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Office of Proceedings
November 9, 2021
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November 9, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 36562, BNSF Railway Company—
Trackage Rights Exemption—Union Pacific Railway Company**

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF Railway Company's Notice of Exemption under 49 C.F.R. § 1180.2(d)(7), with appropriate redactions that the Board can place in its docket. We are concurrently filing a Motion for Protective Order, along with a highly confidential version of the Notice of Exemption to be filed under seal.

The filing fee of \$1,400 was paid using pay.gov. Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36562

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

Tyler R. White
Senior General Attorney
BNSF Railway Company
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Peter W. Denton
Onika K. Williams
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000

Attorneys for BNSF Railway Company

Dated: November 9, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36562

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

BNSF Railway Company (“BNSF”) submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights from UP Ayer Sub MP 215 to MP 269 and 14 miles over the Riparia Industrial Lead, for approximately 68 miles of Union Pacific Railroad Company’s (“UP”) rail line between Attalia, WA and Riparia, WA. (the “Line”).

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this Notice are based on a written agreement between BNSF and UP, attached as Exhibit B, and are not being sought in a responsive application in a rail consolidation proceeding. Under these circumstances, the Section 1180.2(d)(7) class exemption is applicable.

Pursuant to the Surface Transportation Board's ("STB" or "Board") regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The agreement between BNSF and UP grants BNSF trackage rights over the Line. BNSF and its predecessors have operated over the Line since 1967.

Name and address of tenant railroad:

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

Questions regarding this transaction are to be addressed to BNSF's counsel:

Peter W. Denton
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000

(a)(1)(ii) Consummation Date

The trackage rights will be consummated on the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The purpose of these trackage rights is to permit BNSF to continue operating over the Line.

(a)(5) List of States in which the Party's Property is Situated

The involved trackage rights are located in the State of Washington.

(a)(6) Map

A map illustrating the trackage rights is attached as **Exhibit A**.

(a)(7)(ii) Agreement

A redacted public version of the Trackage Rights Agreement is attached as **Exhibit B**. BNSF has filed a Motion for a Protective Order to protect the confidentiality of the commercial terms of the agreement. A copy of the highly confidential version of the agreement is being filed separately under seal.

Labor Protection

BNSF is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historical Matters

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R §§ 1105.6(c)(3) and 1105.8(b)(3).

Respectfully submitted,

/s/ Peter W. Denton

Tyler R. White
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131-2828

Peter W. Denton
Onika K. Williams
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000

*Attorneys for BNSF Railway
Company*

Dated: November 9, 2021

VERIFICATION

I, Olivia E. Power, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Notice of Exemption. Executed on November 9, 2021.

/s/ Olivia E. Power

Olivia E. Power

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 36562

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company (“UP”) has agreed to grant overhead trackage rights to BNSF Railway Company (“BNSF”) from UP Ayer Sub MP 215 to MP 269 and 14 miles over the Riparia Industrial Lead, for over approximately 68 miles of Union Pacific Railroad Company’s (“UP”) rail line between Attalia, WA and Riparia, WA. (the “Line”). The trackage rights will be consummated on or after December __, 2021.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board

