

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: August 1, 2016

RE: Railcar Use Agreement with Mt. Vernon Transfer Terminal, LLC

Attached hereto for your consideration is a proposed Railcar Use Agreement with Mt. Vernon Transfer Terminal, LLC (MVTT) for transport of 150,000 tons of Illinois Basin coal. The City currently contracts for two (2) sets of railcars that normally transport a maximum of 77,400 tons of coal per month. The ability to add a third train will provide a contingency plan to ensure Lakeland Electric's Illinois Basin coal supply is delivered timely. The length of time between train deliveries has recently been extended from eight (8) to ten (10) days due to CSX routing coal trains on longer routes to free up direct routes for intermodal trains.

In addition, this Agreement provides Lakeland Electric with the opportunity to test unloading coal by using rapid discharge longitudinal door hoppers which will allow staff to determine if this Trinityrail RDL railcar is more efficient and safer to use at the McIntosh coal yard. The City's current railcar lease expires in September 2017, so having the ability to temporarily use another hopper style serves Lakeland Electric's delivery needs as well as the possibility of improving staff's ability to unload coal faster and safer across the trestle.

In accordance with this Agreement, Lakeland Electric Fuels' staff is requesting approval to move a maximum of 150,000 tons of coal at a rate of \$0.75 per ton for a total cost of \$112,500, with no obligation to move any minimum tonnage or liability to store the railcars during the contract period. The term of the Agreement shall be effective August 1, 2016, upon City Commission approval, and continue through December 31, 2016. The contract cost is included in Lakeland Electric's FY 2016 fuel budget.

It is recommended that the appropriate City officials be authorized to execute a Railcar Use Agreement with MVTT.

RS
attachment

RAILCAR USE AGREEMENT

This Railcar Use Agreement (“Agreement”) made and entered on this 1st day of August, 2016 by and between Mt. Vernon Transfer Terminal, LLC, a Delaware limited liability company (“MVTT”), doing business at 1717 South Boulder Avenue, Suite 400, Tulsa, Oklahoma 74119 and the City of Lakeland, a municipality organized and existing in accordance with the laws of the State of Florida on behalf of its municipal utility, Lakeland Electric, 501 E. Lemon Street, Lakeland, Florida 33801 (“Lakeland”).

WHEREAS, MVTT controls, maintains and operates rapid discharge bottom dump railcars (“Cars”) designed for use at various destinations including Lakeland, Florida (“Destination”); and

WHEREAS, Lakeland needs to utilize the MVTT Cars to support bituminous coal tonnage originating from Hamilton County Coal, LLC, Dahlgren, Illinois (“Hamilton”) rail served operations for rail movement to the Destination.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 **TERM**

- A. Initial Term. Car use under this Agreement shall commence on August 1, 2016 (“Commencement Date”) and shall continue through December 31, 2016 (“Term”) unless extended in accordance with Article 1B or otherwise as provided in the Agreement.
- B. Renewal of Term. The Initial Term shall be extended based on mutual written agreement of the parties.

ARTICLE 2 **CARS**

- A. Car Type. The Cars leased or owned (“Controlled”) by MVTT shall be rapid discharge bottom dump type equipment with a minimum of 4,200 cubic feet capacity in good design and workmanlike manner with a gross weight capacity of 286,000 lbs. capable of holding a minimum of 115 net tons of coal per car.
- B. Unit Train. MVTT shall furnish up to, one hundred and two (102) Cars for each shipment. These 102 railcars will be known as one unit train (“Unit Train”) for loading at Hamilton’s unit train loadout (“Loadout”) operation in Dahlgren, Illinois known as the White Oak station served by the Evansville Western Railway, Inc. (“EVWR”).

ARTICLE 3 **PLANNED CAR UTILIZATION**

- A. Scheduling of Cars. Lakeland will advise MVTT on or before the beginning of each month of any anticipated rail shipment utilizing the Cars for the following month or a defined shipping period. The

Parties shall work in good faith to develop a reasonable and mutually agreeable shipping schedule for rail shipments from the Loadout to the Destination. MVTT shall endeavor to provide as much flexibility as possible but with the understanding that Lakeland will provide a fairly ratable schedule for each month. In the event Lakeland has not provided a fairly ratable schedule as provided above, any Shipments missed during any month due to scheduling conflicts will be rescheduled as mutually agreed to in writing by the parties.

