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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34951

PORTLAND & WESTERN RAILROAD, INC.

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- TRACKAGE RIGHTS EXEMPTION -

NOV 3 2006

BNSF RAILWAY COMPANY

SURFACE
TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FILED

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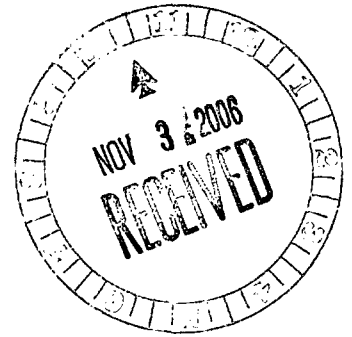
TRACKAGE RIGHTS

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Attorney for
Portland & Western Railroad, Inc.

DATED: November 2, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34951



**PORTLAND & WESTERN RAILROAD, INC. AND
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY 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)(7) to exempt from the provisions of 49 U.S.C. §11323 the grant of trackage rights by BNSF Railway Company ("BNSF") to PNWR. The trackage rights are based on a written agreement and are not being filed or sought in a responsive application.

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) BNSF is granting trackage rights to PNWR over approximately 13.31 miles of rail lines between M.P. 10.0 in Vancouver, WA, on the BNSF Fallbridge Subdivision, and M.P. 0.69 (Main Track 1) and M.P. 0.91 (Main Track 2) in Portland, OR, and between M.P. 132.5 and M.P. 136.5 in Vancouver, WA, on the BNSF Seattle Subdivision (together, the "Joint Trackage"). The Joint Trackage is located in the States of Oregon and Washington.

The name, business address and telephone number of Applicant (tenant railroad) are: Portland & Western Railroad, Inc., 650 Hawthorne Ave., SE, Suite 220, Salem, OR 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, 1600 John F. Kennedy Blvd., Suite 200, Philadelphia, PA 19103-2808; (215) 563-9400.

(a)(1)(ii) PNWR intends to commence operations under the trackage rights on or after November 13, 2006.

(a)(1)(iii) The trackage rights will allow PNWR and BNSF to shift their interchange from Salem or Albany, OR to Vancouver, WA.¹

(a)(5) PNWR currently operates in Oregon. The Joint Trackage is located in Oregon and Washington.

(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 redacted "public" copy of the written trackage rights agreement is attached hereto as Exhibit B. The trackage rights agreement that is being filed with the Board does not include the attachments to Exhibit B since those documents are already part of the public record in *Portland & Western Railroad, Inc. – Trackage Rights Exemption – Union Pacific Railroad*

¹ To accomplish this shift, PNWR will also use trackage rights between Labish, OR and Portland, OR. See *Portland & Western Railroad, Inc. – Trackage Rights Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 34883 (served July 19, 2006).

Company, STB Finance Docket No. 34883. PNWR is simultaneously filing a motion for a protective order, together with a "confidential" version of the agreement under seal.

Labor Protection

Applicants understand that any employees adversely affected by the 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).

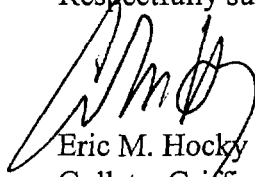
Environmental and Historic Reports

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)(i).

Respectfully submitted,



Eric M. Hocky
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Attorneys for
Portland & Western Railroad, Inc.

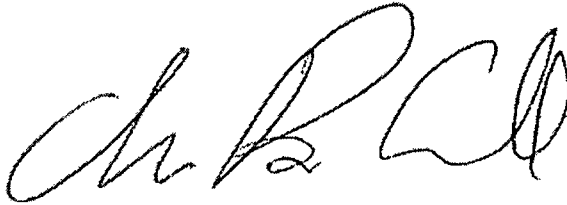
DATED: November 2, 2006

VERIFICATION

I, Allan 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 November 2, 2006.

A handwritten signature in dark ink, appearing to read 'A. B. Carswell', written over a horizontal line.

Allan Bruce Carswell

MAP

EXHIBIT A

PNWR over UP
Willamette River Bridge to
East Portland
UP MP 0.0 and UP MP 0.2 (770.2)

PNWR over PTR
BNSF MP 0.69 & 0.91
and PTR MP 0.0

PNWR over UP *
E. Portland UP MP 770.2
to Labish UP MP 720.9

- Note: Steel Bridge is double d
TCMTD on upper level,
lower level.

