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ERIC M. HOCKY
DIRECT DIAL 215.320.3720
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October 20, 2006
VIA: UPS Overnight

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
OCT 23 2006
Part of
Public Record



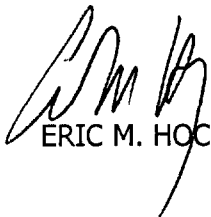
Re: STB Finance Docket No. 34946
Portland & Western Railroad, Inc.
– Temporary Trackage Rights Exemption –
Portland Terminal Railroad Company
Notice of Exemption

Dear Secretary Williams:

Enclosed please find for filing the original and ten (10) copies of the above-referenced Temporary Trackage Rights Notice of Exemption of Portland & Western Railroad, Inc. along with 20 unbound copies of the map. A check in the amount of \$1,000 representing the filing fee is also enclosed.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Respectfully,


ERIC M. HOCKY

Enclosures

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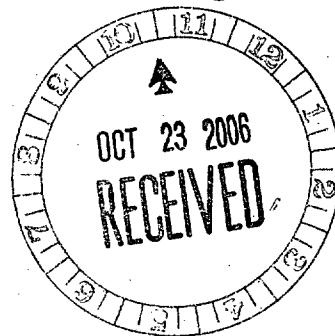
GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

217883



BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 34946

PORTLAND & WESTERN RAILROAD, INC.
- TEMPORARY TRACKAGE RIGHTS EXEMPTION -
PORTLAND TERMINAL RAILROAD COMPANY

NOTICE OF EXEMPTION

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OCT 23 2006
**SURFACE
TRANSPORTATION BOARD**

Eric M. Hocky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center Plaza, Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400
Attorney for
Portland & Western Railroad, Inc.

DATED: October 20, 2006

FILED
OCT 23 2006
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 34946

PORTLAND & WESTERN RAILROAD, INC.
- TEMPORARY TRACKAGE RIGHTS EXEMPTION -
PORTLAND TERMINAL RAILROAD COMPANY



NOTICE OF EXEMPTION

Portland & Western Railroad, Inc. ("PNWR"), a Class III railroad, files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(8) to exempt from the provisions of 49 U.S.C. §11323 the grant of temporary trackage rights by Portland Terminal Railroad Company ("PTRR") to PNWR. The temporary trackage rights are based on a written agreement, are not being filed or sought in a responsive application, are for overhead operations only, and are scheduled to expire on a specific date less than one year from the effective date of the exemption being sought.

These temporary trackage rights are related to the temporary trackage rights over the lines of Union Pacific Railroad Company ("UPRR") and BNSF Railway Company ("BNSF") that are the subject of separate notices filed in STB Finance Docket No. 34945 and STB Finance Docket No. 34944, respectively. Together the temporary trackage rights make a continuous detour route between Willbridge and Labish, Oregon, that will allow PNWR to continue to handle traffic while its line is undergoing rehabilitation and construction.

Required Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), PNWR provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) PTRR is granting temporary overhead trackage rights to PNWR over the approximately 1.5 mile line of railroad between BNSF Railway Company Fallbridge Subdivision M.P. 0.91 and a connection with Union Pacific Railroad Company Portland Subdivision M.P. 0.0, all located near Union Station in Portland, Oregon, as shown on the map attached as Exhibit A (the "Joint Trackage").

The name, business address and telephone number of Applicant are: Portland & Western Railroad, Inc., 650 Hawthorne Ave., SE, Suite 220, Salem, Oregon 97301; (503) 365-7717.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2808; (215) 563-9400.

(a)(1)(ii) PNWR intends to commence operations under the temporary trackage rights on or after October 30, 2006. The temporary trackage rights are scheduled to terminate on December 30, 2006.

(a)(1)(iii) The temporary trackage rights (together with other temporary trackage rights being granted to PNWR by UPRR and BNSF) will allow PNWR to detour its trains from Willbridge to Labish, Oregon, while PNWR's line between those points is undergoing rehabilitation and reconstruction.

(a)(5) PNWR currently operates in the State of Oregon, and the Joint Trackage is also located in the State of Oregon.

(a)(6) A map showing the Joint Trackage is attached as Exhibit A. Twenty extra copies of the map are also included.

(a)(7)(ii) A copy of the temporary trackage rights agreement is attached as Exhibit B.

Labor Protection

Applicant understands that any employees adversely affected by the temporary trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980). Further, Applicant understands that any employees adversely affected by the discontinuance of these temporary trackage rights are entitled to protection under the conditions imposed in *Oregon Short Line Railroad Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

Environmental and Historic Reports

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(iii).

