

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

307062

ENTERED
Office of Proceedings
September 1, 2023
Part of
Public Record

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

September 1, 2023

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36721**
Cedar River Railroad Company and Chicago, Central &
Pacific Railroad Company – Trackage Rights Exemption --
Dakota, Minnesota & Eastern Railroad Corporation

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Cedar River Railroad Company and Chicago, Central & Pacific Railroad Company Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated September 1, 2023. The sum of \$1,400, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

FILED
September 1, 2023
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Cedar River Railroad Company and
Chicago, Central & Pacific Railroad Company

TJL:tl

Attachment

FEE RECEIVED
September 1, 2023
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36721

CEDAR RIVER RAILROAD COMPANY AND
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
CEDAR RIVER RAILROAD COMPANY AND
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR
CEDAR RIVER RAILROAD COMPANY
AND CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY**

Dated: September 1, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36721

CEDAR RIVER RAILROAD COMPANY AND
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**VERIFIED NOTICE OF EXEMPTION OF
CEDAR RIVER RAILROAD COMPANY AND
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Cedar River Railroad Company (“CEDR”) and Chicago, Central & Pacific Railroad Company (“CCP”) hereby file this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of limited local trackage rights over a line of railroad of Dakota, Minnesota & Eastern Railroad Company, d/b/a Canadian Pacific Kansas City (“DM&E”) between Charles City, Iowa and an ethanol facility of Valero Marketing & Supply Company (“Valero”) in Floyd County, Iowa west of Charles City, a distance of approximately 3.75 miles.

In accordance with the requirements of 49 C.F.R. § 1180.4(g)(1), CEDR and CCP submit the following information:

Description of Proposed Transaction: 49 C.F.R. §§ 1180.6(a)(1)(i), 1180.4(g)(1)(ii)(A)-(C)

CEDR and CCP are indirect rail carrier subsidiaries of Canadian National Railway Company (“CNR”). *See Illinois Central Corporation and Illinois Central Railroad Company -- Control -- CCP Holdings, Inc., Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company*, Docket No. FD 32858 (STB served May 14, 1996); *Canadian National Ry.*

Co. -- Control -- Illinois Central Corp., 4 S.T.B. 122 (1999).¹ CEDR owns or operates approximately 100 miles of rail line extending north from Cedar Falls, Iowa through Charles City to Glenville, Minnesota.² CCP operates approximately 725 miles of rail line between Chicago, Illinois and Council Bluffs/Sioux City, Iowa. CEDR and CCP connect at Mona Junction in Cedar Falls.

DM&E is a component of the recently-created Canadian Pacific Kansas City system. *See Canadian Pacific Railway Ltd., et al. – Control – Kansas City Southern, et al.*, Docket No. 36500 (STB served Mar. 15, 2023), slip op. at 3, n.3 and 6, n.6. Its routes include a rail line extending west from Marquette, Iowa to Mason City and Sheldon, Iowa, crossing CEDR at Charles City.

Pursuant to a written trackage rights agreement dated as of March 3, 2023 between CEDR/CCP and DM&E, CEDR and CCP propose to acquire limited local trackage rights as tenants over the line of railroad of DM&E, as landlord, between approximately Milepost 88.85 in Charles City, Iowa and the east mainline switch to the Valero ethanol facility at approximately Milepost 92.6 west of Charles City, a distance of approximately 3.75 miles. CEDR/CCP's local trackage rights will be limited to the provision of rail freight service to the Valero facility, and to the movement of no more than seven loaded trains per week.

¹ CN's U.S. rail carrier subsidiaries, including CEDR and CCP, are held directly or indirectly by Grand Trunk Corporation ("GTC"), a wholly-owned subsidiary of CNR, and report to the Board on a consolidated basis under the GTC name.

² Service on the far northern end of CEDR's line into Glenville is currently discontinued. *Cedar River Railroad Company – Discontinuance of Service Exemption – In Freeborn County, MN*, Docket No. AB-1288X (STB served Aug. 21, 2019).

The full name and address of the applicant carriers herein is as follows:

Cedar River Railroad Company
Chicago, Central & Pacific Railroad Company
17641 South Ashland Avenue
Homewood, Illinois 60430
(708) 332-4381

Any questions concerning this Notice should be sent to CEDR/CCP's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

Proposed Consummation Date: 49 C.F.R. §§ 1180.6(a)(1)(ii), 1180.4(g)(1)(ii)(D)

CEDR and CCP expect to consummate the trackage rights exemption authority proposed in this notice in the first quarter of 2024, but in any event no sooner than October 1, 2023.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights are for the purpose of CEDR and CCP providing rail service to the Valero facility west of Charles City, and are provided for in a 2009 agreement between Valero and DM&E associated with the siting of the Valero facility. CCP service to the Valero facility will be provided in conjunction with related overhead trackage rights that CCP is separately obtaining over CEDR between Iowa Falls and Charles City. See Docket No. FD 36722, *Chicago, Central & Pacific Railroad Company – Trackage Rights Exemption – Cedar River Railroad Company*, notice of exemption filed concurrently herewith.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

