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NOV 29 2005
RECEIVED

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November 29, 2005

VIA HAND-DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

Re: **Finance Docket No. 34788**
Mitchell-Rapid City Regional Railroad Authority and Dakota
Southern Railway Company -- Trackage Rights Exemption --
BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)**, of Mitchell-Rapid City Regional Railroad Authority and Dakota Southern Railway Company, dated November 29, 2005. A disk containing the Caption Summary is enclosed. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

I have included an extra copy of this transmittal letter and would request that you date-stamp this to show receipt of this filing and return it to me in the envelope provided.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,



Michael J. Barron, Jr.

MJB: arw

Enclosures.

cc: Adrian L. Steel, Jr., Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOV 29 2005
RECEIVED

FINANCE DOCKET NO. 34788

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY AND
DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

Michael J. Barron, Jr.
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29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

ATTORNEY FOR
MITCHELL-RAPID CITY REGIONAL
RAILROAD AUTHORITY AND
DAKOTA SOUTHERN RAILWAY COMPANY

Dated: November 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34788

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY AND
DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Pursuant to an agreement executed between Mitchell-Rapid City Regional Railroad Authority (MRC) and Dakota Southern Railway Company (DSRC) (hereinafter collectively referred to as "User") on the one hand and BNSF Railway Company (hereinafter referred to as "Owner") on the other, User files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of overhead trackage rights over a line of railroad on what will be Owner's track as set forth below.

Pursuant to 49 C.F.R. § 1180.4(g), User submits the following information:

**SECTION 1180.6(a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION**

Pursuant to an agreement ("Agreement") executed between Owner and User (copy attached herein), User proposes to acquire non-exclusive overhead trackage rights over Owner's line of railroad as set forth below and referred to as "Joint Trackage":¹

¹ The Joint Trackage is projected to become the property of BNSF Railway Company upon consummation of a sale described in FD 34794. The balance of this Notice will describe BNSF Railway Company as Owner. User will withdraw this Notice if the sale to BNSF Railway Company described in FD 34794 does not close.

- 1) At Mitchell, South Dakota, between Owner's connection with DSRC (Owner's Milepost 650.65) and DSRC leased tracks in Owner's Mitchell, South Dakota Yard, (Owner's Milepost 650.16).
- 2) At Mitchell, South Dakota, between Owner's Mitchell, South Dakota Yard (Owner's Milepost 650.16) and the Grain Shuttle Facility at Mitchell, South Dakota (Owner's Milepost 652.9).

In addition to User's right to utilize the Mitchell, South Dakota yard pursuant to other agreements between Owner and User, User shall have the right to Ingress and Egress to the Mitchell, South Dakota Yard for the purpose of User "running around" its train at Mitchell, South Dakota, if operationally necessary to originate traffic from or terminate traffic at the Grain Shuttle Facility.

The full name and address of User is:

Mitchell-Rapid City Regional Railroad Authority
25129 401st Street
Mitchell, South Dakota 57301
(605) 996-8478

Dakota Southern Railway Company
408 East Prospect Street
Chamberlain, South Dakota 57325
(605) 734-6595

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

Michael J. Barron, Jr.
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
(312) 252-1500

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

The applicant intends on consummating this transaction no sooner than December 6, 2005.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED

MRC is a political subdivision of the State of South Dakota (State) and leases certain trackage from the State that traverses the corridor between Mitchell, South Dakota and Rapid City, South Dakota (the Mitchell-Rapid City Corridor) and that connects with Owner at Mitchell, South Dakota. DSRC is MRC's sublessee/contract operator on the line from Mitchell to Kadoka, South Dakota. MRC and DSRC are being granted overhead trackage rights to operate on the Joint Trackage for the purpose of handling traffic that originates or terminates on the Mitchell-Kadoka line (as it existed as of April 25, 2005)² and originates or terminates at the Cenex-Harvest States Grain Elevator in Mitchell, South Dakota as set forth in the Agreement, and MRC and DSRC have entered into the Agreement as the User.

Therefore, Owner grants to User the right to use the Joint Trackage for the movement of certain commodities as set forth in the Agreement.

DSRC has entered into the Agreement as a sublessee/contract operator for the MRC, and pursuant to the terms of the Agreement MRC would be able to utilize the rights set forth in the Agreement with another sublessee/contract operator (other than a Class I or Class II railroad or the Dakota Minnesota & Eastern Railroad Corporation) . In addition, pursuant to the

² There is no prohibition on traffic moving to/from new industries that locate on the Mitchell-Kadoka line after April 25, 2005.

Agreement, should MRC cease to be the lessee of the State for the Mitchell-Rapid City Corridor, then the rights of MRC will automatically be assigned to the State.

SECTION 1180.6(a)(5)
STATES IN WHICH APPLICANT'S PROPERTY IS LOCATED

User owns rail property located in the State of South Dakota.

SECTION 1180.6(a)(6)
MAP – EXHIBIT 1

A map of the rail line over which User proposes to acquire trackage rights is attached hereto as Exhibit 1.

SECTION 1180(a)(7)(ii)
AGREEMENT – EXHIBIT 2

A copy of the Agreement executed between Owner and User is attached hereto as Exhibit 2.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIVE CONDITIONS

User does not anticipate any adverse labor impacts as a result of this transaction. Nevertheless, as a condition of this exemption, User agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. – Lease and Operate, 260 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto.