Respectfully submitted,



Eric M. Hocky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center Plaza, Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400

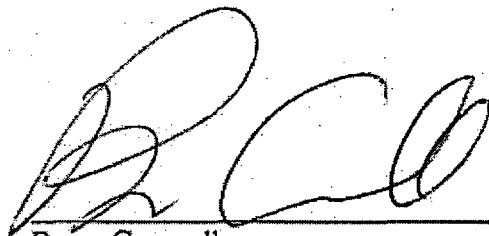
Attorney for
Portland & Western Railroad, Inc.

DATED: October 20, 2006

VERIFICATION

I, Bruce Carswell, President and General Manager of Portland & Western Railroad, Inc. verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

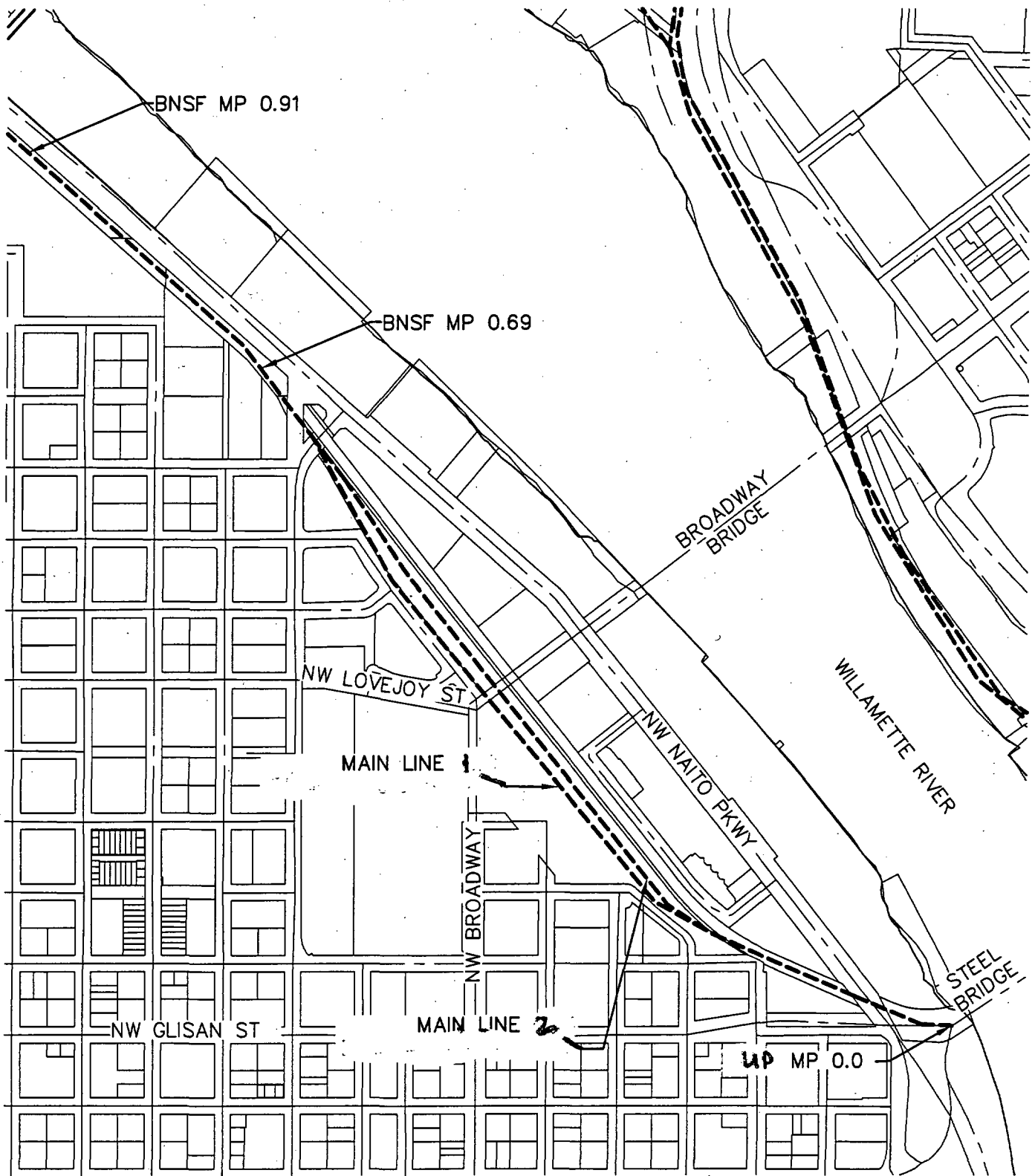
Executed on October 20, 2006.