CEDR owns or operates over rail property in the States of Iowa and Minnesota. CCP owns and operates over rail property in the States of Illinois, Iowa, and Nebraska. DM&E owns and operates over rail property in the States of Illinois, Iowa, Minnesota, Missouri and Wisconsin.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the DM&E rail line over which CEDR and CCP propose to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A redacted copy of the Trackage Rights Agreement dated as of March 3, 2023 between CEDR/CCP and DM&E is attached hereto as Exhibit 2. An unredacted copy of the Trackage Rights Agreement is being filed separately along with a motion for protective order.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, CEDR and CCP agree to the employee protective conditions established in *Norfolk and Western Ry. Co. -- Trackage Rights* -- BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc. -- Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by CEDR and CCP is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed CEDR/CCP trackage rights acquisition also is exempt from historic preservation reporting requirements.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

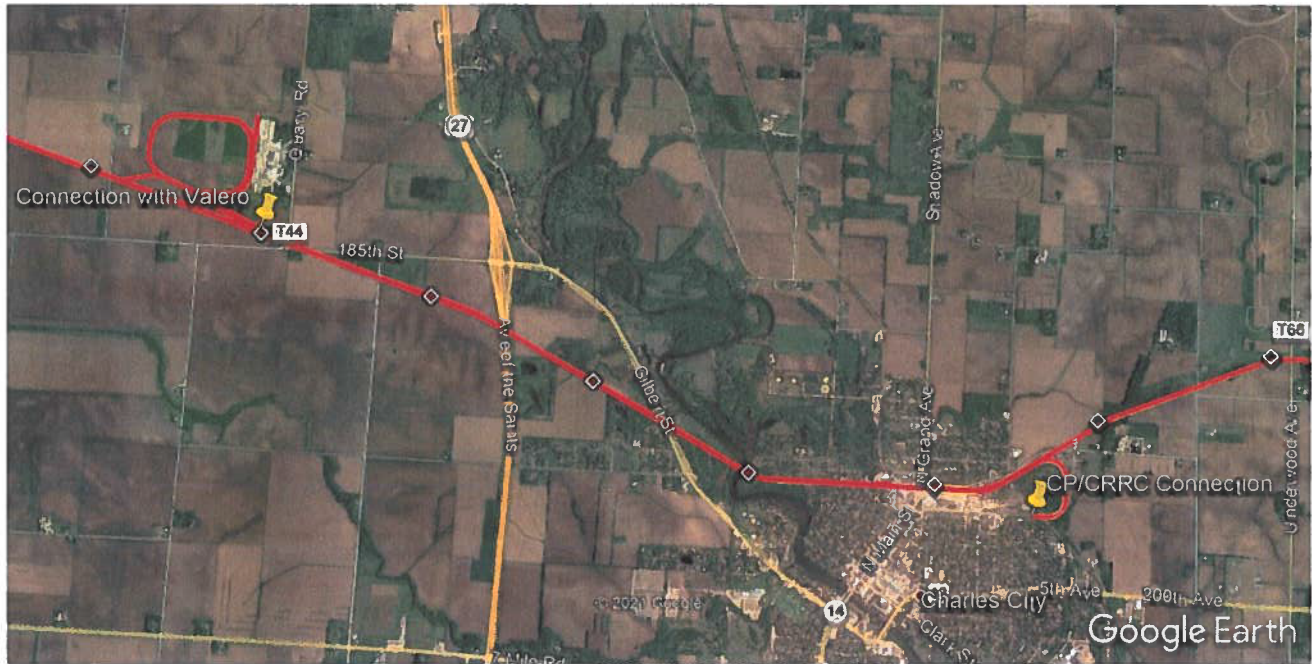
By: _____

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR
CEDAR RIVER RAILROAD COMPANY
AND CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY**

Dated: September 1, 2023

Charles City, Iowa



TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT (the "Agreement") is made this 3rd day of March, 2022 by and between Cedar River Railroad Company, an Iowa corporation ("CRRC") and the Chicago Central and Pacific Railroad Company, a Delaware corporation ("CCP") (collectively CRRC and CCP shall hereinafter be referred to as "CN") and Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation, d/b/a Canadian Pacific ("CP"). CN and CP are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, CP is party to that certain Confidential Transportation Master Contract for Valero Marketing and Supply Company dated January 1, 2009 whereby CP agreed, upon the occurrence of certain events, to grant trackage rights over its Mason City subdivision to CN for the sole purpose of providing rail service to the ethanol facility located in Floyd County, IA; and

WHEREAS, the predicate events having occurred, CN has requested that CP grant the trackage rights described in the preceding recital; and

WHEREAS, the Parties agree that CN's right to operate over CP's Mason City subdivision to serve the above-described ethanol facility shall be governed by the terms of this Agreement;

NOW, THEREFORE, in consideration of the following mutual promises, the Parties agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) On the terms and subject to the conditions herein provided, CP hereby grants to CN the right to operate its trains, locomotives, cars and equipment with its own crews (such rights being referred to hereinafter as the "Subject Trackage Rights") over the following CP railroad line, as shown in detail on Exhibit A to this Agreement:

Between the CN connection with CP at Milepost 88.85 +/- in Charles City, IA, thence over CP's Mason City subdivision to Milepost 92.6+/-, being the east mainline switch to the ethanol facility operated by Valero Marketing and Supply Company Charles City, LLC ("Valero") located in Floyd County, IA (the "Valero Facility").

(b) The trackage described in this Section 1 is referred to as the "Subject Trackage."