- B. Liability in Connection with Cars. Lakeland shall be responsible for and shall reimburse MVTT for any damage and/or replacement for any loss of the Cars while they are in Lakeland's care, custody and control.
- C. Furnish and Maintain Equipment and Facilities. MVTT shall, at its sole cost and expense, furnish and maintain all Cars necessary to perform its obligations under this Agreement.

ARTICLE 4 **LAKELAND RESPONSIBILITIES**

- A. Rail Charges. All rail related charges shall be for the account of Lakeland for all Hamilton coal loaded and transported in Cars.

ARTICLE 5 **VOLUME AND WEIGHTS**

- A. Volume. Unless otherwise agreed to by Lakeland and MVTT in writing, the maximum transport of Hamilton coal in the Cars for the Initial Term shall be 150,000 tons. A ton of coal shall be 2,000 pounds avoirdupois. There shall be no minimum volume of coal required pursuant to this Agreement.
- B. Weight Determination
 - i. The certified rail weight utilized at the time the coal is loaded at the Loadout into the Cars shall be the binding weight for determining payment, if any, for the use of the Cars.

ARTICLE 6 **INVOICING AND PAYMENT**

Within ten (10) days following the end of each month, MVTT shall invoice Lakeland at the Use Fee Rate of \$0.75/NT for all Lakeland coal loaded and transported in Cars. Lakeland agrees to pay the amount due, in immediately available funds to the remittance address set forth on the invoice within forty-five (45) days of receipt of invoice in accordance with Florida Statute §218.74, et. seq., the Local Government Prompt Payment Act. MVTT shall send its invoices to Lakeland via email to the following email addresses: Fuelinvoices@lakelandelectric.com with a copy to tory.bombard@lakelandelectric.com; provided that Lakeland shall have the right to add to or change the email address of such recipients upon delivery of written notice as provided in Article 15. Lakeland shall pay MVTT interest at the rate of one percent (1%) per month on any unpaid balance in accordance with Florida Statute 218.74 et seq., the Local Government Prompt Payment Act.

ARTICLE 7
RAILCAR DAMAGE

Lakeland shall not be responsible for any corrosion damage of the Cars, provided that the Unit Train is used solely to transport Alliance coal from either its Hamilton or Gibson mine locations. Lakeland's total liability for any damage to the Cars pursuant to this Agreement shall be limited to the cost of ordinary repair for damage it caused while using the Unit Train to transport Cars pursuant to this Agreement. To the fullest extent permitted by law, Lakeland will indemnify and hold harmless MVTT and its officers, directors, employees, contractors, and agents from and against any and all loss, cost, liability, claim, damage, fine or expense relating to any act, occurrences or other events of loss arising from Lakeland's use of any Car during the term of this Agreement.

ARTICLE 8
INSURANCE

- A. Lakeland Insurance Obligations. Lakeland shall be responsible for all claims, injuries or liability of its employees or agents, who are responsible for inspecting and loading Cars unless such claims, injuries or liability result from intentional wrongdoing, willful misconduct, or gross negligence of MVTT, its employees, contractors, subcontractors or invitees, and only to the extent such claims, injuries or liability were not caused by Lakeland.

- B. Liability Coverage. Lakeland shall maintain an occurrence based commercial general liability insurance including contractual liability insurance coverage, with limits of \$1,000,000.00 each occurrence, for bodily injury and property damage, Lakeland is self-insured for auto liability.

ARTICLE 9
INDEMNIFICATION

- A. MVTT Indemnity. To the fullest extent permitted by law, MVTT will release, indemnify, defend, and hold harmless Lakeland, its employees and agents from and against any claims, damages, or liens threatened, brought, asserted or sustained against Lakeland for property damage and/or personal injuries, including death, resulting from the negligent acts or omissions of MVTT and its employees while performing obligations or exercising rights under this Agreement.

- B. Lakeland Indemnity. To the fullest extent permitted by law, Lakeland will release, indemnify, defend, and hold harmless MVTT, its employees, and agents from and against any and all claims, damages or liens threatened, brought, asserted or sustained against MVTT for property damage and/or personal injuries, including death, resulting from the negligent acts or omissions of Lakeland and its employees or agents while performing obligations or exercising rights under this Agreement.