Bruce Carswell

MAP

EXHIBIT A



**DAVID EVANS
AND ASSOCIATES INC.**

2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.6663

PROJECT

EXHIBIT MAP

SHEET

TITLE

PORTLAND TERMINAL RAILROAD

DWG. REF.

PdxTerRr

PROJECT

SCALE

1" = 500'

AMENDMENT NO.

0.0

DRAWN BY

TAS

DESIGN BY

JSW

APPROVED BY

DATE

01-01-2001

1

TRACKAGE RIGHTS AGREEMENT

EXHIBIT B

**TEMPORARY TRACKAGE RIGHTS AGREEMENT
BETWEEN PTRR & PNWR OVER TRACKAGE
NEAR UNION STATION IN PORTLAND, OREGON**

THIS AGREEMENT is made and entered into this 30th day of October 2006 by and between **PORTLAND TERMINAL RAILROAD COMPANY**, hereinafter called "PTRR", and **PORTLAND & WESTERN RAILROAD COMPANY**, hereinafter called "PNWR."

WITNESSETH:

WHEREAS, PTRR is the owner of certain railroad trackage extending between a connection with BNSF Main Lines 1 and 2 and a connection with the UP railroad system, all located near Union Station in Portland, Oregon; and

WHEREAS, PNWR desires to obtain temporary overhead trackage rights upon the Trackage while PNWR's lines are out of service due to structural maintenance; and

WHEREAS, PTRR is agreeable to said temporary overhead trackage rights but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

PTRR hereby grants temporary overhead trackage rights to PNWR over trackage located near Union Station in Portland, Oregon, depicted on Exhibit "A" attached hereto and made a part hereof, which runs a length of approximately 1.5 miles between UP Milepost 0.0 of the Union Pacific Railroad Portland Subdivision and BNSF Milepost 0.91 of the BNSF Fallbridge Subdivision, which Trackage shall include all necessary right-of-way and appurtenances and support facilities thereof.

Section 2. GRANT OF TRACKAGE RIGHTS.

(a) PTRR grants to PNWR the temporary nonexclusive right to use the Trackage in common with PTRR and such other railroad company or companies as PTRR has heretofore admitted or may hereafter at any time admit to the joint use of any and all of PTRR trackage. Such other railroad company or companies to hereinafter be considered PTRR for the purpose of this Agreement.

(b) It is understood and agreed that PNWR shall **not** have the right to:

- (1) set out, pick up or store cars, or switch upon the Trackage, or any part thereof, except as necessary for handling PNWR's rail equipment that is bad ordered en route; or
- (2) serve any industry, team or house track now existing or constructed in the future along Trackage, which heretofore has not been served by PNWR; or

- (3) permit or admit any third party to the use of all or any portion of Trackage, nor have the right to detour trains of any other railroad over or upon Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own rail equipment over or upon Trackage, or any portion thereof, the rail equipment of any third party which in the normal course of business would not be considered the rail equipment of PNWR provided, however, that the foregoing shall not prevent PNWR, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

- (a) PTRR, at its expense, shall maintain Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this Agreement and shall permit PNWR to operate at such speeds unless by mutual written agreement a different standard is provided.
- (b) PNWR 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 PTRR prior to PNWR commencing operations as contemplated herein. All detour trains will be manned by PNWR crews.
- (c) The management and operation of the Trackage shall be under the exclusive direction and control of PTRR. PTRR shall have the unrestricted power to change the management and operations on and over the Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.
- (d) PTRR shall employ all persons necessary to construct, operate, maintain, repair, and renew the Trackage. PTRR shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Trackage and in managing same. The Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as PTRR has heretofore admitted or may hereafter admit to use of the 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 Trackage, PTRR 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 this Agreement, PNWR shall not, by reason of PTRR's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Trackage, have or make against PTRR any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. PNWR shall be given the same advance notice of maintenance plans and schedules as is provided to PTRR's personnel.
- (e) All officers, agents, and employees of PTRR engaged in the management, operation, and maintenance of the Trackage shall perform their duties in a fair, impartial, and just manner.