SECTION 2. USE OF SUBJECT TRACKAGE

(a) CN's use of the Subject Trackage shall be in common with CP, and CP's right to use the Subject Trackage shall not be diminished by this Agreement.

(b) CN may operate trains in either direction over the Subject Trackage.

(c) CN may use the Subject Trackage solely for the purpose of providing rail freight service access to the Valero Facility that connects to CP's Mason City subdivision at Milepost 92.6+/- and Milepost 94.1+/-, for trains consisting entirely of cars in the revenue waybill account of CN.

(d) CN locomotives and crews operating over the Subject Trackage shall be PTC-enabled and equipped to communicate with CP on radio frequencies normally used by CP in directing train movements on the Subject Trackage.

(e) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. CN's operations over the Subject Trackage shall at all times be subject to the direction and control of the CP operating officer in charge of the Subject Trackage and the applicable provisions of CP's operating rules and Section 9 herein.

(f) Before a CN train enters the Subject Trackage, CN shall confirm to CP that the crew operating such CN train has the ability to make a complete round trip over the Subject Trackage.

SECTION 3. RESTRICTIONS ON USE

(a) The Subject Trackage Rights are granted for the sole purpose of CN using the Subject Trackage to operate its trains to provide rail freight service to the Valero Facility.

(b) CN shall not perform any local freight service whatsoever at any point located on Subject Trackage other than to the Valero Facility at its current location in Floyd County, IA.

(c) CN shall not interchange any traffic with any other carrier at any point on or along the Subject Trackage.

(d) CN shall not have the right to serve existing or future shippers at facilities located on or along the Subject Trackage, except as contemplated herein.

(e) CN shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except as necessary for the handling of locomotives, cars or cabooses bad ordered en route; provided, however, that CN shall use such auxiliary Subject Trackage as may be designated by CP for such purposes.

(f) CN may not grant trackage rights of any nature on the Subject Trackage to other parties except to CN's sister and/or parent companies.

(g) Notwithstanding any other provision of this Agreement to the contrary, CN may not permit or admit any third party to the use of all or any part of the Subject Trackage, nor may CN contract or make any agreement to provide haulage over the Subject Trackage of trains, locomotives, cars or cabooses of any third party which, in the normal course of business, would not be considered as the trains, locomotives, cars or cabooses of CN, or in any other way provide haulage service for other carriers over the Subject Trackage; provided, however, that this Section 3(g) shall not be construed to prohibit CN from using the locomotives, cars and cabooses

of another railroad as its own in CN trains pursuant to a run-through agreement with any railroad, or a bona fide equipment lease.

(h) The Parties agree that rebilling in the traffic at the Charles City, IA area is not a permissible method of avoiding any direct traffic limitation set forth in this Agreement.

(i) This Agreement is not intended to, and shall not operate to, grant CN's commercial access to, or right to serve (directly or through switching), any customer other than Valero at the Valero Facility.

(j) Unless otherwise permitted by CP, the length of CN trains (including locomotives and other motive power units) operating pursuant to this Agreement shall not exceed 6,300 feet, subject to compliance with operating policies applied to CP's own trains, or as otherwise agreed by the Parties. The maximum train length set forth in this Section 3(j) may be adjusted by the Parties from time to time consistent with CP's governing operating practices and procedures.

(k) CN's use of the Subject Trackage pursuant to this Agreement shall be subject to the following maximum volume limitations (none of which may be exceeded at any time by CN, each of which is referred to hereinafter as a "Maximum Volume Restriction"):

(i) CN may move no more than seven (7) loaded train movements per Calendar Week (Sunday to Saturday) over the Subject Trackage.

(ii) CN may move no more than one (1) loaded train movements per calendar day over the Subject trackage; provided, however, that the total number of trains moved by CN during any Calendar Week shall not exceed the number specified in Section 3(j)(i) unless otherwise agreed to by CP.

(iii) If the Subject Trackage is unavailable to CN due to a derailment, line outage or other interruption of service on the Subject Trackage for a period of time (the "Outage Period") greater than twenty-four (24) hours, and no detour is available, then CP shall cooperate and consult with CN in order to address any resulting backlog of trains over a period of time ("Resolution Period") following the resolution of such derailment, line outage or other interruption of service (including the possibility of waiving the Maximum Volume Restrictions set forth in this Section 3(j) for the Resolution Period as may be required to reduce such backlog of CN trains), provided, however, that the Maximum Volume Restriction set forth in Section 3(j)(i) shall not be exceeded as measured over an average of the Outage Period plus the Resolution Period.

(l) CN shall not move any dimensional loads and excess clearance rail cars over the Subject Trackage, subject to a clearance file (the "Clearance File") maintained by CP and published in Railway Line Clearances.

(m) CN may not move any rail cars containing TIH/PIH commodities over the Subject Trackage.

SECTION 4. SERVICE STANDARDS

(a) CN hereby acknowledges that CP makes no guarantee as to the actual transit time or slot availability for any CN train, and there shall be no penalty imposed on CP for failure to meet the anticipated transit time over any period of time, nor shall CN have any right to seek damages from CP on account of such failure. The Parties agree that this Section 4(a) addresses anticipated average transit time and Section 9(a) addresses dispatching, which are separate and distinct.