EXHIBIT A

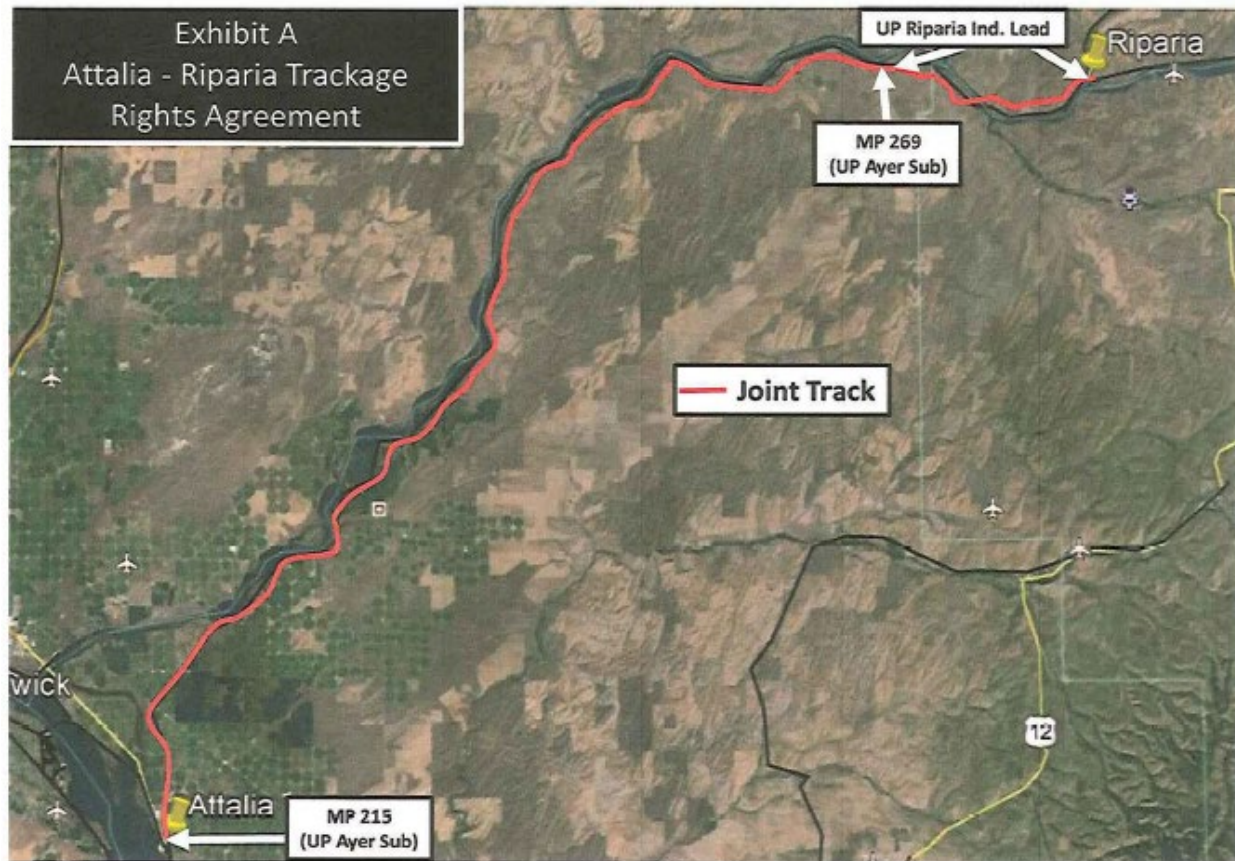


EXHIBIT B

Trackage Rights Agreement

**TRACKAGE RIGHTS AGREEMENT
BETWEEN ATTALIA AND RIPARIA, WA**

THIS TRACKAGE RIGHTS AGREEMENT, (hereinafter called "Agreement") is entered into this 25th of June 2021, ("Effective Date") by and between **Union Pacific Railroad Company**, a Delaware corporation (hereinafter called "UP" or "Owner") and **BNSF Railway Company**, a Delaware corporation (hereinafter called "BNSF" or "User"); and

RECITALS:

WHEREAS, UP is the owner and operator of certain railroad lines and tracks between Attalia, Washington and Riparia, Washington, a distance of approximately sixty-eight (68) miles ("Joint Trackage") as defined below;

WHEREAS, that certain agreement dated June 14, 1967 governing BNSF's rights to operate the Joint Trackage expired by its terms on June 30, 2015 ("Original Expired Agreement"), and BNSF desires to continue utilizing trackage rights over the Joint Trackage for the movement of trains between Attalia and Riparia, WA; and

WHEREAS, UP is willing to allow the continued use of BNSF trackage rights upon UP railroad lines subject to the terms and conditions of a new agreement as set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. DEFINITIONS

Any capitalized terms used in the body of this Agreement but not specifically defined herein shall have the meanings given to such terms in the general conditions (hereinafter called "General Conditions") set forth in **Exhibit "B"**, attached to and made a part of this Agreement.