- (f) PNWR, at its expense, shall install and maintain upon its Rail Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of PTRR, for operation of trains upon the Trackage. PNWR will not, however, be required to install any equipment or devices not in use on rail equipment of PTRR. PTRR shall consult with PNWR prior to the adoption of new communication or signaling systems to be employed on the Trackage, which have not theretofore been generally adopted in the railroad industry.
- (g) If the use of the Trackage shall at any time be interrupted or traffic thereon or therefor be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.
- (h) Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own rail equipment over the 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.
- (i) The operation by PNWR on or along the Trackage shall at all times be in accordance with the rules, instructions, and restrictions of PTRR, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Trackage and shall not unjustly discriminate against any of them.
- (j) PNWR shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on rail equipment in PNWR's account on the Trackage. Except as may be specifically provided for in this 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 Trackage.
- (k) All employees of PNWR engaged in or connected with the operations of PNWR on or along the Trackage shall be required to pass periodic examination on the rules of PTRR related to the Trackage, provided, with respect to such examinations that, upon request of PNWR, PTRR shall qualify one or more of PNWR's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of PNWR engaged in or connected with PNWR's operations on or along the Trackage. Pending qualification of train and engine crews of PNWR, PTRR shall furnish a pilot or pilots, at the expense of PNWR, as deemed necessary by PTRR to assist in operating trains of PNWR over the Trackage.
- (l) If any employee of PNWR shall neglect, refuse, or fail to abide by PTRR's rules, instructions, and restrictions governing the operation on or along the Trackage, such employee shall, upon written request of PTRR, be prohibited by PNWR from working on the 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 PNWR, then upon such notice presented in writing, PTRR and PNWR 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 PNWR shall be given by PNWR's officers, and such investigation

shall be conducted in accordance with the terms and conditions of schedule agreements between PNWR and its employees. If, in the judgment of PTRR, the result of such investigation warrants, such employee shall, upon written request of PTRR, be withdrawn by PNWR from service on the Trackage, and PNWR shall release and indemnify PTRR from and against any and all claims and expenses because of such withdrawal. If the disciplinary action is appealed by an employee of PNWR 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 Trackage by reason of such occurrence.

- (m) If any rail equipment of PNWR is bad ordered enroute on the Trackage and it is necessary that it be set out, PTRR will, at PNWR'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 PTRR while in any manner so engaged or while enroute to or returning to PTRR's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of PNWR and Sole Property (as hereinafter defined) of PNWR. In the case of such repairs by PTRR to freight cars in PNWR'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. PTRR 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. PTRR shall also submit billing to and collect from PNWR 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.
- (n) In the event rail equipment of PNWR shall be forced to stop on Trackage, and such stoppage is due to insufficient hours of service remaining among PNWR's employees, or due to mechanical failure of PNWR's rail equipment, or any other cause not resulting from an accident or derailment, and such rail equipment is unable to proceed, or if a train of PNWR fails to maintain the speed required by PTRR on the Trackage, or if in emergencies, crippled or otherwise defective rail equipment is set out of PNWR's trains on the Trackage, PTRR shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew PNWR's train) as may be necessary to haul, help or push such rail equipment, or to properly move the disabled rail equipment off the Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at PNWR's expense.

Section 4. LIMITATIONS OF TRAINS AND COMPENSATION.

PNWR has projected train operation frequency of one train per day in each direction, seven days per week. PNWR agrees to pay to PTRR \$100 for each train that PNWR operates over the Trackage during the term of this Agreement.

Section 5. LIABILITY.

- (a) For the purpose of this Section 5, the following definitions shall apply:

- “Loss or Damage” shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid under any State or Federal compensation law incident to loss or destruction of or damage to property and injury to and death of persons arising from the operation by the parties to this Agreement on the Trackage.
 - “Sole Employees” and “Sole Property” shall mean one or more officers, agents, employees, contractors, trains or rail equipment, while engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of one or more, but fewer than all, of the parties hereto. Pilots furnished by PTRR to assist in operating rail equipment of PNWR shall be considered the Sole Employees of PNWR. All such officers, agents, employees, contractors, or rail equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing rail equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Trackage subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment.
- (b) As between the parties hereto only, each party shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its equipment, or on or about the Trackage in transaction of business for or with such party, its Sole Property, or property in its care, custody, or control, except when the Loss or Damage is contributed to by the acts or omissions, negligent or otherwise, of the Sole Employees and/or Sole Property of one or more other parties hereto, in which event the parties whose Sole Employees and/or Sole Property contributed to the same shall bear all of the costs of such Loss or Damage equally.
- (c) It is understood and agreed that a number of vehicular and pedestrian crossings of the Trackage presently exists. PNWR agrees to accept all vehicular and pedestrian crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand, or cause of action against PTRR and will hold PTRR harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian crossing accident on the Trackage in which the trains or rail equipment of PNWR is involved.
- (d) 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.
- (e) In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.
- (f) 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 Ten Thousand Dollars (\$10,000), the settling party shall notify the other parties prior to settlement. Failure of the settling party to so notify the other parties prior to settlement shall not relieve the other parties of their obligation

under the settlement Agreement, so long as the settling party's failure to notify did not prejudice the other parties and then only to the extent of such prejudice.