(b) CN shall provide the CP notice of the schedules for regularly scheduled CN trains operating over the Subject Trackage, as well as any proposed modifications. CN shall provide CP at least seven (7) days prior written notice of such changes in CN train schedules, and notice as reasonably practicable in the case of train annulments and subject to the Maximum Volume Restrictions set forth in Section 3(k), extra trains necessitated by sudden or seasonal surges in traffic volumes.

SECTION 5. COMPENSATION

(a) Generally.

(i) CN shall compensate CP for the use of the Subject Trackage by paying to CP a sum computed by multiplying (a) the Trackage Rights Charges (as defined in Section 5(b) of this Agreement) by (b) the number of cars (loaded or empty) and locomotives moved over the Subject Trackage by (c) the miles of the Subject Trackage over which the cars and/or locomotives are moved (which are agreed to be 5.2 miles). In computing the compensation payable by CN pursuant to this Section 5, cars that exceed ninety-six (96) feet in length shall be counted as one (1) car for each four (4) axles.

(b) Trackage Rights Charges.

(i) The charge payable by CN for use of the Subject Trackage shall be [REDACTED], and escalated pursuant to the provisions of this Section 5(b).

(ii) The Trackage Rights Charges shall be adjusted upward or downward effective July 1 each year, beginning July 1, 2022, to compensate CP for one hundred percent (100%) of any increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the Western District ("Indices"), included in "the AAR Railroad Cost Indexes" issued by the Association of American Railroads ("AAR"); provided, however, that the Trackage Rights Charges shall in no event be decreased to a level below those set forth in Section 5(b)(i) of this Agreement. In determining the amount (if any) of the July 1, 2022 adjustment, the calendar year ending December 31, 2020 shall be deemed the "Base Calendar Year."

(iii) The first annual adjustment to the Trackage Rights Charges shall be computed by calculating the percentage of increase or decrease in the final index for the calendar year ending December 31, 2021, as related to the final index for the Base Calendar

Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). Subsequent annual adjustments will be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately preceding the year in which the adjustment is to be applied, as related to the final index published for the Base Calendar Year, and applying that percentage to the initial Trackage Rights Charges set forth in Section 5(b)(i). By way of example, assuming "A" to be the Indices' final index for the Base Calendar Year; "B" to be the Indices' final index for the calendar year 2021; "C" to be the initial Trackage Rights Charges; "D" to be the percentage of increase or decrease, the adjusted Trackage Rights Charges to be applied on and after July 1, 2022 would be determined by the following formula:

(1) $(B-A) / A = D$

(2) $(C \times D) + C = \text{adjusted Trackage Rights Charges, effective July 1, 2022.}$

(iv) If the base for the Indices issued by the AAR is changed from the year 2020, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 2020. If the AAR or any successor organization discontinues publication of the Indices, an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties.

(v) Each month, CP shall develop and present to CN an invoice (the "Use Invoice") computed in accordance with Section 5(a) for use of the Subject Trackage Rights. CN shall make payment to CP within forty-five (45) days after the date of such Use Invoice.

(vi) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If CN disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full (unless such dispute involves a material amount in relation to the total amount of such Use Invoice), subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(vii) CN and CP shall each have the right, at its own expense, to audit the records of the other Party pertaining to the use of the Subject Trackage Rights under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by CN or CP, respectively, pursuant to this Agreement, at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to use of the Subject Trackage Rights. All such audits shall be conducted at reasonable intervals, locations and

times. Each Party agrees that, except as permitted by Section 19 of this Agreement, all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 5(b)(vii) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(viii) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices and charges under Section 9(i), shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CP at the time any work is performed by CP for CN, or shall include actual costs and expenses, upon mutual agreement of the Parties.

SECTION 6. MAINTENANCE OF SUBJECT TRACKAGE

(a) CP shall be solely responsible for the maintenance, repair and renewal of the Subject Trackage. CP shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, such condition not to be less than Federal Railroad Administration class specification the Subject Trackage was as of the Effective Date of this Agreement, subject to slow orders and the like, but CP does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CP shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions. CN shall not be reason of failure or neglect on the part of CP to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CP or its parent corporation; subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for damage to or loss or destruction of any property whatsoever suffered by CN resulting from such failure or neglect.

(b) CP shall, in planning program maintenance of the Subject Trackage, take into account the schedule of CN trains on the Subject Trackage as well as CP trains. CP shall from time to time throughout the term of this Agreement advise CN of its schedule for planned maintenance, and any revisions to such schedule, as soon as practicable after such maintenance plan is determined or revised. CP shall further provide the designated officer of CN with seven (7) days' prior notice (or such lesser notice period as is reasonable in the circumstances) of substantial delays or line outages on the Subject Trackage due to planned maintenance.

SECTION 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the Parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

(a) If, in the opinion of CN, a new or upgraded connection is required at a point of permitted entry, or, if in the opinion of CN, other upgrading, including but not limited to switches, power switches, signals, communications, is required for operational efficiency, then CP will, subject to its own operational needs, cooperate and CN will be responsible for funding that

construction/upgrading at actual cost or a cost mutually agreed to by CN and CP. Such construction/ upgrading shall be progressed as follows:

(i) CN or others shall furnish all labor and materials and shall construct such portions of the tracks located on the right-of-way of CN or others, which connect the respective lines of the Parties.