- C. Mutual Obligations. To the extent that either party invokes any indemnity provision in this Agreement, the invoking party shall give prompt written notice of the specific indemnification requested under this Agreement in order to enable the other party to investigate, evaluate and defend any claims. The invoking party shall assist the other party in its investigation, including but not limited to, providing witnesses, documents and technical or other assistance, as reasonably required, at the other party's expense.

ARTICLE 10
NO ASSIGNMENT

Any assignment or other transfer (whether voluntarily, involuntarily or by operation of law and including assignment or transfer as part of or by merger, reorganization or consolidation involving a party) of this Agreement or of any of a party's rights or obligations hereunder, without the prior written consent of the other party (which consent may be granted or withheld in the sole discretion of such party) is expressly prohibited and attempted assignment or other transfer contrary to this provision shall be deemed void and the non-assigning party may thereupon terminate this Agreement immediately. If a party seeks consent to assign or transfer this Agreement to its successor in connection with a sale of all or substantially all of its assets, but the other party declines to provide such consent, the party seeking to assign the Agreement shall have the right to terminate this Agreement upon thirty (30) days' notice; provided that such right of termination shall exclude a transfer or assignment in connection with a voluntary or involuntary bankruptcy proceeding. Notwithstanding the foregoing, no consent is required for assignment by MVTT or Lakeland to a parent, subsidiary, sister or other affiliated company, provided that such party provide written notice of the assignment.

ARTICLE 11
INDEPENDENT CONTRACTOR

The parties agree that all persons performing any service for it under this Agreement shall be and remain the sole employees of and subject to the exclusive control and direction of that party or its agents. It is the intention of the parties hereto that both parties are independent contractors in the performance of their duties under this Agreement and that nothing herein shall be constructed as inconsistent with the status.

ARTICLE 12
DEFAULT AND REMEDIES

- A. Event of Default. An event of default (“Event of Default”) with respect to a party (the “Defaulting Party”) shall mean and shall have occurred upon (i) the failure of a Defaulting Party to pay when due any undisputed required payment and such failure is not remedied within five (5) business days after the Defaulting Party’s receipt of written notice thereof; (ii) the failure of the Defaulting Party to comply with any of its other material obligations under this Agreement and such failure is not remedied within ten (10) business days, or where cure of such failure is not possible within ten (10) business days, the Defaulting Party fails to commence cure of such failure within such ten (10) business day period and to diligently and in good faith pursue such cure; (iii) the attempt by the Defaulting Party to assign or otherwise transfer this Agreement without the prior written consent of the other party; or (iv) the Defaulting Party is subject to bankruptcy proceedings. Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other party may, in its sole discretion, terminate this Agreement and thereafter shall be entitled to pursue any and all remedies to which it is entitled, either at law or in equity.
- B. Waiver; Cumulative Remedies; No Consequential Damages. The failure of either party to insist on strict performance of any provision of this Agreement, or to take advantage of any rights hereunder, shall not be construed as a waiver of such provision or right. All remedies provided for under this Agreement shall be taken and construed as cumulative and in addition to other remedies provided by law or in equity. Notwithstanding the foregoing, neither party shall be liable to the other for indirect or consequential damages of any type including but not limited to loss of profits, punitive damages, etc. under any theory of law.

ARTICLE 13
RECORDS AND AUDITS

During the term of this Agreement, the parties shall keep accurate records of all Alliance Coal loaded into Cars at the Operations and transported by rail to the Terminal Facility under this Agreement, for a period of two (2) years from date of the loading of Alliance Coal. The parties shall have the right to inspect those shipment, delivery or loading records applicable to performance under this Agreement during regular business hours and upon reasonable advance written notice to the other party.

PUBLIC RECORDS:

IF THE MVTTHAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MVTT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, MVTT shall keep and maintain public records required by Lakeland in performance of services pursuant to the Agreement. Upon request from Lakeland's custodian of public records, MVTT shall provide Lakeland with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. MVTT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if MVTT does not transfer the records to Lakeland. MVTT shall, upon completion of the contract, transfer, at no cost, to Lakeland all public records in possession of MVTT or keep and maintain public records required by Lakeland to perform services pursuant to the Agreement. If MVTT transfers all public records to Lakeland upon completion of the Agreement, MVTT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If MVTT keeps and maintains public records upon completion of the Agreement, MVTT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Lakeland, upon request from Lakeland's custodian of public

records, in a format that is compatible with the information technology systems of Lakeland.