SECTION 1180.4(g)(3)

ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights also is exempt from historic preservation reporting requirements. The proposed trackage rights will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

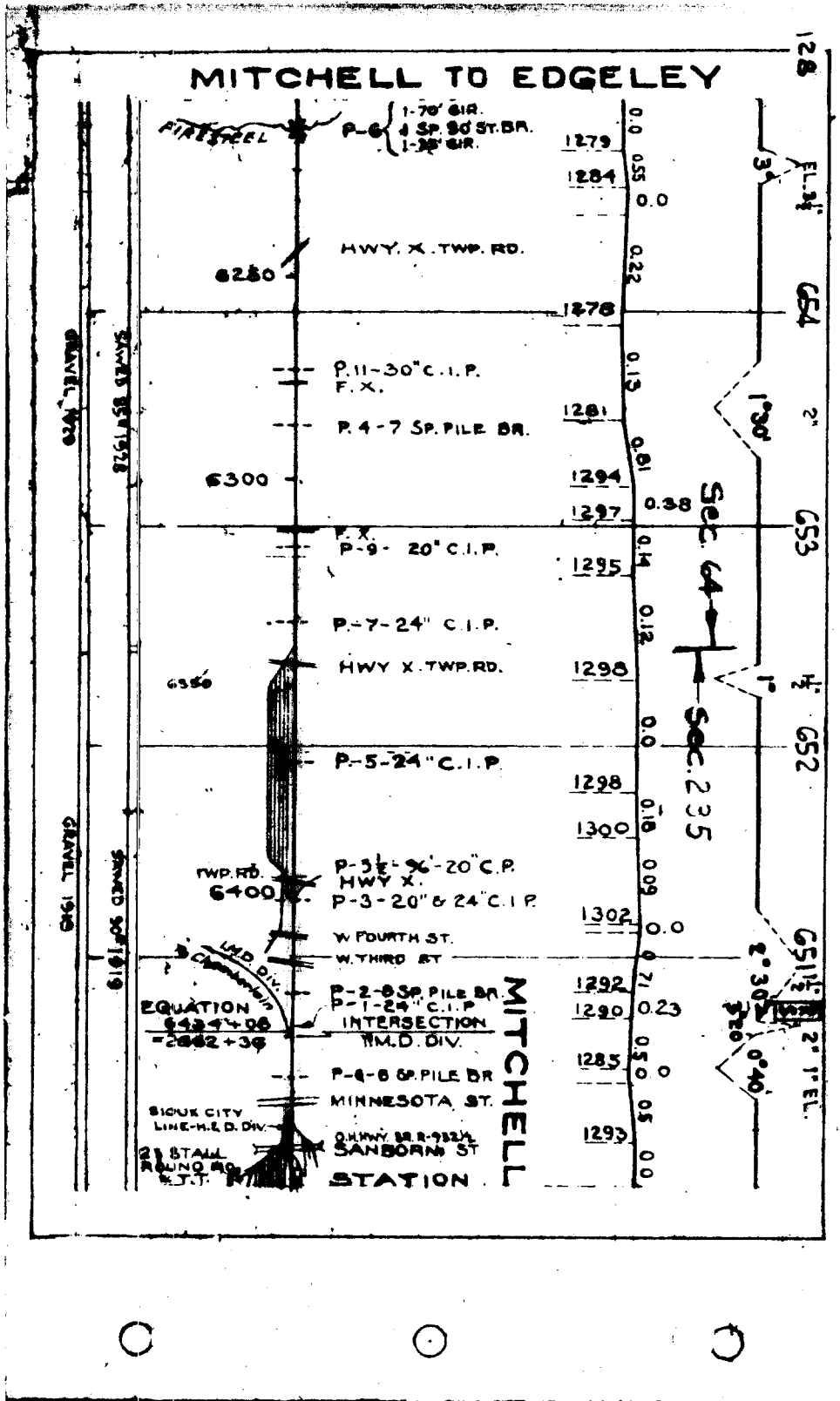
By: Michael J. Barron, Jr.

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

**ATTORNEY FOR
MITCHELL-RAPID CITY REGIONAL
RAILROAD AUTHORITY AND
DAKOTA SOUTHERN RAILWAY COMPANY**

Dated: November 29, 2005

Joint Tracings



VERIFICATION

State of ~~South~~ Dakota)

County of Brule)

SS:

George A. Hoff being duly sworn, deposes and says the he is PRESIDENT of Dakota Southern Railway Company that he has read the foregoing Notice of

Exemption and knows the facts asserted therein, and that the same are true as stated.

Subscribed and Sworn to
Before me this 13th day of
October, 2005

Peggy L. Hanson Notary Public

My Commission Expires: 6-27-2009

Exhibit 2

Drafted

TRACKAGE RIGHTS AGREEMENT MITCHELL, SOUTH DAKOTA

THIS AGREEMENT, ("**Agreement**") made and entered into this 22nd day of November, 2005, by and between **BNSF Railway Company**, a Delaware corporation (hereinafter referred to as "**BNSF**" or "**Owner**") and the **Mitchell-Rapid City Regional Railroad Authority**, a political sub-division of the State of South Dakota ("**MRC**"), and MRC's designated contract operator, Dakota Southern Railway Company, a South Dakota corporation (hereinafter referred to as "**DSRC**"), acting as MRC's agent (collectively, MRC and DSRC are referred to collectively as "**User**"); and

WITNESSETH:

WHEREAS, Owner owns a line of railroad located in Mitchell, SD and serves a grain elevator located at Mitchell, SD connecting to Owner's tracks between BNSF Milepost 651 and Milepost 653 on Owner's Aberdeen subdivision; and

WHEREAS, DSRC subleases from the MRC, and is the designated contract operator of a 189.7 mile portion of railroad between Mitchell, SD and Kadoka, SD that connects with BNSF at Mitchell, SD, the entire railroad of which connects with BNSF at Mitchell, SD and extends from Mitchell, SD to Rapid City, SD ("Mitchell-Rapid City Corridor") for a distance of approximately 288.2 miles; and

WHEREAS, BNSF and the State of South Dakota ("State") entered into that certain Settlement Agreement dated April 25, 2005 providing, in part, for User's right to access the Cenex-Harvest States grain elevator shuttle facility ("Grain Shuttle Facility") at Mitchell, SD for the sole purpose of User moving commodities that originate or terminate on the line which User operates from Mitchell, SD to Kadoka, SD, on the Mitchell-Rapid City Corridor and originate or terminate at the Grain Shuttle Facility through either Haulage or Trackage Rights ("Settlement Agreement") with the concurrence of the Grain Shuttle Facility owner, Cenex-Harvest States; and

WHEREAS, Cenex - Harvest States has concurred to allow DSRC direct access to the Grain Shuttle Facility, and pursuant to the terms of the Settlement Agreement, DSRC will be granted access to the Grain Shuttle Facility using DSRC's cars, engines, cabooses and end of train devices, via trackage rights, and the parties wish to set forth the terms and conditions governing the implementation of such rights.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the parties hereto covenant and agree as follows:

Section 1. TRACKAGE SUBJECT TO AGREEMENT

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad over which DSRC is granted overhead trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this Agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF TRACKAGE RIGHTS

The General Conditions covering the grant of trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this Agreement shall arise, the provisions of this Agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this Agreement, and User's agreement to file a "Notice of Exemption" filing for approval of these trackage rights with the U.S. Department of Transportation, Surface Transportation Board ("STB"), Owner grants to User the nonexclusive right to use the Joint Trackage for the operation by User's employees of the Equipment (as defined in Exhibit "B" of this Agreement) that is in User's account while moving over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered Owner for the purpose of this Agreement. Said grant of trackage rights shall be between:

- 1) At Mitchell, SD, between Owner's connection with DSRC (Owner's Milepost 650.65 and DSRC leased tracks in Owner's Mitchell, SD Yard, (Owner's Mile Post 650.16).
- 2) At Mitchell, SD, between Owner's Mitchell, SD yard (Owner's Milepost 650.16) and the Grain Shuttle Facility at Mitchell, SD (Owner's Milepost 652.9).

In addition to User's right to access the Mitchell, SD Yard pursuant to the December 4, 1991 agreement, as amended, between Owner and DSRC, User shall have the right of ingress and egress to the Mitchell, SD Yard for the purpose of User "running around" its train at Mitchell, SD, if operationally necessary to originate traffic from or terminate traffic at the Grain Shuttle Facility.

Except as may be expressly provided otherwise herein, it is understood and agreed that in the exercise of rights under this Agreement, User shall not have a right to:

- (a) set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or
- (b) handle any traffic over the Joint Trackage other than overhead (bridge) traffic that originates or terminates on the Mitchell-Rapid City Corridor between

Mitchell, SD and Kadoka, SD and originates or terminates at the Grain Shuttle Facility at Mitchell, SD. (For purposes of this Agreement the Mitchell, SD to Kadoka section of the Mitchell-Rapid City Corridor shall encompass said corridor as constituted and connecting with the South Dakota Core on April 25, 2005 (and shall not include any extensions from or to such corridor made on or after April 25, 2005; provided, however, the term "extensions" means additions to the Mitchell-Rapid City Corridor by way of acquisition or construction of Lines of Railroad, but does not include a prohibition against service to new industries that locate on the Mitchell-Rapid City Corridor); or

(c) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by User, except the Grain Shuttle Facility; or

(d) enter or exit the Joint Trackage other than at Mitchell, SD; or

(e) permit or admit any third party to the use of 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, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of User; or

(f) transport or interchange any traffic on or to the Joint Trackage which results in, facilitates, or induces a breach of or is otherwise inconsistent with the terms of any agreement between Owner and User; or

(g) connect with User or any other rail carrier; or

(h) transport passengers for hire; or

(i) move any other business cars over the Joint Trackage (Note: for purposes of this Agreement, business cars shall mean the private, not-for-hire passenger cars owned or leased by User) as well as User's engines and end of train devices required to move said business cars.

(A) Each party shall maintain records of operations and activities conducted pursuant to this Agreement to the same extent and in the same form and detail as those normally maintained by that party with respect to other identifiable portions of its rail system. Records pertaining to individual rail movements shall be maintained for a period of three (3) years from the waybill date of each such movement.

(B) Upon reasonable notice, each party shall allow the other party to examine applicable records of the other party at its place of business during normal business hours for purposes of verifying that party's compliance with the terms and conditions of this Agreement; provided, however, that the party whose records are to be examined may refuse access to records which that party is required to keep confidential pursuant to the express terms of any law, ordinance, decree or regulation of any governmental authority with jurisdiction over the party.

The auditing party will keep non-public audit records confidential, except to the extent disclosure may be required by applicable law.