(ii) CP shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by CP, which connect the respective lines of the Parties. Upon termination of this Agreement, CP may at its option remove any portion of trackage and appurtenances located on right-of-way, constructed as a result of this provision, at the sole cost and expense of CN. CP will release any salvage material removed to CN or will credit CN for the current fair market value of the salvage materials.

(iii) CP will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by CP that connect the respective lines of the Parties at the sole cost and expense of CN.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) CP, from time to time and at its sole cost and expense, may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation of the Subject Trackage or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental entity having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If the Parties agree that changes in or additions and betterment to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CN's operations beyond that required by CP to accommodate its operations, CP shall construct the additional or altered facilities and CN shall pay to CP the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

SECTION 9. MANAGEMENT AND OPERATIONS

(a) CP shall have exclusive control of the management and operation (including dispatching) of the Subject Trackage. Operation and control, including dispatching, of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the line. For the purposes of dispatching, CN's and CP's trains of the same class shall be treated with equal priority, with the four (4) classes of trains being:

1. Passenger
2. Intermodal and automotive
3. Regular (unit and freight trains not scheduled to set off/pick up en route)
4. Other (includes trains and equipment that must operate at restricted speeds, i.e., local, work, or other such equipment movements);

provided, that in the event of a conflict, the CP dispatcher shall be empowered to deviate from the priorities set forth herein in order to employ best practices to efficiently move all trains.

(b) CP shall provide CN with read-only access to CP's Central Traffic Control screens covering the Subject Trackage in the offices of CN designated by CN. CP shall be responsible for the cost of modifying its system to the extent necessary to provide CN access to its Central Traffic Control screens, and CN shall be responsible for the cost of the communications link with CN and the costs to use such link incurred in CN's offices. Such access, and the information derived therefrom, shall be restricted to CN operating personnel designated by CP, who shall only use said access, and the information derived therefrom, to monitor CN train movements and for no other purpose, and shall further protect the confidentiality of the information derived therefrom.

(c) CN shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CN shall indemnify, protect, defend, and save harmless CP and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable to the failure of CN to comply with its obligations in this regard.

(d) CN in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions except as otherwise provided by the written directions of CP's transportation officers, which directions shall not unjustly discriminate between the Parties and shall be applied equally to the trains of CP and CN. While using the Subject Trackage, CN shall comply in all respects with the operating rules, timetables, and special instructions of CP, and the movement of CN's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders and directions of the transportation officers of CP; provided, however, that such operating rules, timetables, special instructions, and orders and directions of the transportation officers of CP shall not unjustly discriminate between the Parties. CP will not make any rule or restriction applying to CN's trains that does not apply equally to CP's trains. CN's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CP's operating rules and regulations, without the prior consent of CP. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All CN trains shall be powered to permit operation at posted speeds.

(e) CN shall make such arrangements with CP as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover. CP shall provide reasonable cooperation and assistance in the qualification of CN operating (train and engine) crews for service over the Subject Trackage as soon as the date such crews and CP personnel are available and the notice of exemption relating

to the trackage rights granted herein has been filed with the STB. CN shall pay to CP, upon receipt of bills therefor, any cost incurred by CP in connection with the qualification of such employees of CN, as well as the cost of pilots furnished by CP until such time as such CN employees are deemed by the appropriate examining officer of CP to be properly qualified for operation as herein contemplated. CN supervisory personnel who have been qualified to operate over the Subject Trackage by an appropriate examining officer of CP may qualify other CN employees for operation of trains over the Subject Trackage.

(f) If any employee of CN shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Subject Trackage or the associated CP property, CP shall so notify CN. CP shall have the right to require CN promptly to withhold any CN employees from service over the Subject Trackage pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to CN, CN and CP shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to CN employees shall be given by CN officers. The investigation shall be conducted in accordance with any applicable terms and conditions of schedule agreements between CN and its employees. If the result of such investigation warrants, such employee shall, upon written request by CP, be restricted by CN from service on the Subject Trackage, and CN shall release and indemnify CP from and against any and all claims and expenses because of such withdrawal.

(g) In the event that a CN train shall be forced to stop on the Subject Trackage, due to mechanical failure of CN's equipment or any other cause (mechanical or otherwise) not resulting from an accident or derailment, and such train is unable to proceed, or if a CN train fails to maintain the speed required by CP on the Subject Trackage, or if in emergencies, bad ordered or otherwise defective cars are set out of a CN train on the Subject Trackage, CP shall have the option to furnish motive power or such other assistance (mechanical or otherwise) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage. CN shall reimburse CP for the cost of rendering any such assistance. If it becomes necessary to make repairs to or adjust or transfer the lading of such disabled or defective cars in order to move them off the Subject Trackage, CP shall arrange for such work to be done, and CN shall reimburse CP for the cost thereof.

(h) Whenever CN's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CP shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CN at the time of such wreck, shall be promptly delivered to it.

(i) If any cars, cabooses, or locomotives of CN are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being repaired, be picked up by CN. CP may, upon request of CN and at the expense of CN, unless

otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

(j) CN shall not have any claim against CP for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by CN is interrupted or delayed at any time from any cause.