ARTICLE 14
NOTICES

All notices under this Agreement, except as otherwise provided herein, shall be in writing and may be delivered by fax with a conforming copy sent the same day by an overnight mail service, shall be addressed as follows (unless a party otherwise notifies the other party in writing of a change in notice address as herein provided):

If to MVTT:

Mt. Vernon Transfer Terminal, LLC
Attn: V.P. Market Services & Transportation
1717 South Boulder Avenue
Suite 400
Tulsa, Oklahoma 74119
Telephone: (918) 295-7688
Facsimile: (918) 295-7360
Email: kevin.larkin@arlp.com

If to Lakeland:

The City of Lakeland
Lakeland Electric
501 E Lemon Street
Lakeland, Florida 33801
Attn: Fuels Manager
Telephone: (863)834-6207
Facsimile: (863) 834-8393
Email: tory.bombard@lakelandelectric.com

ARTICLE 15
CONSTRUCTION OF AGREEMENT

- A. Headings. The Section headings, captions, and emphasized text appearing in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.
- B. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be found invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
- C. Binding Effect. This Agreement shall bind and inure to the benefit of the parties and their permitted successors and assigns, if any.

- D. Entire Agreement. This Agreement inclusive of all appendices and exhibits hereto contains the entire agreement between the parties respecting the subject matter hereof and supersedes all prior or contemporaneous oral or written statements, understandings, and agreements. This Agreement may not be changed or amended except in writing and executed by duly authorized representatives of both parties.
- E. Separate Counterparts. This Agreement may be executed in separate counterparts, one for each party, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.
- F. Third-Party Beneficiaries. Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or entity other than the parties hereto.

ARTICLE 16
GOVERNING LAW

This Agreement shall be construed, enforced and performed in accordance with the laws of the State of Indiana without giving effect to principles of conflicts of laws and except to the extent specifically regulated by Federal Laws. The parties consent to the non-exclusive jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement.

ARTICLE 17
TITLE TO COAL

It is understood by the parties that title to the Alliance coal loaded and transported in Cars shall transfer to Lakeland at the time the coal is loaded into the Cars at the Hamilton Loadout.

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

Mt. Vernon Transfer Terminal, LLC

City of Lakeland, Florida

By: _____

By: _____

Name: _____

Name: R. Howard Wiggs

Title: _____

Title: Mayor _____

Date: _____

Date: _____

Attest: _____

Printed Name Kelly Koos

Title: City Clerk

Approved as to form and correctness:

Timothy J McCausland, City Attorney

RDL Coal Hopper

Robust Top Chord with Shaker Bar

- Proven Design to Meet Service Demands

One Piece Side

- Improved Fatigue Life

Robust Interior Bracing

- Equalizes Forces
- Designed for Unit Train Service
- Improves Reliability

Cast Steel Draft Arm

- High Strength
- Less Weight

Advantages of Longitudinal Doors

- Greater Capacity with a lower height
- Improved Ride Characteristics
- Can be used in virtually all rotary dumpers

Visible Lock Indicator

Rapid Discharge® Longitudinal Door

- Fastest Unloading Car in the Industry
- Discharges Between Rail
- Clean and complete discharge of coal
- Better Seal