In the event BNSF desires to perform an audit of User's records related to performance of this Agreement and DSRC and/or MRC demand an independent audit in lieu of an audit using BNSF personnel or consultants, such independent audit shall be accommodated in lieu of performance thereof with BNSF resources, provided that the party(ies) demanding an independent audit (in lieu of an internal BNSF audit at no expense to such party) shall share equally with BNSF the expense of an independent consultant/auditor.

No audit of records may be conducted for movements which occurred more than three (3) years prior to the request for audit.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE

Owner, at its expense, shall maintain the Joint Trackage. In the event that for, operating convenience, necessity or emergency, Owner permits or directs User to use adjacent Owner track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. LIMITATIONS OF TRACKAGE RIGHTS TRAINS

Absent advance coordinated planning between User and Owner, User and Owner agree that User's use of the trackage rights granted herein shall be for a maximum of one (1) User train per day to the Grain Shuttle Facility at Mitchell, SD and one (1) train per day from the Grain Shuttle Facility at Mitchell, SD, unless otherwise coordinated in advance with Owner's General Transportation Superintendent or that person's designee. Movement from connecting track at Mitchell, SD to the Mitchell Yard, and from the Mitchell, SD Yard to the Grain Shuttle Facility will be counted as one train. Movement from the Grain Shuttle Facility at Mitchell, SD to the Mitchell, SD Yard, and from the Mitchell, SD Yard to the connecting track will be counted as one train. Trains will be limited to length, horsepower per trailing ton, gross weight on the rail, and any other restrictions or requirements then in effect that govern BNSF operations on the Joint

Trackage. The provisions of this Section 4 shall not in any way be construed as granting BNSF any rights of consent or prohibition with respect to User's movement of additional trains beyond one (1) per day in either direction. Rather, such additional movements shall merely require advance coordination.

When entering or exiting the Joint Trackage at Mitchell, SD, User shall enter and exit without delay and shall not be permitted to park trains or Equipment on the Joint Trackage or Owner's trackage unless such trains are awaiting movement of other trains or Equipment of Owner or third party occupying the Joint Trackage. User is responsible for making all arrangements necessary with Cenex-Harvest States to enter and exit the Grain Shuttle Facility.

Section 5. COMPENSATION

Section 6. IMPLEMENTATION REQUIREMENTS, CAPITAL INVESTMENT, CONNECTIONS, AND ADDITIONS

(A) Prior to initial commencement of the overhead trackage rights, Owner and User will consult on trains to be moved over the Joint Trackage, methods of operation and interchange, and necessary changes in infrastructure, if any, to permit unobstructed operations for BNSF and User.

(B) All such capital investments, if any, necessary for initial commencement of operations under this Agreement are set forth in that letter agreement between Owner and the State of South Dakota dated November 22, 2005 ("Improvement MOA") and such improvements, if any, to the extent related to and required for the performance of services under this Agreement, shall be performed as a condition of exercise of the rights under this Agreement, in accordance with the terms of the Improvement MOA. The terms of the Improvement MOA are attached hereto as Exhibit "I-MOA", and to the extent applicable to this Agreement the terms thereof shall be deemed a part of this Agreement. The terms of this Agreement shall be subject to and conditioned upon the terms of the Improvement MOA.

Section 7. LIABILITY

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto.

Section 8. ENGINEER CERTIFICATION

User shall submit its written program for certifying the qualifications of locomotive engineers per CFR 49 part 240.101. Such written program shall be approved by Owner prior to User commencing operations as contemplated herein.

Section 9. INSURANCE

For so long as User shall exercise rights under this Agreement, User shall, at its sole cost and expense, procure and maintain insurance coverage in compliance with the terms and conditions set forth in Exhibit "B" Sections 5.5.1 and 5.5.2.

Section 10. APPLICABLE LAW

This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard to its conflicts of laws provisions.

Section 11. Default

(A) Except to the extent expressly provided otherwise herein, either party hereto claiming material default of any of the provisions of this Agreement shall furnish written notice and demand to the other party for performance or compliance with the covenant or condition of this Agreement claimed to be in material default, which notice shall specify wherein and in what respect such material default is claimed to exist and shall specify the particular Section or Sections of this Agreement under which such claim of default is made.

(B) If the material default shall continue for an additional period of fifteen (15) days after receipt of such written notice, and such default has not been remedied within an additional seven (7) day period, and such default relates a material provision of this Agreement, including without limitation provisions and terms concerning unauthorized movements of commodity, or commercial, or geographic restrictions under this Agreement, either party shall have the right to terminate this Agreement provided, however, either party may contest the termination pursuant to the arbitration provisions set forth in Section 6 of Exhibit "B" for resolution of any disputes with respect thereto. Cancellation of this Agreement shall be stayed pending a decision by the Arbitration Panel or Arbitrator convened under said Section 6. Such rights of termination may be exercised without prejudice to any other rights or remedies available to the Parties at law or in equity.

(C) Failure of a party to claim a default shall not constitute waiver of such default. Either party hereto entitled to claim default may waive any such default in writing, 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 12. TERM AND TERMINATION.

(a) Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this Agreement shall become effective ("Effective Date") as of the later of the:

- i.) the date last signed below,
- ii.) the date of dismissal of all litigation referenced in the Settlement Agreement,

and shall continue in full force for [REDACTED] subsequent to DSRC having secured all necessary consent, approval or authority from appropriate governmental agencies for the sanction of this Agreement upon terms and conditions consistent with this Agreement. Owner and User agree to cooperate fully to procure all such necessary consent, approval or authority.