(k) CP shall make best efforts to provide the designated officer of CN with prompt notice of any unplanned substantial delays or line outages on the Subject Trackage, and shall promptly advise the designated officer of CN of the resumption of normal service on the Subject Trackage.

SECTION 10. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CN's trains on the Subject Trackage shall be assumed by CN and reported and paid by it directly.

SECTION 11. LIABILITY

The responsibility between the Parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Agreement, also expressly including, without limitation, all liabilities arising after the Commencement Date hereof under FELA and environmental laws but excluding consequential damages of any Party hereto (which are always borne by the Party which sustained them) and excluding claims for exemplary and punitive damages, hereinafter referred to as "Damage," shall be apportioned as follows without regard to fault or negligence:

(a) If Damage occurs involving solely the trains, locomotives and Equipment, cars in the revenue account (including lading), or employees of one of the Parties, then that Party shall be solely responsible for such Damage, even if caused partially or completely by another party (including the other Party).

(b) If Damage occurs involving the trains, locomotives and Equipment, cars in the revenue account (including lading), and employees of both CN and CP, then (i) CN and CP each shall be solely responsible for any Damage to its own employees, locomotives and Equipment, and those cars in its own revenue account (including lading) (such cars (including lading) being referred to as "CN Cars" and "CP Cars," respectively, and collectively, the "Cars"), and (ii) the Parties shall each be responsible for 50 percent of the Damage to the Subject Trackage and associated facilities and any Damage sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Damage.

(c) For the purposes of assigning responsibility for Damage under this Section as between the Parties hereto, the trains of a third party or parties operating on the Subject Trackage shall be considered to be the trains of CP.

(d) Notwithstanding anything to the contrary in Sections 11(a), (b) and (c), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of the Parties involved, then, as between themselves, the Parties agree that (i) CN shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in CN Cars or CN locomotives and CN Equipment from which there was a release, (ii) CP shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in CP Cars, or CP locomotives and CP Equipment from which there was a release, and (iii) CN and CP shall be responsible, in proportion to the total number of Cars, pieces of Equipment, and locomotives of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from one or more substances transported in both CN Cars, CN locomotives, and CN Equipment and CP Cars, CP locomotives, and CP Equipment from which there was a release.

(e) CP and CN each shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under this Section 11, and CP and CN shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under this Section 11. In assigning joint responsibility to both CP and CN, it is not intended that CP and CN will, in all instances, actually act jointly, but rather that they will agree between themselves on the most practical and efficient arrangement for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

(f) Each Party covenants and agrees (i) to indemnify and save harmless the other Party from and against any payments which are the responsibility of such Party under this Agreement, and all expenses, including attorney's fees and expenses, and any other expenses of any court or regulatory proceeding, incurred by the indemnified Party in defending any claim for which the responsible Party is liable, and (ii) to defend such indemnified Party against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

(g) Notwithstanding anything to the contrary in this Section 11, whenever Damage occurs with one or more trains being involved, and one or more of the involved trains is a CN train, and such Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Damage. The Parties agree that, for purposes of this Section 11(g), "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

(h) Notwithstanding any provision of this Section 11 to the contrary, each Party shall assume and bear all responsibility for any Damage caused by acts or omissions of any its

employees while under the influence of drugs or alcohol. An FRA positive test for drugs or an FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Agreement.

(i) If any suit or action shall be brought against either Party for Damage which under the provisions of this Agreement is in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expenses and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(j) For purposes of determining liability under this Section 11, pilots furnished by CP to CN pursuant to this Agreement shall be considered to be the employees of CN while such pilots are on board or getting on or off CN trains.

(k) CN shall indemnify and hold harmless CP against, any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of lawsuits, claims or grievances brought either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement.

(l) Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Section 11, the word "Equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 12. CLAIMS

(a) Under no circumstances will either Party assert a claim for punitive or exemplary damages against the other Party related to the matters contemplated by this Agreement.

(b) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under Agreement shall be included as costs and expenses in applying the liability provisions of Section 11. However, each Party shall bear the salaries or wages of its full-time agents, full-time attorneys, and other full-time employees engaged directly or indirectly in such work.

(c) No Party shall settle or compromise any claim, demand, suit, or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (US) (\$35,000).

(d) The Parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Party shall be responsible for losses occurring to lading in its possession for the account of such Party and (ii) the Parties shall follow applicable AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the Parties.

SECTION 13. TERM, DEFAULT AND TERMINATION

(a) This Agreement shall become effective ("Effective Date") as of the first date executed by each of the Parties. However, CN operations over the Subject Trackage shall not commence until a date (the "Commencement Date") mutually agreed in writing between CN and CP, which shall not occur until the effective date of any required STB authorization or exemption of CN's trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).

(b) This Agreement shall remain in full force and effect for so long as Valero operates the Valero Facility that connects to CP's Mason City subdivision at Milepost 92.6+/- and Milepost 94.1+/- or until mutually terminated by the Parties. In the event any other entity other than Valero Marketing and Supply Company Charles City, LLC operates the Valero Facility, whether by merger, acquisition or operation of law, this Agreement shall terminate and CN shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights provided by this Agreement.