Section 2. TRACKAGE SUBJECT TO AGREEMENT

BNSF's trackage rights under this Agreement will be over the Joint Trackage shown on **Exhibit "A"**, attached hereto and made a part of this Agreement. The Joint Trackage shall include all of the track structure, including mainlines together with cross-overs, connections, switches, siding and passing tracks, of Owner as described in this Agreement including necessary right-of-way and all appurtenances, signals, communications and facilities of Owner and all Changes in and/or Additions, including any Capacity Improvements, to said track structure now or in the future.

Section 3. GENERAL CONDITIONS, CONFLICTS BETWEEN PROVISIONS

The trackage rights granted in this Agreement are subject to the terms and conditions herein and the General Conditions. In the event there is a conflict between the terms in the body of this Agreement and the General Conditions, then the terms contained in the body of this Agreement shall prevail.

Section 4. GRANT OF TRackage RIGHTS

4.1 Subject to the terms and conditions contained herein, UP grants to BNSF the nonexclusive right to use the Joint Trackage. BNSF's use of the Joint Trackage shall be in common with UP and any other railroad company or companies that use or access the Joint Trackage, now or in the future (provided that such future admittance shall not materially interfere with the fair and reasonable exercise of the rights granted in this agreement), pursuant to authorization by UP, and shall be contingent on the provision of reasonable advance notice to and coordination with UP's personnel.

4.2 The parties understand and agree that BNSF shall not have the right to:

- (a) Switch industries or transload upon the Joint Trackage; or
- (b) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in **Exhibit "B"**; or
- (c) Serve any industry, team or house track, transload, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (d) Permit or admit any third party to use all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage; or
- (e) Enter into or make a contract or agreement for the handling of BNSF Equipment over or upon the Joint Trackage, or any portion thereof, or the Equipment of any third party which in the normal course of business would not be considered the Equipment of BNSF, provided, however, that the foregoing shall not prevent BNSF, pursuant to a run-through agreement with any other railroad, from using the locomotives of another railroad as its own under this Agreement; or
- (f) Provide any passenger service of any kind or handle or operate passenger trains on or along the Joint Trackage; or

- (g) Load or unload cars on or along the Joint Trackage, except as permitted by this Agreement or the General Conditions or incidental to cleaning derailments or other similar emergencies.

4.3 BNSF agrees to perform its operations (hereinafter called "**BNSF's Operations**") and handle its Equipment in a manner that will not unreasonably interfere with or impair the use of the Joint Trackage by UP or other parties.

Section 5. ADDITIONAL LIMITATIONS

[This Section Intentionally Left Blank]

Section 6. COMPENSATION

[REDACTED]

[REDACTED]

[REDACTED]

Example:

[REDACTED]

Section 7. APPLICABLE LAW

Except to the extent this Agreement may be governed by federal law, this Agreement and any claims, disputes or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of Washington, without regard to its conflicts of laws provisions.

Section 8. GOVERNMENTAL OR REGULATORY APPROVALS

8.1 BNSF shall be responsible for obtaining, at BNSF's sole cost and expense, the consent, approval or authority of applicable governmental agencies or departments, including, but not limited to the STB (hereinafter collectively called "**Government Approvals**"), necessary for BNSF's use and operation on, over or along the Joint Trackage pursuant to this Agreement and Legal Requirements. In the event any applications, petitions or filings by UP are required for BNSF to obtain the necessary Government Approvals pursuant to the preceding sentence, then UP will cooperate with BNSF and undertake and diligently prosecute any applications, petitions or filings by UP at UP's expense.

8.2 UP shall have the right, but not the obligation, to review any BNSF applications, petitions, filings or requests for the Government Approvals described in this Section. BNSF shall provide UP with advance written copies of any such applications, petitions, filings or requests.