(b) Once activated by the commencement of User's operations, this Agreement shall remain in effect until April 25, 2055, or until rail operation on the Mitchell-Rapid City Corridor is permanently abandoned, discontinued in its entirety, and/or rail-banked if sooner pursuant to STB authority. In the event DSRC's rights to operate the Mitchell-Rapid City Corridor are terminated, DSRC shall no longer have right or authority to exercise any rights under this Agreement. Upon termination or expiration of this Agreement, for whatever reason, User shall fully cooperate, consent, participate and jointly file with Owner to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Agreement. User shall assist and support Owner's filing and any associated proceedings to facilitate any termination or expiration, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in Owner's sole discretion, be prepared and made at any time after this Agreement has been terminated or expired. Such filing shall be coordinated by and at the expense of Owner. User shall surrender possession and operation of the Joint Trackage as promptly as User is able to do so under applicable laws and regulations. Notwithstanding any provision to the contrary herein, User shall not contest the right of Owner at any time to abandon, transfer, or discontinue all or any part of the Joint Trackage. Any liability created under this Agreement shall survive any termination of this Agreement.

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

BNSF RAILWAY COMPANY

By: Peter J. Rickshausen

Printed: Peter J. Rickshausen

Title: VP Network Development

Date: November 22, 2005

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY

By: _____

Printed: _____

Title: _____

Date: _____

DAKOTA SOUTHERN RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

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

BNSF RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY

By: Thomas Greenway

Printed: Thomas GREENWAY

Title: Chm. - MRC

Date: Nov. 21st - 2005

DAKOTA SOUTHERN RAILWAY COMPANY

By: George A. Huff

Printed: GEORGE A. HUFF

Title: PRESIDENT

Date: Nov 21, 2005

Exhibit A
DSRC
Trackage Rights
Mitchell, SD

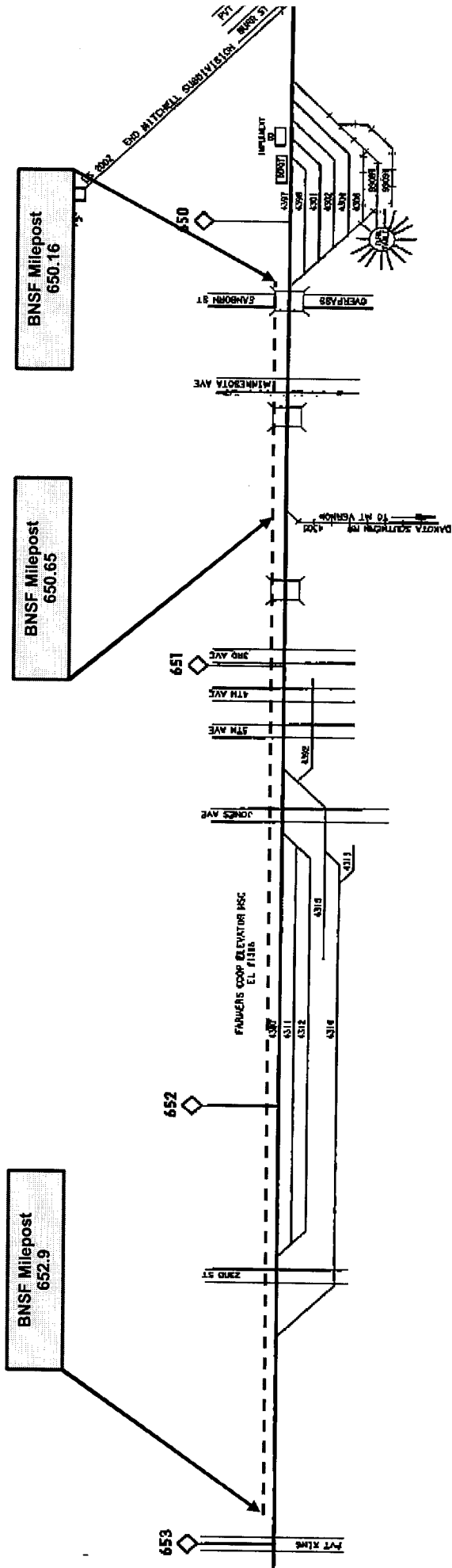


EXHIBIT "B"
GENERAL CONDITIONS
TRACKAGE RIGHTS AGREEMENT
MITCHELL, SOUTH DAKOTA

Section 1. DEFINITIONS

1.1 "Agreement" shall mean the Trackage Rights Agreement, dated November 22, 2005 to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B".

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined). Use of the term "Owner" is a term of convenience and shall not represent or warrant ownership status or quality of title to Joint Trackage.

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, end of train devices vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Annual" shall mean a calendar year.

1.7 "Car" shall mean one (1) rail car; however, in the case of an articulated rail car of two (2) or more platforms, each platform shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology and each locomotive shall be counted as two (2) cars.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions, Betterments and/or Capital Improvements" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of the Agreement.

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

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 Except as provided in the Improvement MOA, in the event new construction is requested by User to connect the parties, User shall construct, maintain, repair, and renew, at its sole cost and expense, and User or State of South Dakota shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs in its sole discretion, which shall not be exercised unreasonably, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended, provided, however, that any changes shall be applied equally to Owner and User. The grant of trackage rights to User by BNSF shall be provided on a non-discriminatory basis, and BNSF shall treat the trains/cars of User on an equal basis with BNSF's trains/cars of the same or similar type, volume and commodity.