(c) In the event that railroad operations, technology or other events create, in the view of one Party to this Agreement, a disparity such that the terms and conditions of this Agreement over time no longer reflect the intention of the Parties in a substantial and material way, and such disparity has a material and substantial adverse effect on said Party, that Party may give notice of such to the other Party, who shall negotiate in good faith modification of this Agreement in order to address and possibly remove said perceived disparity. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

(d) CN shall have the right to terminate this Agreement upon giving CP at least thirty (30) days' prior written notice of such termination. Such termination shall be considered to be a termination of both this Agreement and the underlying right of movement.

(e) Termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination thereof.

(f) In the event of any substantial failure on the part of any Party to perform its obligations provided under the terms of this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from another Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof,

to file a lawsuit pursuant to Section 14 and seek damages and/or specific performance of the terms of this Agreement from the defaulting Party. In the case of a substantial default by CN which continues after adjudication of such default through litigation described in Section 14, CP may terminate this Agreement and the underlying right of movement if CN fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default by CN in an obligation to pay CP, (ii) fourteen (14) days of the receipt of notice of continued default in the case of such a default under Section 3(d), (e), (g), (i), (j) or (k); and (iii) ninety (90) days of the receipt notice of continued default in the case of any other such default under this Agreement.

SECTION 14. DISPUTE RESOLUTION

(a) Any dispute arising between the Parties with respect to this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, the dispute shall be resolved through binding arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties shall be governed by the rules and procedures set forth in this Section 14.

(b) If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the Conflict Prevention and Resolution ("CPR") Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, upon application by either Party after ten (10) days' written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed in the same manner hereto before stated.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another to act in the arbitrator's place.

(d) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on

all Parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

(e) Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

(f) The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(g) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. For purposes of this Section 5, the term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

SECTION 15. ABANDONMENT

(a) CP shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof (the "Abandonment Segment") during the Term of this Agreement. CP shall provide CN no less than ninety (90) days' prior notice of its intention to seek to abandon any Abandonment Segment.

(b) If CP elects to abandon an Abandonment Segment, CP shall, not less than ninety (90) days prior to any submission to the Surface Transportation Board (or successor agency having jurisdiction over said abandonment) of an application or exemption for authority to abandon such Abandonment Segment, offer CN the first right to purchase the Abandonment Segment for the fair market value of such Abandonment Segment at the time of purchase, and on such other terms and conditions as are customary with respect to line sales by CP at the time. The fair market value shall be no less than the greater of the net liquidation value of such line or the going concern value of such line, as used and defined by the STB. CN shall have sixty (60) days ("Abandonment Notice Period") within which to advise CP that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the fair market value of the Abandonment Segment that CN wishes to purchase, either Party may refer the issue to mediation or binding arbitration before a single arbitrator who is a qualified expert on rail line value and appraisal ("ADR"). Any such arbitration shall be conducted on an expedited basis, with a selection of the arbitrator within forty-five (45) days of the initiation of arbitration, all submissions to be made by

the Parties within ninety (90) days of the initiation of arbitration, and a decision to be rendered within thirty (30) days following the final submissions of the Parties.

(c) The Parties shall consummate the sale contemplated by this Section 15 within forty-five (45) days of the latest of: (a) the date of the final decision or order, should issues related to the sale proceed to ADR; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(d) If CN elects not to purchase the Abandonment Segment, it shall so advise CP within the same sixty (60) day Abandonment Notice Period by delivering to CP a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of CN to provide CP with either an Exercise Notice or a Waiver Notice within the aforesaid sixty (60) day period shall constitute a Waiver Notice.

(e) In the event of a Waiver Notice, CN agrees not to object to CP's abandonment of the Abandonment Segment and shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the discontinuance of its trackage rights over the Abandonment Segment.

(f) A Waiver Notice shall constitute a waiver by CN of its statutory rights, if any at the time of the abandonment, to purchase or otherwise subsidize operations over the Abandonment Segment pursuant to an offer of financial assistance or other applicable method.

SECTION 16. SUCCESSORS AND ASSIGNS

(a) This Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns.

(b) CN may not assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, except to a parent or subsidiary without CP's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. CP may assign this Agreement, and any of its rights, interests or obligations hereunder without CN's consent.

SECTION 17. NOTICE

Any notice required or permitted to be given by one Party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may agree, and shall be addressed as follows:

If to CP: Canadian Pacific
120 S. 6th Street, Suite 800
Minneapolis, MN 55402
Facsimile: (612) 904-5981

with copies to:

Vice President - Operations
Canadian Pacific
1010 Shop Road
Battle Creek Building
St. Paul, MN 55106
Facsimile: (612) 904-5917

Vice-President, Legal Services
Canadian Pacific Railway Company
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Facsimile: (403) 319-3725

If to CN: Cedar River Railroad Company
Chicago, Central & Pacific Railroad

Senior Director Contracts and Administration
CN
17641 S Ashland Ave
Homewood, IL 60430

Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

SECTION 18. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures, including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Trackage at locations other than the End Points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

SECTION 19. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Initial Term and any Additional Terms, the terms and provisions of this Agreement and all information to which access

is provided or which is obtained hereunder will be kept confidential, and will not be disclosed by either Party to any person other than such Party's officers, employees, and attorneys, without the prior written approval of the other Party.

SECTION 20. INDEMNITY COVERAGE

As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other Party, and all of its directors, officers, agents and employees.