- (g) If a judgment shall be recovered against and satisfied by one party involving a liability which should under the 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.

Section 6. INSURANCE.

- (a) **Types of Insurance.** PNWR shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- (1) All risks property insurance covering the all of PNWR's property including property of others in its care, custody or control.
 - Policy shall be issued on a replacement cost basis.
 - Policy shall provide that in respect of the interest of PTRR the insurance shall not be invalidated by any action or inaction of PNWR or any other person or company.
 - Policy shall insure the respective interests of PTRR as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by PNWR or any other person or company.
 - Such coverage shall be endorsed by adding a standard loss payable endorsement naming PTRR as the loss payee as its interests may appear.
 - PNWR shall be allowed to self-insure for the all risks property coverage required herein.
 - PNWR agrees that any property of PTRR and property of others in PNWR's care, custody or control shall be the financial responsibility of PNWR while PNWR is operating over the Trackage.
- (2) Railroad liability policy of insurance acceptable to PTRR in an amount of at least TWENTY-FIVE MILLION DOLLARS (\$25,000,000) per occurrence. Such insurance shall include coverage for:
 - 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.
 - Sudden and accidental pollution coverage.
 - Contractual liability for the liability assumed in this Agreement.
- (3) Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1,000,000 per occurrence or claim. This insurance shall provide contractual liability covering all motor vehicles including hired and non-owned,

mobile equipment to the extent it may be excluded from general liability insurance, and severability of interests.

- (4) Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the State of Oregon, which shall include:
- PNWR's statutory liability under the worker's compensation laws of the state of Oregon.
 - Employer's Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee.
 - Alternate employer endorsement naming PTRR as the alternate employer, which shall be indicated on the certificate of insurance.
 - FELA endorsement on an if any basis, which shall be indicated on the certificate of insurance.
- (b) **Waive Right of Recovery.** PNWR agrees to waive its right of recovery against PTRR for all claims and suits against PTRR. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against PTRR for all claims and suits. Issued certificate must reflect waiver of subrogation endorsement. PNWR further waives its right of recovery, and its insurers also waive their right of subrogation against PTRR for loss of its owned or leased property or property under its care, custody or control.
- (c) **Additional Insured.** Any coverage afforded PTRR, the Certificate Holder, as Additional Insured, shall apply as primary and not excess to any insurance issued in the name of PTRR and issued certificate must reflect that above wording is included in evidenced policies.
- (d) **Claims-Made Policies.** The insurance company(ies) issuing such policy(ies) shall notify PTRR in writing of any change in any "claims-made" policies and any cancellation thereof at least forty-five (45) days prior to the effective date of such change and give PTRR at least twenty (20) days notice prior to cancellation for non-payment of premium. Any claims-made policies shall be maintained for a period of five (5) years from the commencement date of this Agreement with a retroactive date no later than the commencement date of this Agreement.
- (e) **Consent Required to Self-Insure.** PNWR is not allowed to self-insure without the prior written consent of PTRR. If granted by PTRR, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by PNWR in lieu of insurance. Any and all PTRR liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by PNWR's insurance will be covered as if PNWR elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- (f) **Liability.** It is mutually understood and agreed that the purchase of insurance as herein provided shall not in any way limit the liability of PNWR to PTRR as herein set forth.
- (g) **Certificates.** Prior to commencing any operations over the Trackage, as provided under this Agreement, PNWR shall furnish to PTRR a Blanket Additional Insured Endorsement, ISO Form (or equivalent CG 20 26 and CA 00 01 certificates) of the required insurance evidencing the required coverage and endorsements and, upon request, a certified duplicate original of any of

those policies. Failure to provide evidence as required herein shall entitle, but not require, PTRR to terminate this Agreement immediately. Acceptance of a certificate that does not comply with requirements set forth herein shall not operate as a waiver of PNWR's obligations hereunder.

- (h) **Insurance Company Rating**. The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to PTRR or with a current Best's Insurance Guide Rating of A and Class VII or better. Such insurance company shall be authorized to transact business in the State of Oregon.
- (i) PNWR warrants that this Agreement has been thoroughly reviewed by its insurance agent/s or broker/s, who have been instructed by PNWR to procure the insurance coverage required by this Agreement, as detailed herein.

Section 7. HAZARDOUS MATERIALS.