2.4 Any construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner, and Owner shall have unrestricted power to implement any actions Owner deems necessary for construction, maintenance, repair, or renewal of the Joint Trackage, provided, however, that such actions do not materially interfere with User's exercise of its rights to operate over the Joint Trackage. In the event there are conditions

from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.6 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, injury or death, or expense of any kind, caused by or resulting from such interruption or delay.

2.7 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.9 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall not unjustly discriminate against any party hereto.

2.10 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 herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.11 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 4 of these General Conditions.

2.12 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Sections 2.11, 2.18 and 4 of these General Conditions.

2.13 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

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 or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on 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 all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of 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 the Joint Trackage by reason of such occurrence.

2.15 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's 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 employees of User and property of User. However, should

Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return 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 Association of American Railroads, hereinafter called "Interchange Rules", in effect at 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. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.16 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed 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 and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit "B".

2.17 In the event Equipment of User shall be forced to stop on 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, or any other cause not resulting from an accident or derailment, 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, crippled or otherwise defective 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 costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.18 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "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.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars 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 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING AND PAYMENT

3.1 Except with respect to liability or indemnity claims, billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives (normally agreed upon by the State of South Dakota and BNSF in the ordinary course of business), and equipment rental rates as published by the Owner. 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, 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 and services rendered during the billing period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.2 Except with respect to liability or indemnity claims, errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment. No exception to any bill or claim 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 or claim is rendered and no bill or claim shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense or claim covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) 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 Each party shall maintain records of operations and activities conducted pursuant to this Agreement to the same extent and in the same form and detail as those normally maintained by that party with respect to other identifiable portions of its rail system. Records pertaining to

individual rail movements shall be maintained for a period of three (3) years from the waybill date of each such movement.

Upon reasonable notice, each party shall allow the other party to examine applicable records of the other party at its place of business during normal business hours for purposes of verifying that party's compliance with the terms and conditions of this Agreement; provided, however, that the party whose records are to be examined may refuse access to records which that party is required to keep confidential pursuant to the express terms of any law, ordinance, decree or regulation of any governmental authority with jurisdiction over the party.

The auditing party will keep non-public audit records confidential, except to the extent disclosure may be required by applicable law.

In the event BNSF desires to perform an audit of User's records related to performance of this Agreement and User demands an independent audit in lieu of an audit using BNSF personnel or consultants, such independent audit shall be accommodated in lieu of performance thereof with BNSF resources, provided that the party(ies) demanding an independent audit (in lieu of an internal BNSF audit at no expense to such party) shall share equally with BNSF the expense of an independent consultant/auditor.

No audit of records may be conducted for movements which occurred more than three (3) years prior to the request for audit.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other material respect to perform a material obligation as required under the Agreement, and such material default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, Owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, and User shall, upon written demand of Owner, pursue and obtain any required regulatory filings to discontinue use of the Joint Track; provided that failure to make any disputed payment or the failure to comply with a demand by Owner relative to User's operations on the Joint Trackage, either of which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, a cause for forfeiture hereunder. At all times, User shall have the right to resort to arbitration under Section 6 of this Agreement if User disputes Owner's claim of material default.

Owner may agree to waive a default by User, but no such action shall be deemed to waive any rights to pursue a remedy for subsequent defaults of User or otherwise impair any rights of Owner for the future as a result of such written waiver.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6 below) as between the parties shall be borne as follows:

a) User shall be responsible for Environmental Claims resulting in whole or in part from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, Attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of this Exhibit "B".

Section 5. LIABILITY

5.1 Except to the extent expressly provided otherwise in Section 4.2, the responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights Agreement set forth in this Agreement, shall be determined as follows:

- (a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 2 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from, and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of, User being involved, Owner shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 2 hereof, and shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody (without regard to which party was negligent or at fault), and Owner and User further agree that all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Section 2 hereof (without regard to which party was negligent or at fault) subject to reduction for any amount recovered from another carrier using the Joint Trackage or from a third party. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it.

(d) Notwithstanding the foregoing, the allocation of liability provided for herein shall not apply to punitive or exemplary damages, and neither party hereto shall be liable for or indemnify the other party against any punitive or exemplary damages resulting from the acts or omissions of the other party or its employees, officers, agents, invitees or contractors.

(e) For the purposes of this Section 5, the word "Equipment" shall mean and be confined to (i) trains, locomotives, cars and 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 Joint Track(s), and (iii) vehicles and machinery that, at the time of an occurrence, are on the Joint Track(s), or their rights-of-ways for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(f) For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured or admitted by Owner to operate over the Joint Track(s) and all persons other than Owner or User employees engaged in moving such Equipment, shall be considered the Equipment and employees of the party hereto under whose detour agreement or other auspices such movement is being made.

(g) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either party under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Section 5, pilots furnished by Owner to User pursuant to Section 2 of this Agreement shall be considered as the employees under the custody and control of User while such employees are on duty as pilots.

5.2 For purposes of this Agreement, for so long as DSRC is acting as a contract operator of the Mitchell-Rapid City Corridor exercising rights under this Agreement for and on behalf of itself and/or MRC, DSRC shall be jointly and severally liable with MRC for all obligations, liabilities, and indemnities of User under this Agreement.

5.3 (a) Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

(b) In case a suit shall be commenced against Owner for or on account of damages for which User may be solely or jointly liable under the provisions of this Section 5, Owner shall

give notice to User of the pendency of such suit and thereupon User shall, at the request of Owner assume or join in the defense of such suit.