Section 9. TERM AND TERMINATION

The effectiveness of this Agreement is subject to and conditioned upon approval of the Surface Transportation Board, if required. This Agreement shall apply retroactively to the Application Date. This Agreement shall remain in effect for a period of twenty-five (25) years from the Effective Date of the Agreement (hereinafter called "**Term**"). After the initial term, this Agreement shall automatically renew for one year terms thereafter unless terminated by either party giving at least twelve (12) months' advance written notice of that party's desire to not renew the term.

Section 10. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

General Director Joint Facilities
1400 Douglas Street, STOP 1180
Omaha, Nebraska 68179-1180
Email: DWHUGHES@UP.COM

If intended for BNSF:

AVP Contracts and Joint Facilities
2500 Lou Menk Drive
Fort Worth, Texas 76131
Email: OPRDLJointFacilities@BNSF.com

Notice of address change may be given any time pursuant to the provisions of this Section 10.

Section 11. SURVIVAL

Termination of this Agreement shall not relieve, release or excuse either party hereto from any obligations or liabilities which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

Section 12. ENTIRE AGREEMENT

This Agreement together with its exhibits or appendices, all as may be amended from time to time, constitutes the final agreement between the parties concerning the subject matter herein. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

Section 13. SEVERABILITY

If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable. If any provision is held invalid, illegal or unenforceable, the parties agree to negotiate a revised or replacement provision.

Section 14. CONFIDENTIALITY

This Agreement is strictly confidential between the parties. No party shall disclose the terms and conditions of this Agreement other than as required by law or as otherwise agreed in writing between the parties. The party making disclosure will notify the other parties in advance of such disclosure.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: John W. Turner