- (a) In the event any accident, derailment, or wreck, hereinafter called "derailment" involving units on or in a train operated by PNWR 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 Trackage, any report required by federal, state or local authorities shall be the responsibility of PNWR. PNWR shall also advise PTRR and the owner/shipper of the Hazardous Materials involved in the derailment immediately.
- (b) Unless otherwise agreed by the parties, PTRR shall assume responsibility for cleaning up any release of such Hazardous Materials from PNWR's cars in accordance with all federal, state, or local regulatory requirements. PNWR 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. All costs shall be borne in accordance with Section 9 of this Agreement.
- (c) If Hazardous Materials must be transferred to undamaged cars, PNWR shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Trackage, PTRR, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by PNWR shall only be conducted after being authorized by PTRR. All costs shall be borne in accordance with Section 9 of this Agreement.

Section 8. BILLING DEFAULT.

- (a) Billing shall be prepared according to the rules, additives, and equipment rental rates in effect on the PTRR. PNWR shall pay to PTRR all the compensation and charges of every name and nature which in and by this Agreement PNWR is required to pay, 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.
- (b) The books, accounts, and records of each party hereto as are related to the subject matter of this Agreement only, shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be

maintained to furnish readily full information for each item in Accordance with 49 U.S.C. Section 11161 et seq. and the related regulations of the Surface Transportation Board of the United States Department of Transportation or any successor agency in 49 C.F.R. Part 1201, 1-3, et sea.

Section 9. COMPLIANCE WITH LAWS.

- (a) PNWR 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 Trackage.
- (b) PNWR shall be responsible for Environmental Claims, as defined in (f) of this section, to the extent they result from (i) the use of, or presence upon, the Trackage by PNWR or by PNWR's contractors or invitees, or (ii) the negligence or willful misconduct of PNWR, its contractors or invitees in operations on or over the Trackage.
- (c) 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.
- (d) In the event of any incident, accident, derailment, or vehicle striking or being struck by rail equipment (hereinafter "Derailment") involving rail equipment operated by PNWR 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 Trackage, any report required by Federal, State or local authorities shall be the responsibility of PNWR, with PTRR overseeing and receiving copies of all documents. PNWR shall advise PTRR immediately of the occurrence of a Derailment involving rail equipment operated by PNWR that was carrying Hazardous Materials. PTRR shall undertake any Response Action, as defined in (e) of this section, in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on PTRR's right-of-way underlying the Trackage from rail equipment operated by PNWR upon the occurrence of a Derailment. PNWR shall have data or a representative available at the scene of any Derailment involving rail equipment operated by PNWR to provide information concerning the characteristics of Hazardous Materials released. If following a Derailment upon the Trackage, Hazardous Materials must be transferred to undamaged cars or other vehicles; PTRR shall perform the transfer at the expense of PNWR.
- (e) In the event any cleanup, response, removal or remediation of any environmental condition on the Trackage is necessary (collectively referred to herein as "Response Action"), PTRR and its contractors shall have full, unrestricted and unconditional access to the Trackage for the purpose of completing or engaging in a Response Action for which PTRR has any responsibility or, a Response Action which PTRR has undertaken for which PNWR has any or all responsibility, and to diligently pursue and complete such Response Action; provided, however, that any Response

Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of PTRR, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under this Agreement. PTRR shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of PNWR and PNWR shall provide PTRR all information requested by PTRR regarding any Response Action of PNWR or any Environmental Claims for which PNWR is responsible.

- (f) 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.
- (g) The liability and indemnity provisions of this Section 9 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Trackage is abandoned and vacated by PNWR.
- (h) The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Trackage 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 Agreement

Section 10. ARBITRATION

- (a) 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, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Party"), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Party in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Party shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Party, if any, shall select one for the Noticed Party, so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

- (b) Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all 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 they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. 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 in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the 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.
- (c) Each party to the arbitration shall pay the 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.
- (d) The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 11. GOVERNMENTAL APPROVAL or ABANDONMENT.

- (a) PNWR 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 this Agreement and the operations to be carried on by PNWR thereunder. PTRR, 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. PNWR and PTRR agree to cooperate fully to procure all such necessary consent, approval, or authority.
- (b) In the event PTRR shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Trackage, PTRR shall have no obligation hereunder to provide tracks for PNWR's use, and PNWR shall have and shall make no claim of any kind, legal or otherwise, against PTRR for failure to provide such tracks for PNWR's use.

Section 12. OTHER CONSIDERATIONS.

- (a) Nothing in this Agreement shall limit the right of PTRR to admit other companies to the use of the Trackage or any part thereof on such terms and conditions as are satisfactory to PTRR, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement. Such other companies presently or hereafter admitted to the use of the Trackage or any part thereof by PTRR shall be considered PTRR for the purpose of

this Agreement. PNWR shall have no right to admit any person, firm, or corporation to the use of the Trackage.