(c) In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (\$50,000), the settling party shall notify the other parties prior to settlement and shall obtain written consent of such party to settle said matter. Consent to settlement shall not be unreasonably withheld in the event such settlement shall have no adverse impact on the non-settling party's rights (including rights of indemnity), liability, potential liability, or litigation position. Failure of the settling party to obtain consent to settle prior to settlement shall not relieve any party of its obligations under this Agreement. In the event a party settles without required written consent, at the option of the non-settling party, and without prejudice to any other rights or remedies available at law or in equity, all or part of any such unauthorized settlement terms shall be voided.

(d) If a judgment shall be recovered against and satisfied by one party involving a liability which should under this Agreement be borne entirely or participated in by the other parties, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of this Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

5.4 For so long as User shall exercise rights under this Agreement, User shall, at its sole cost and expense, procure and maintain insurance coverage in compliance with the terms and conditions set forth hereinbelow in Sections 5.5.1 and 5.5.2. Compliance with this Section 5.5 only requires that either DSRC or MRC (not both) procure and maintain the aforesaid insurance coverage, provided such coverage will apply to liability and indemnity of both DSRC and MRC under this Agreement.

5.5.1 Required Coverage. User shall, at its sole cost and expense, procure and maintain during the life of this Agreement and during operations or occupancy of all any part of the Joint Trackage by User (even if same shall extend beyond the term of this Agreement), the following insurance coverage:

- (a) All risks property insurance covering all of User's property including property in the care, custody or control of User. Such insurance shall:
 - (i) Be issued on a like kind and quality basis;
 - (ii) Provide that in respect of the interest of Owner the insurance shall not be

invalidated by any action or inaction of User or any other person and shall insure the respective interests of Owner as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by User or any other person;

- (iii) Include a standard loss payable endorsement naming Owner as an additional loss payee as its interests may appear;
- (iv) Include a waiver of subrogation in favor of Owner; and
- (v) Include coverage for property in the care, custody or control of Owner.

Railroad liability policy of insurance acceptable to Owner in an amount of at least [REDACTED] for hazardous materials (prior to User initiating rights involving the handling of hazardous materials for movement hereunder) and an amount of at least [REDACTED] for all non-hazardous material commodities. Such insurance shall include coverage for:

- (i) injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;
- (ii) seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn;
- (iii) contractual liability; and
- (iv) evacuation expense coverage.

5.5.2 Other Requirements.

- (a) Required policies under this Agreement shall contain no other endorsements limiting coverage as respects obligations under this Agreement.
- (b) Annually Owner shall provide evidence of such coverage as required hereunder.
- (c) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

- (d) Except as provided in Section 5.1-5.5 of this Exhibit "B," User agrees to waive its right of recovery against Owner for all claims and suits against Owner arising out of incidents for which Owner shall have assumed liability or provided indemnity pursuant to this Agreement. In addition, its insurers, through policy endorsement, waive their right of subrogation against Owner for all claims and suits arising out of this Agreement. The certificate of insurance must reflect waiver of subrogation endorsement. User further waives its right of recovery, and its insurers also waive their right of subrogation against Owner, for loss of its owned or leased property or property under its care, custody or control.
- (e) User's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Owner. The certificate of insurance must reflect that the above wording is included in evidenced policies.
- (f) All policy(ies) required above shall include a severability of interest endorsement and shall name Owner as an additional insured with respect to work performed under this Agreement. Severability of interest and naming Owner as additional insured shall be indicated on the certificate of insurance.
- (g) User is not allowed to self-insure without the prior written consent of Owner. If granted by Owner, any deductible, self-insured retention or other financial responsibility for claims, User shall itself directly cover, in lieu of insurance, any and all Owner liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by User's insurance as if User elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- (h) Prior to commencement of operations, User shall furnish to Owner an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Owner in writing at least thirty (30) days prior to any cancellation, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Owner, a certified duplicate original of any required policy shall be furnished.
- (i) If any coverage is purchased on a claims-made basis, User shall continue to provide evidence of insurance as required under this Agreement for a period of at least three (3) years.
- (j) Any insurance policy shall be written by a reputable insurance company acceptable to Owner or with a current Best's Guide Rating of A- and Class VII or

better, and authorized to do business in the state(s) in which the service is to be provided.

- (k) User represents that this Agreement has been thoroughly reviewed by User's insurance agent(s)/broker(s), who have been instructed by User to procure the insurance coverage required by this Agreement.
- (l) Not more frequently than once every five (5) years, Owner may request renegotiation of required insurance coverage to reflect reasonable terms consistent with then-current risk management practices in the railroad industry and underwriting practices in the insurance industry. In the event the parties are unable to mutually agree upon suitable coverage terms, Owner may request arbitration of the dispute and for the arbitrator to set alternative reasonable terms and conditions under dispute between the parties. Pending final resolution pursuant to arbitration, the insurance coverage terms set forth herein shall continue to apply without amendment thereto.
- (m) If any portion of the operation is to be subcontracted by User, provided such subcontracting is authorized by this Agreement, User shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Owner as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Owner to the same extent and under the same terms and conditions as User is required to release, defend and indemnify Owner herein.
- (n) Notwithstanding any provision to the contrary in this Agreement, failure to provide evidence as required by this Section shall be deemed to be a Material Breach and shall entitle, but not require, Owner to terminate this Agreement immediately without prejudice to Owner's ability to pursue any other remedies available at law or in equity. In addition to any other rights or remedies for breach of the terms of this Section, Owner shall have the right to seek and obtain coverage required by this Agreement by or on behalf of User and bill User for all costs associated therefor.
- (o) The fact that insurance (including, without limitation, self-insurance if permitted) is obtained by User shall not be deemed to release or diminish the liability of User including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Owner shall not be limited by the amount of the required insurance coverage.
- (p) For purposes of this Section, Owner shall mean "Burlington Northern Santa Fe

Corporation", "The BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each and their officers, directors, employees, agents, contractors and representatives.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 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. MRC and DSRC shall collectively have the ability to nominate only 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 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.