Printed: John W. Turner

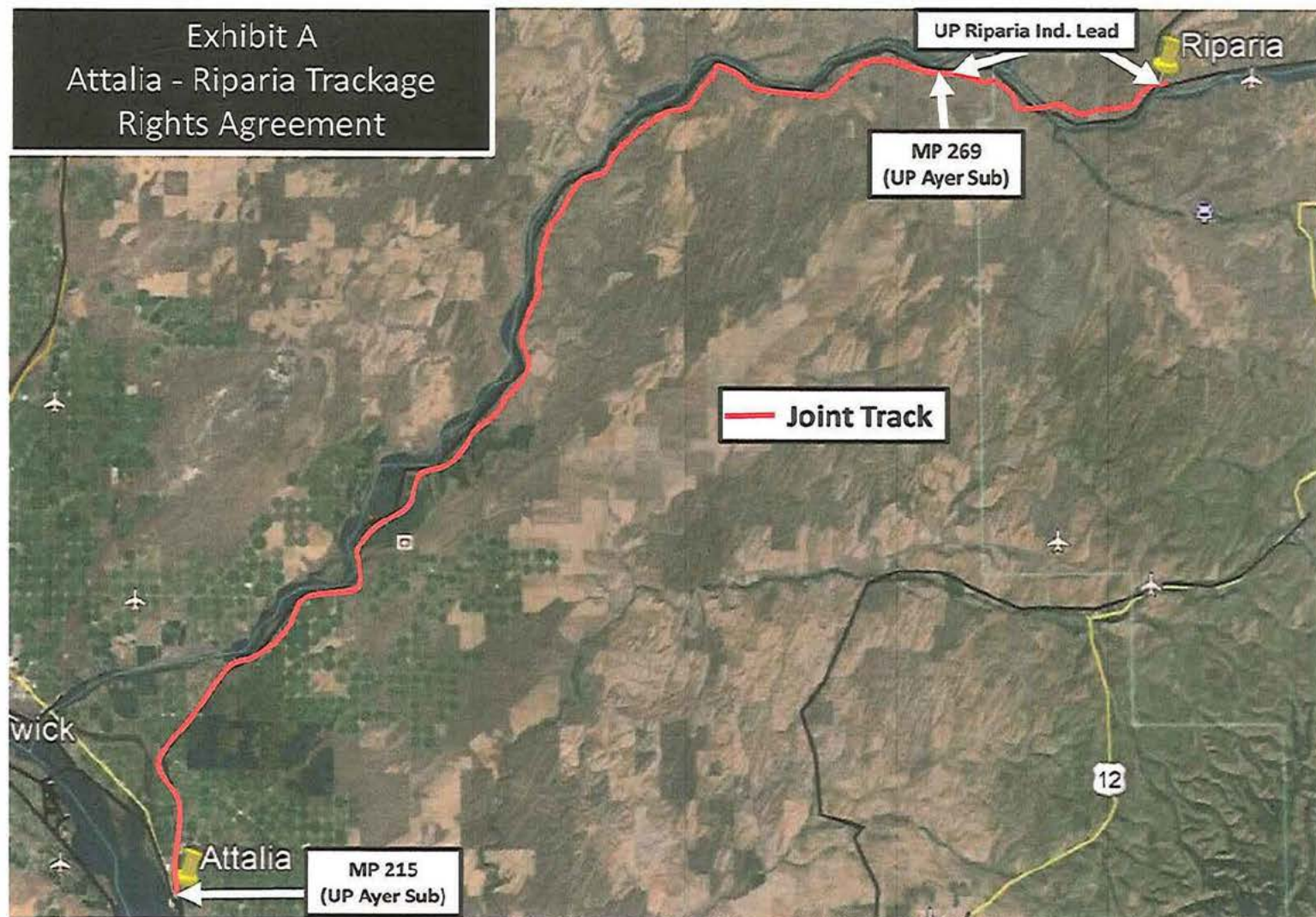
Title: VP Network Planning + Operations

BNSF RAILWAY COMPANY

By: Paul Duncan

Printed: Paul Duncan

Title: VP Service Design



Pg. 1

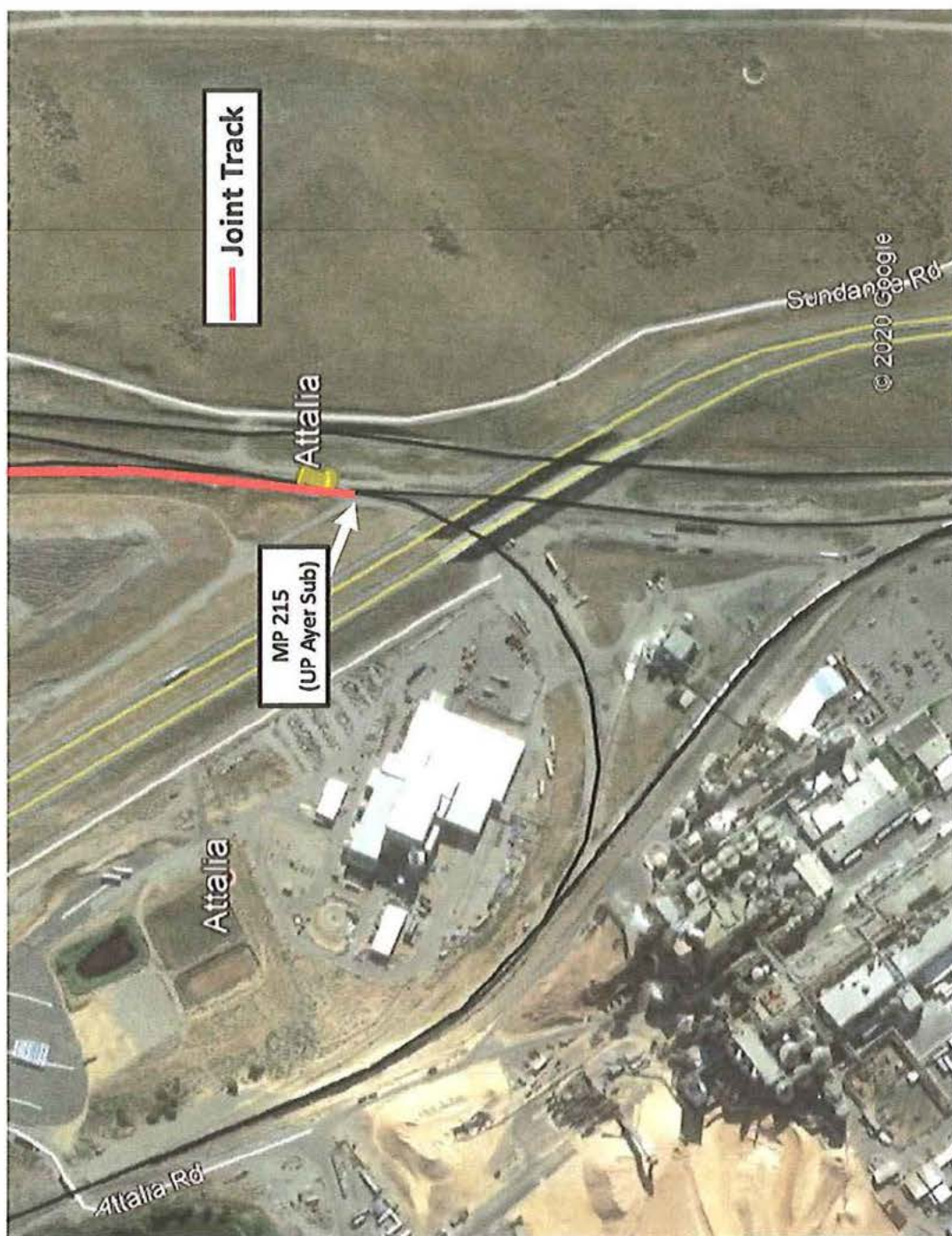




EXHIBIT "B"
GENERAL CONDITIONS
TRACKAGE RIGHTS AGREEMENT

Section 1. DEFINITIONS

To the extent used in this Exhibit "B" and/or the Agreement, the following terms shall have the meanings indicated below:

- 1.1 "AAR" shall mean the Association of American Railroads.
- 1.2 "Agreement" shall mean that certain Trackage Rights Agreement between Owner and User dated _____, 2021, to which this Exhibit "B" is attached.
- 1.3 "Annual" shall mean a calendar year.
- 1.4 "Application Date" shall mean February 1, 2015.
- 1.5 "Capacity Improvements" shall mean projects or improvements whose primary purpose is to increase the capacity or through-put over the Joint Trackage or a portion thereof and provide utility beyond ordinary and/or Programmed Maintenance, the cost of which is chargeable in whole or in part to Property Accounts (defined below) under STB (defined below) accounting standards in effect as of the Application Date of the Agreement.
- 1.6 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the Application Date of the Agreement.
- 1.7 "Environmental and Safety Requirements" means and includes all Legal Requirements relating to the protection, preservation or conservation of the environment and/or public or worker health or safety including, without limitation, any Legal Requirements covering the handling, storage, treatment and disposal of Hazardous Materials.