SECTION 21. REGULATORY APPROVAL

Upon execution of this Agreement by each of the Parties hereto, CN shall promptly file with the STB, and diligently prosecute, an appropriate notice of exemption with respect to the trackage rights granted to it herein.

SECTION 22. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any other person. Nothing herein contained shall be taken as creating or increasing any right of any other person to recover by way of damages or otherwise against any of the Parties hereto.

(b) This Agreement contains the entire understanding of the Parties hereto with respect to its subject matter and supersedes any and all other agreements and understandings between the Parties.

(c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all of the Parties.

(d) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(e) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.

(f) The division of this Agreement into sections and subsections, and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references herein to sections are to sections in this Agreement.

(g) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or moving in the trains of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party, but are in the possession of, or are being operated in a train of the other Party, such locomotives, cars and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

(h) This Agreement is the product of mutual negotiations of the Parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(i) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(j) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(k) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between CP and CN.

(l) The interpretation and performance of this Agreement shall be governed by the substantive and procedural laws of the State of Iowa, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Iowa or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Iowa.

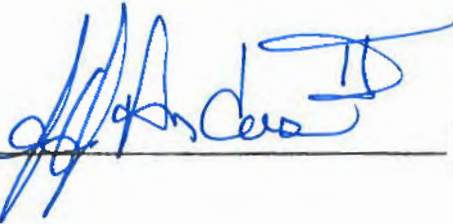
(m) This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

[Signature page follows]

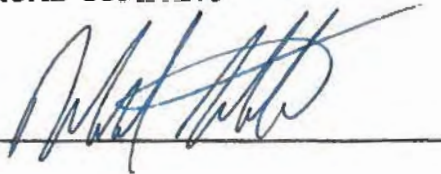
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed
as of the date first above written.

WITNESS:

CEDAR RIVER RAILROAD COMPANY
CHICAGO CENTRAL AND PACIFIC
RAILROAD COMPANY

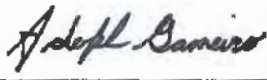


By



WITNESS:

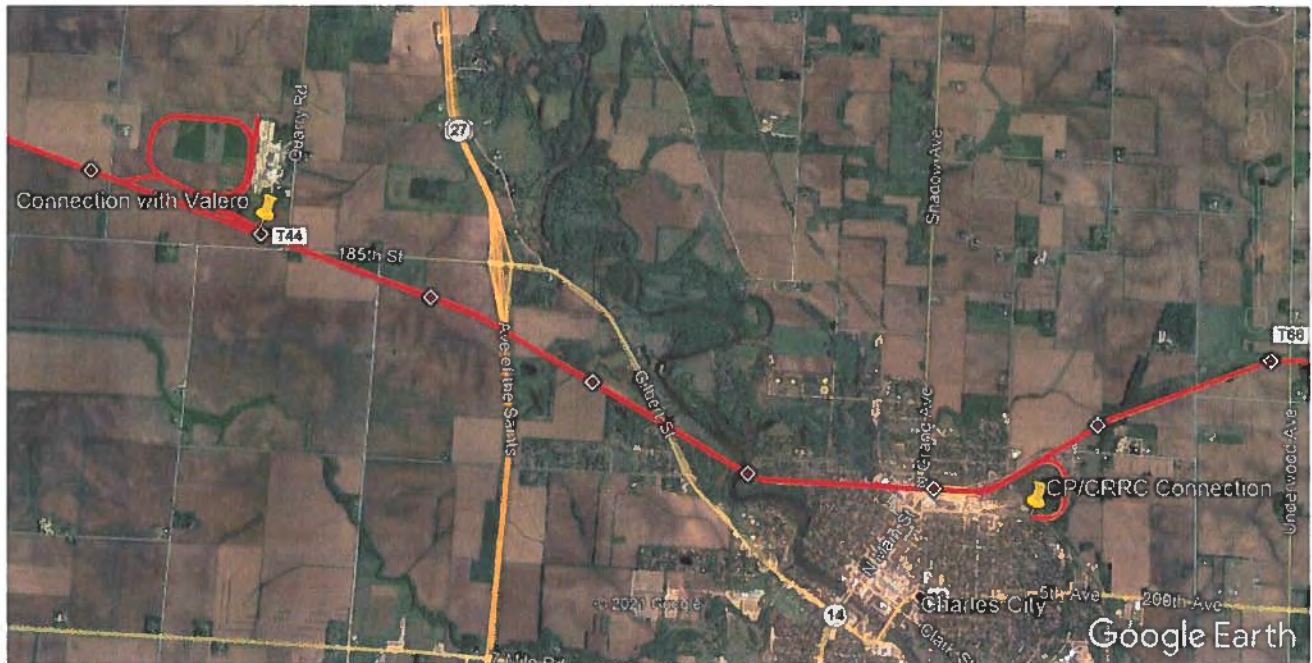
DAKOTA, MINNESOTA & EASTERN
RAILROAD COMPANY
d/b/a Canadian Pacific



By



EXHIBIT A



VERIFICATION

I, James Q. Anders II, hereby verify under penalty of perjury that I am Senior Manager Contracts of Cedar River Railroad Company and Chicago, Central & Pacific Railroad Company, that I have read the foregoing Notice of Exemption and know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information and belief.

/s/ James Q. Anders II

James Q. Anders II

Dated: September 1, 2023