Enhanced Interior Bracing

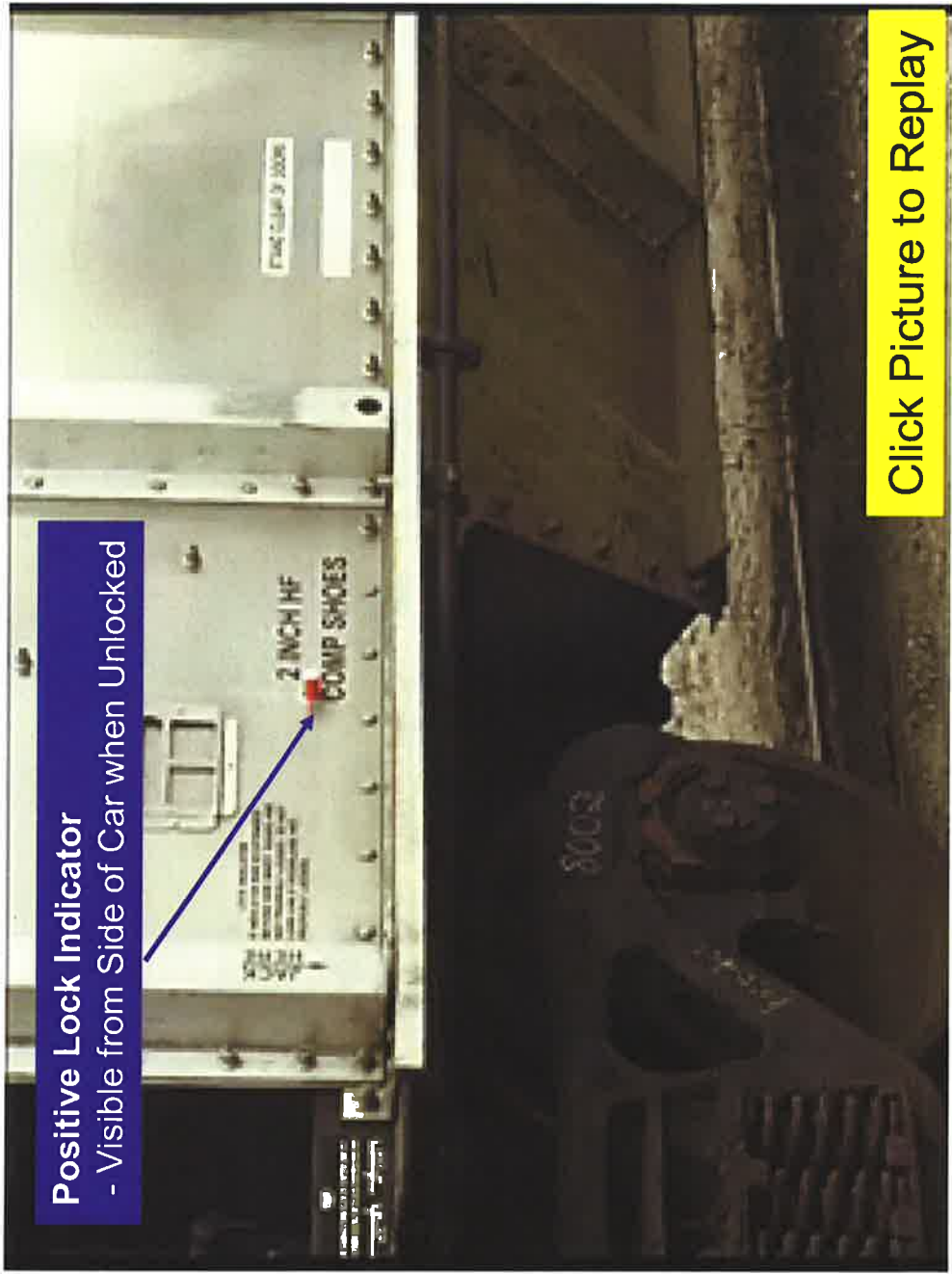
Robust Interior Bracing

- Equalizes Forces
- Designed for Unit Train Service
- Improves Reliability



[Return](#)

Door Lock Indicator



[Return](#)

RDL Door Operation

[Click Picture to Replay](#)

Single Operating Beam

- Positive Over-center Lock
- Fewer Moving Parts
- Simple Adjustment



Ease of Adjustment

- Simple turnbuckles
- One Door Per Side
- Easily accessible

[Return](#)

RDL Door Seal



Positive Overlap

Positive Contact



Eliminates Virtually
All Dust & Fines

[Return](#)