- 1.8 "Equipment" shall mean (i) trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks or on right-of-way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- 1.9 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.
- 1.10 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties

using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage, Capacity Improvements or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.11 **"Hazardous Materials"** shall mean and include all toxic or hazardous substances, pollutants, waste or contaminants to which liability or standards of conduct may be imposed under any Environmental and Safety Requirements including, without limitation, (a) petroleum or petroleum based products or any derivatives or hazardous constituents thereof or any additives thereto, (b) fuels (including motor fuels, diesel, methane and other natural gas), (c) waste oils, lubricating oils and cleaning solvents, (d) ammonia, glycol and freon, (e) any "Hazardous Substances," "Hazardous Materials," "Regulated Substances" or "Toxic Substances," or similarly defined terms, as set forth in any Legal Requirements, and/or (f) any other substances at levels greater than those allowed by applicable Legal Requirements.

1.12 **"Legal Requirements"** means and includes all applicable statutes, laws, rules, regulations, ordinances, orders, codes, permits, licenses, and requirements (including consent decrees, judicial decisions and administrative orders) of all federal, state and local governments, departments, commissions, agencies and boards, including, without limitation, laws, statutes, regulations or rules respecting the operation, condition, inspection or safety of trains, locomotives, cars and equipment and all applicable Environmental and Safety Requirements, all as amended or supplemented.