- (b) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, and assignment by PNWR of any interest or right given it under this Agreement, shall be valid or binding without the prior written consent of PTRR.
- (c) All notices, demands, requested, or submissions which are required or permitted to be given pursuant to this Agreement, shall be given by either party to the other in writing by serving the same upon the following officer of each company:
 - (1) PTRR: Robert F. Stephan, Manager
Portland Terminal Railroad Company
3500 NW Yeon Avenue
Portland, OR 97210
Phone: 503.241.9898, ex. 103
 - (2) PNWR: Bruce Carswell, President & General Manager
Portland & Western Railroad
650 Hawthorne Avenue SE, Suite 220
Salem, OR 97301
Phone: 503.365.7717
- (d) If any covenant or provision of this Agreement not material to the right of PNWR to use the 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 this Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of this Agreement.
- (e) 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 this Agreement. However, in the event the parties agree that PTRR should retain employees or provide additional employees for the sole benefit of PNWR, the parties shall enter into a separate written agreement providing that PNWR 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 PTRR and which would not have been incurred had such retention or provision of employees for the sole benefit of PNWR not been required.

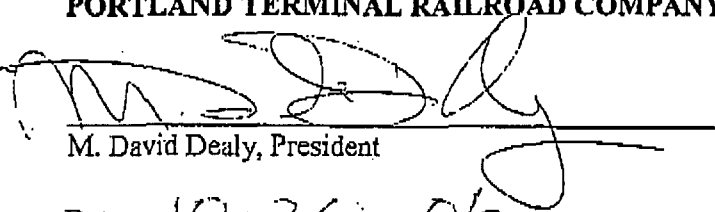
Section 14. TERM AND TERMINATION.

- (a) This Agreement shall become effective October 30, 2006, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to PTRR, and shall terminate on December 30, 2006.

(b) Upon termination of this Agreement, PNWR shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by PNWR to operate over the Trackage to which such termination applied, and as to such part, PNWR shall forever release and discharge PTRR of and from any and all manner of obligations, claims, demands, causes of action, or suits which PNWR might have, or which might subsequently accrue to PNWR growing out of or in any manner connected with, directly or indirectly, the contractual obligations of PTRR under this Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of PNWR shall not in any case affect any of the rights and obligations of either PTRR or PNWR which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination.

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

PORTLAND TERMINAL RAILROAD COMPANY


M. David Dealy, President

Date: 10-20-06

PORTLAND & WESTERN RAILROAD

Bruce Carswell, President & General Manager

Date: _____

Attachment: Exhibit "A"

(b) Upon termination of this Agreement, PNWR shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by PNWR to operate over the Trackage to which such termination applied, and as to such part, PNWR shall forever release and discharge PTRR of and from any and all manner of obligations, claims, demands, causes of action, or suits which PNWR might have, or which might subsequently accrue to PNWR growing out of or in any manner connected with, directly or indirectly, the contractual obligations of PTRR under this Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of PNWR shall not in any case affect any of the rights and obligations of either PTRR or PNWR which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination.