Built to Deliver®

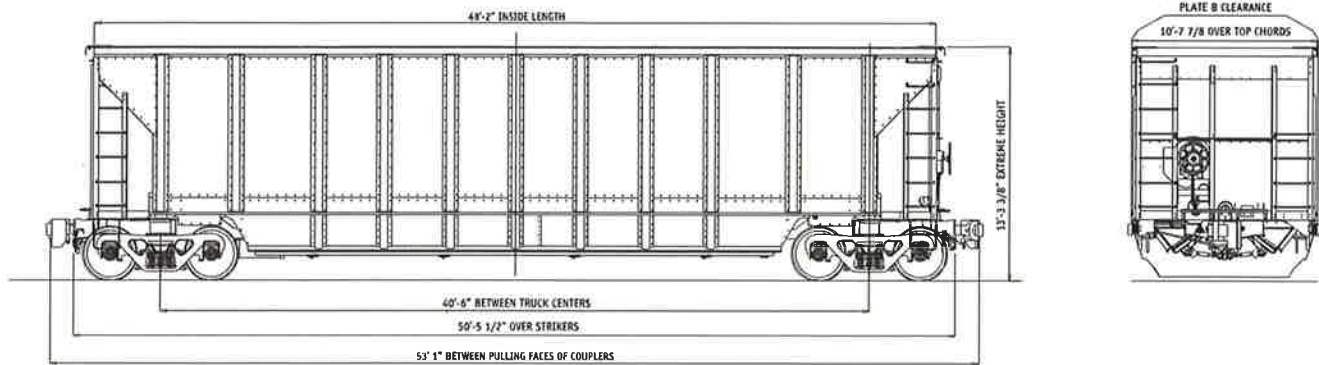
4,323 CUBIC FOOT ALUMINUM LONGITUDINAL DOOR HOPPER

TrinityRail® offers a new concept in Rapid Discharge® coal car technology, the RDL™ which is an automatic unloading aluminum longitudinal door coal car. A continuous steel center sill offers the strength and durability to meet the rigors of unit train coal service. The door system offers increased overall capacity while providing quick and efficient unloading between the rails. Rotary couplers can be added if a rotary dump option is required.

TrinityRail delivers solutions you can depend on. From cars to components, fleet management to leasing, we leverage our extensive manufacturing and engineering resources with a full complement of services to bring you value, mile after mile. Whether you seek one service or many, TrinityRail provides the comprehensive understanding to ensure your rail shipping is cost-efficient and trouble-free.



4,323 CUBIC FOOT ALUMINUM LONGITUDINAL DOOR HOPPER



Length Over Coupler Pulling Faces	53' 1"	Inside Length	48' 2"	Estimated Load Limit Based on 286,000 lbs Gross Rail Load	237,200 lbs.
Length Over Strikers	50' 5 1/2"	Inside Width	10' 0 1/2"	Cubic Capacity Level Full	4,323 cu. ft.
Length Between Truck Centers	40' 6"	Truck Wheel Base	5' 10"	Cubic Capacity with 10" Average Heap	4,719 cu. ft.
Extreme Height	13' 3 1/4"	Estimated Lightweight	48,800 lbs.		
Extreme Width	28' 7 1/4"	Gross Rail Load	286,000 lbs.		

FEATURES	BENEFITS
Rapid Discharge Longitudinal Door System	Simple, efficient and easily adjustable mechanism that offers increased capacity over standard hoppers and traditional automatic discharge hoppers. The mechanism helps to maintain a positive seal for improved dust control. Quick and efficient unloading and large opening promotes clean and complete discharge of even the most difficult coal. Coal is discharged between rails for potential use in rotary dump facilities.
Lower Height and Center of Gravity	Longitudinal design offers lower load height and lower center of gravity for improved ride. Lower height offers the ability to accommodate a greater number of rotary dump facilities.
Robust Top Chord Design with Integral Wear Bar	Heavy duty aluminum extrusion designed to handle the stresses associated with demanding unit train coal service. Wear bar protects the top chord during rotary dump or shaker unloading operations.
Proven Underframe Design	TrinityRail's steel underframe is a proven design, engineered for strength and durability over the life of the car.
High Strength Cast Steel Draft Arm	Proven structural strength along with the benefits of a weight saving casting.
Rotary Coupler Capability	The RDL can be equipped with rotary couplers for rotary applications. Promotes better fleet utilization in operations that require both gondolas and hoppers.
Component Availability	Replacement components are available to minimize out of service time.
Field Service Support	TrinityRail Field Service personnel are available for customer training and support.
TrinityRail	TrinityRail offers the widest and most complete product line available in the industry with wide-ranging manufacturing and engineering resources. A full-line of leasing and management options are available for total customer flexibility.

2525 Stemmons Freeway, Dallas, TX 75207

p 214.631.4420

f 214.589.8623

www.trinityrail.com