6.3 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.

6.4 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, which may be subject to either party seeking judicial review only on the basis set forth in South Dakota Codified Laws § 21-25A-24. 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, unless further proceedings are instituted by either party within the time allowed under and pursuant to the terms and conditions of South Dakota Law.

6.5 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.

6.6 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.

6.7 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. 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 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 User shall, at its own 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 by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. 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 threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks 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 tracks for User's use.

7.3 Under the terms hereinafter stated, and 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, discontinue, transfer, sell, or lease all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do. The Agreement shall terminate as to any section of Joint Trackage lawfully abandoned by Owner.

7.4 Upon expiration or termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such expiration or termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such expiration, termination or partial termination. Upon any expiration or termination, Owner may, at its option, remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with net salvage proceeds to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Such other companies

presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 Except as provided in this Section 8.2, this Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of Owner. All or part of this Agreement (including without limitation assignment of accounts receivables due hereunder) may be assigned by Owner without the consent of User. Except as expressly provided otherwise in this Section 8.2, this Agreement may not be assigned in whole or in part by MRC or DSRC without Owner's advance written consent. Owner and DSRC specifically agree that this Agreement and rights granted hereunder may be assigned by MRC, without Owner's or DSRC's advance written consent, to another operator of the Mitchell-Rapid City Corridor acting as agent for MRC or otherwise assigned in whole to an entity acquiring ownership of or a leasehold interest in the Mitchell-Rapid City Corridor, provided such operator is not a Class I or Class II railroad or the Dakota, Minnesota and Eastern Railroad Corporation, its successors and assigns. In the event MRC ceases to be the Lessor of the Mitchell-Rapid City Corridor, this Agreement shall automatically be assigned to the State of South Dakota, without the necessity of advance written consent by any party hereto, and the Parties hereby recognize the State of South Dakota as a third-party beneficiary of this Agreement for purposes of enforcing this right of assignment. In the event of an authorized assignment, this Agreement and the operating rights thereunder shall be binding upon the successors and permitted assigns of the parties.

8.3 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, except as provided in Section 8.2. 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.

8.4 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 and addressed to such other party at the address listed below:

If intended for DSRC:

President
Dakota Southern Railway Company
P. O. Box 436
Chamberlain, SD 57325

If intended for MCR:

With a copy to:

Chairman
Mitchell-Rapid City Regional Railroad Authority
25129 401st Avenue
Mitchell, SD 57301

Kenneth W. Cotton
Wipf & Cotton, LLC
107 South Main Street
Wagner, SD 57380-0370

If intended for BNSF

AVP - Contracts & Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

8.5 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 will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

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

8.8 This Agreement may not be amended without a mutual written agreement signed by Owner and User.

End of General Conditions

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34788

MITCHELL-RAPID CITY REGIONAL RAILROAD AUTHORITY AND
DAKOTA SOUTHERN RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

BNSF Railway Company ("Owner") has agreed to grant overhead trackage rights to Mitchell-Rapid City Regional Railroad Authority ("MRC") and Dakota Southern Railway Company ("DSRC") as set forth below:

- 1) At Mitchell, South Dakota, between Owner's connection with DSCR (Owner's Milepost 650.65) and DSRC leased tracks in Owner's Mitchell, South Dakota Yard, (Owner's Milepost 650.16).
- 2) At Mitchell, South Dakota, between Owner's Mitchell, South Dakota Yard (Owner's Milepost 650.16) and the Grain Shuttle Facility at Mitchell, South Dakota (Owner's Milepost 652.9).

In addition to User's right to utilize the Mitchell, South Dakota yard pursuant to other agreements between Owner and User, User shall have the right to Ingress and Egress to the Mitchell, South Dakota Yard for the purpose of User "running around" its train at Mitchell, South Dakota, if operationally necessary to originate traffic from or terminate traffic at the Mitchell Grain Shuttle Facility. The overhead rights granted apply only on traffic that originates or terminates on the rail line between Mitchell, SD and Kadoka, SD (as said line existed as of April 25, 2005) and originates or terminates at the Mitchell Grain Shuttle Facility at Mitchell, SD.

MRC and DSRC have entered into the Agreement collectively as the User. MRC is a political subdivision of the State of South Dakota and DSRC has entered into this Agreement as a sublessee/contract operator for MRC. Pursuant to the Agreement, MRC would be able to utilize these rights with another sublessee/contract operator (other than a Class I or Class II railroad or the Dakota Minnesota & Eastern Railroad Corporation). Also pursuant to the Agreement, if MRC ceases to be the lessee of the State for the corridor between Mitchell and Rapid City, South Dakota, then the rights herein will be automatically assigned to the State of South Dakota.

The trackage rights will be effective on or after December 6, 2005.

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 automatically stay the transaction.

Dated: _____

By the Board

Vernon A. Williams
Secretary