.

C. MAINTENANCE - OTHER THAN ROUTINE

All breakdowns or material equipment failures to the facility shall be immediately reported to the Port. The Port employee(s) designated to receive such reports shall be made known to F.I. If, in the opinion of the Port's designated employee and F.I., repairs to correct breakdowns or material equipment failures require a level of expertise that cannot be provided by F.I., the Port's designated employee will determine

whom to contact to make the appropriate repair.

D. DAILY LOG

A daily log will be accurately maintained by F.I. on forms supplied by the Port. This log shall, at a minimum, include details on the following items:

1. through-put volume of processed logs measured in board foot Scribner;
2. all routine maintenance and associated costs required for the smooth operation of the facility;
3. hours of operation of debarker and other equipment, i.e., stacker, wagner/terex;
4. all breakdown time of the facility, cause of the breakdown, and the appropriate action taken by F.I. to expeditiously correct the breakdown;
5. any other costs associated with the debarking of logs at the facility; and
6. all accidents, incidents and safety violations.

E. QUALITY

The actual debarking of the logs shall be done in a workmanlike manner and at all times meet the standards and specifications as determined by the Port of Anacortes, Toyomenka America, Inc. and MRGC/NW.

6A:FRONT.APP

PORT OF ANACORTES
COMBINED LOG CARGO RATES

ITEM:	<u>PORT</u>	<u>FII</u>	<u>TOTAL</u>
1. <u>LOG YARD SERVICE</u>			
A. Unloading of unsorted logs; sort to length; grade & specie; tag; mark; tally; place in storage (cold decking).			
1) 10 SORTS	9.00	8.50	17.50 MBF
2) 11 - 20 SORTS	9.35	11.00	20.35 MBF
3) 21 - 30 SORTS	11.00	11.00	22.00 MBF
B. Pre-sorted Logs - (all except sorting from 1 (A) above)	3.40	7.60	11.00 MBF
C. 1) Unloading from truck-scaled	2.50	2.50	5.00 MBF
2) " " " - no scale	12.50	12.50	25.00 PER LOAD
D. 1) Loading to truck-from sorting yard scaled	7.50	2.50	10.00 MBF
2) " " " - " storage - scaled	9.50	2.50	12.00 MBF
3) " " " - no scale	37.50	12.50	50.00 PER LOAD
E. Raft to Skids - Inbound			
1) 300 b.f. per log & over	2.50	4.50	7.00 MBF
2) 300 b.f. per log & less	3.50	5.50	9.00 MBF
F. Rafting out - outbound			
1) From sorting yard	8.60	3.40	12.00 MBF
2) From storage - Need Longshoreman	10.60	3.40	14.00 MBF
3) From sorting - No scale	50.00	25.00	75.00 PER BUNDLE
G. Banding (Port supplies banding - 2 bands)			
1) Scaled	----	2.50	2.50 MBF
2) No scale - to truck	----	8.00	8.00 PER LOAD
3) No scale - to raft	----	8.00	8.00 PER LOAD
H. Weighing	----	0.15/st	0.15/st
I. Trimming	----	1.00	1.00 MBF
J. Remanufacturing & Bucking (includes trimming)	----	1.50	1.50 MBF

ISSUED: February 9, 1989
RESOLUTION NO. 825

EFFECTIVE: March 1, 1989

2. EQUIPMENT RATES: HOURLY RENTAL

A. Log Stackers L-80, L-90 & TEREX	60.00 PER HR.	60.00 PER HR.
B. Sorting Shovel	60.00 PER HR.	60.00 PER HR.

3. PORT WHARFAGE & SERVICES & FACILITY TARIFFS 8.53 MBF 8.53 MBF
EX-DOCK TO VESSEL

Ex-water to vessel 1/2 Ex-dock Rate
For Wharfage & Services & Facilities

4. DOCKSIDE HANDLING

Storage to vesselside will be billed
on a manpower and equipment rental rates

5. LOG STORAGE after expiration of assembly
time and a 30-day free time passed 3 cents per day
per thousand (gross)

NOTES

1. All rates based on use of on-site equipment owned by the Port of Anacortes. Additional equipment subject to additional rental and labor charges.
2. Item 1 on Gross Scribner Scale.
3. Item 3 on Net Scribner Scale.
4. Owner/Supplier to provide for scaling, scaling documents and tags.
5. Abbreviations:

MBF - 1000 Board Feet
HR. - Hour
6. These Combined Log Cargo Rates and the Port of Anacortes Terminal Tariff No. 9 which is filed with Federal Maritime Commission shall apply to the public, to shippers, consignees and carriers using all Port facilities in the handling and shipping of logs.

ISSUED: February 9, 1989
RESOLUTION NO. 825

EFFECTIVE: March 1, 1989

Lograte3.wst