1.13 **"Ordinary Maintenance"** shall mean usual and routine work or maintenance performed in the daily upkeep of the Joint Trackage, consistent with industry custom and practice, the cost of which is not chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the Application Date of this Agreement. All compensation for Ordinary Maintenance is included in the GTM Rate.

1.14 **"Owner"** shall have the meaning given to such term in the Agreement.

1.15 **"Programmed Maintenance"** shall mean work or maintenance that is normally pre-planned, non-periodic and generally involves substantial replacements or renewals of existing assets, the cost of which is chargeable to Property Accounts under STB accounting standards in effect as of the Application Date of this Agreement. Further, the replacement or renewal should have the same utility as the asset replaced/renewed, without necessarily reproducing exactly any particular characteristic of the original asset or property. All compensation for Programmed Maintenance is included in the GTM Rate.

1.16 **"Property Accounts"** shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the STB, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.17 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.18 "User" shall have the meaning given to such term in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by Legal Requirements, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the Application Date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the Application Date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), (iii) keep and maintain any Capacity Improvements and Changes in and/or Additions to the Joint Trackage, and (iv) be responsible for construction of any Capacity Improvements and Changes in and/or Additions to the Joint Trackage, as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the Application Date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Capacity Improvements or Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Capacity Improvement or Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall have the exclusive right to perform all construction, operation, maintenance, repair and renewal of the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

2.6 If this Agreement is terminated pursuant to the terms and conditions set forth herein, User will not be entitled to any refunds of amounts paid by Owner for Capacity Improvements, Changes in and/or Additions to the Joint Trackage.

2.7 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. Passenger trains shall in all cases have preference over freight trains. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner. The movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to notice of the adoption or implementation of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.8 A Joint Service Committee ("**Committee**"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which

future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.9 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.10 Owner may from time to time, on a temporary basis, provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for the purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.11 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train, and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel, train and other supplies to another party, then the receiving party shall promptly, upon receipt of billing therefor, reimburse the furnishing party for its reasonable costs thereof, including customary additives.

2.12 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing contained herein is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.13 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and

have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.14 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on, over or along the Joint Trackage or Legal Requirements, such employee shall, upon written request of Owner, be prohibited by User from working on, over or along the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees participating in such investigation. Notice of such investigations to User's employees shall be given by User's officers, and such investigations shall be conducted in accordance with the terms and conditions of schedule or labor agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on, over or along the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on, over or along the Joint Trackage by reason of such disciplinary action.

2.15 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, then such bad ordered Equipment shall be promptly repaired and thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than returning to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the AAR (hereinafter collectively called "Interchange Rules"), in effect on the date of performance of the repairs. Owner shall then

prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.16 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-rail or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to re-rail or clear Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailling or clearing derailed, wrecked, or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Work and services performed under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.17 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.16), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.16), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Work and services provided under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.18 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.19 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the billing party. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances (“**Standards**”), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning Hazardous Materials. Except with Owner’s prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions. If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Section 4 of these General Conditions.

Section 5. LIABILITY

[REDACTED]

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Section 6. ARBITRATION

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Section 7. ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and/or maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("**Notice of Abandonment**").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate

as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

[REDACTED]

Section 9. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 10. DEFAULT

10.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming a default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

10.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

10.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 11. OTHER CONSIDERATIONS

11.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

11.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will affect the purposes and intent of the Agreement.

11.3 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

11.4 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially

similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

11.5 The terms of this Agreement have been arrived at after considerable arm's length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

11.6 The terms of that certain Letter Agreement between the parties dated December 9, 2010 (as amended and supplemented from time to time), concerning construction of certain terms and provisions of the parties' Merger Settlement Agreements shall apply to this Agreement, including this Exhibit B.

END OF EXHIBIT "B"