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

PORTLAND TERMINAL RAILROAD COMPANY

M. David Dealy, President

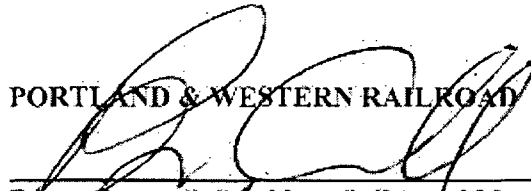
Date: _____

~~Attest:~~

~~_____
Robert F. Stephan, Secretary~~

~~Date: _____~~

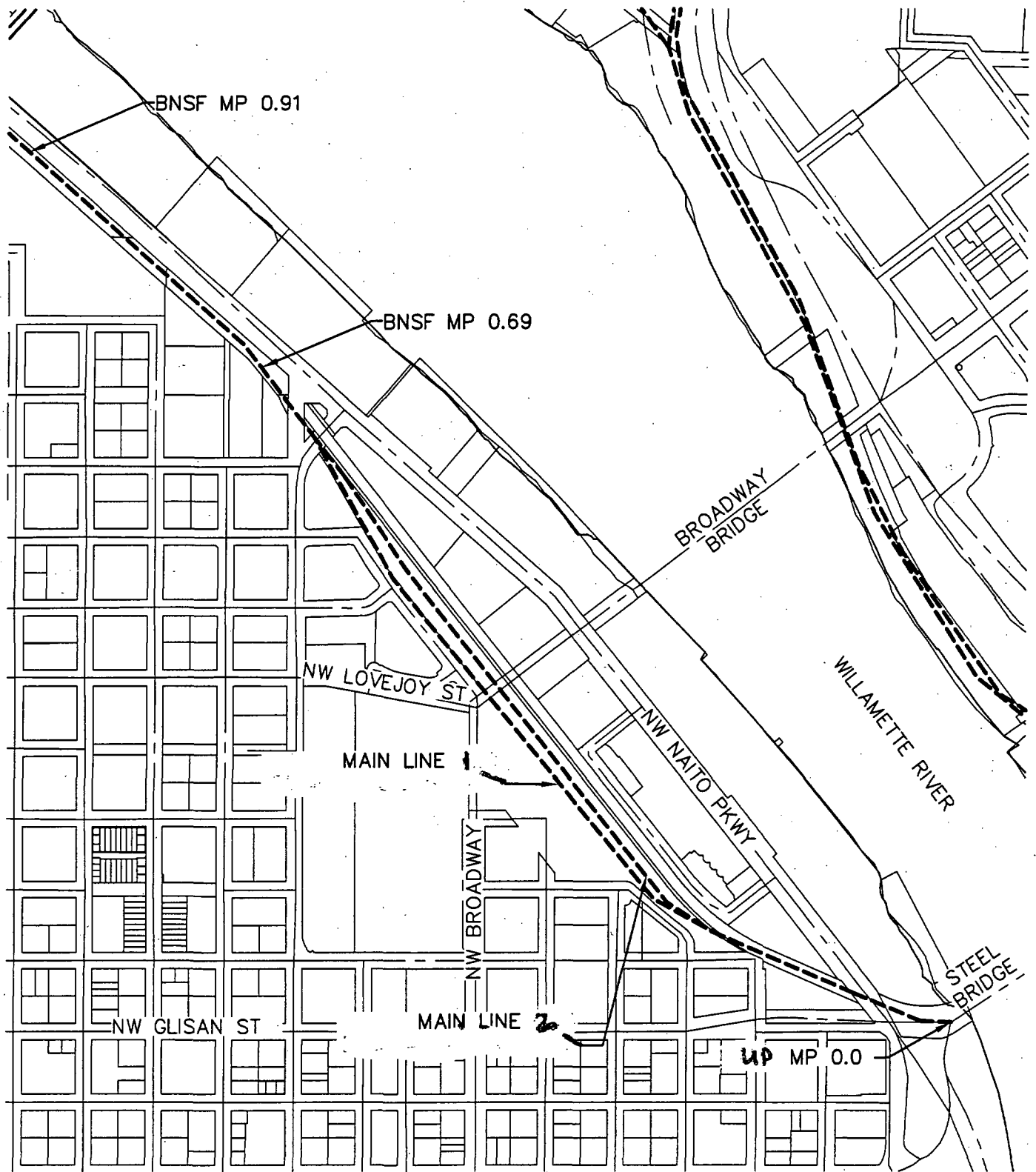
PORTLAND & WESTERN RAILROAD



Bruce Carswell, President & General Manager

Date: 10/19/2006

Attachment: Exhibit "A"



**DAVID EVANS
AND ASSOCIATES INC.**

2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.6663

PROJECT

EXHIBIT MAP

SHEET

TITLE

PORTLAND TERMINAL RAILROAD

DWG. REF.

PdxTerRr

PROJECT

SCALE

1" = 500'

AMENDMENT NO.

0.0

DRAWN BY

TAS

DESIGN BY

JSW

APPROVED BY

DATE

01-01-2001

1

CAPTION SUMMARY

EXHIBIT C

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 34946

**PORTLAND & WESTERN RAILROAD, INC.
- TEMPORARY TRACKAGE RIGHTS EXEMPTION -
PORTLAND TERMINAL RAILROAD COMPANY**

Portland Terminal Railroad Company has agreed to grant overhead temporary trackage rights to Portland & Western Railroad, Inc. ("PNWR") over the approximately 1.5 mile line of railroad between BNSF Railway Company Fallbridge Subdivision M.P. 0.91 and a connection with Union Pacific Railroad Company Portland Subdivision M.P. 0.0, all located near Union Station in Portland, Oregon, as shown on the map attached as Exhibit A (the "Joint Trackage"). The temporary trackage rights will be effective on October 30, 2006. The authorization will expire on December 30, 2006.

The Notice is filed under 49 C.F.R. §1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Vernon A. Williams, Secretary