TCMTD West Line opens Fall 1998

*Subject of F.D. 34883

TRACKAGE RIGHTS AGREEMENT

EXHIBIT B

**FIRST AMENDMENT
TO AGREEMENT FOR LEASE AND TRANSFER OF
CERTAIN ASSETS, RIGHTS, AND OBLIGATIONS OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
THE PORTLAND & WESTERN RAILROAD, INC**

This First Amendment is made as of the 30th day of OCTOBER, 2006, (the "Execution Date") by and between BNSF Railway Company ("BNSF") (formerly known as The Burlington Northern and Santa Fe Railway Company), and The Portland & Western Railroad, Inc. ("PNWR").

WHEREAS, BNSF and PNWR are parties to an Agreement for Lease and Transfer of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company to The Portland & Western Railroad, Inc, dated October 22, 2002 (the "Original Agreement"); and

WHEREAS, BNSF and PNWR desire to change the location where interchange occurs;
and

WHEREAS, BNSF and PNWR desire to amend the Original Agreement as set forth below.

NOW, THEREFORE, in consideration of the premises, covenants, and considerations set forth herein, the parties hereto agree as follows.

**Article I
Change of Interchange
From Salem or Albany, OR to Vancouver, WA**

(a) As of the Effective Date of this First Amendment, or as soon as practicable thereafter, PNWR shall interchange trains with BNSF at Vancouver, WA, or any other station or location along the Joint Trackage, as hereinafter defined, and as may be designated from time to time by BNSF local operating officers which heretofore were interchanged at Salem or Albany, OR. In order to effectuate the interchange at Vancouver:

1. BNSF hereby grants to PNWR nonexclusive overhead trackage rights between Vancouver, WA, MP 10.0, on the BNSF Fallbridge Subdivision, and MP 0.69 (Main Track 1) and MP 0.91 (Main Track 2) at Portland, OR, and between MP 132.5 and MP 136.5 at Vancouver, WA, on the BNSF Seattle Subdivision ("Joint Trackage");
2. By Resolution of the Portland Terminal Railroad Company ("PTR") Board, dated June 1, 2006, PTR authorized BNSF to sublet its rights to operate over PTR (in addition to BNSF and UP) trackage between MP 0.69 (Main Track 1) and MP 0.91 (Main Track 2) at Portland, OR, and end of PTR ownership at MP 0.0 at Portland, OR to facilitate PNWR's interchange operations ("PTR Trackage");
3. By Second Supplemental Agreement dated May 30, 2006, to BNSF and UP's original agreement dated 1920, UP agreed to allow BNSF to sublet the use of BNSF's trackage rights to PNWR to operate (in addition to BNSF and UP) over UP

owned trackage between Portland, OR, MP 0.0 and East Portland, OR, MP 0.3 (equivalent of MP 770.3 on UP's Brooklyn Subdivision) ("Willamette River Steel Bridge Trackage"); and

4. By First Amendment dated May 30, 2006 to BNSF and UP's original agreement dated 1994, UP agreed to allow BNSF to sublet to PNWR BNSF's right to operate over UP owned trackage on UP's Brooklyn Subdivision between East Portland, OR, MP 770.3 and Labish, OR, MP 720.9 ("East Portland-Labish Trackage"). During the term of this First Amendment, BNSF retains the right to operate over a portion of the East Portland-Labish Trackage between East Portland, OR and Willsburg Jet., OR for the purpose of effecting the interchange of unit trains between BNSF and PNWR as may be mutually agreed upon between BNSF and PNWR local operating officers from time to time.

(b) A map showing the track segments noted above is attached as Exhibit A to this Agreement. Copies of the agreements noted above are attached as Exhibit B to this Agreement.

(c) The rights of operation over the Joint Trackage, and the sublet of rights to operate over the PTR Trackage, Willamette River Steel Bridge Trackage, and East Portland-Labish Trackage are granted under this First Amendment for the sole and exclusive purpose of facilitating interchange between PNWR and BNSF at Vancouver. The use of the operating rights granted to PNWR are granted with the intent that they will be used collectively to facilitate interchange, and that each segment of operating rights may not be used by PNWR individually or for any purposes not associated with the performance of interchange of traffic at Vancouver pursuant to the Original Agreement as amended herein.

(d) Subject to the terms of this First Amendment, for so long as PNWR is not in default of this First Amendment, BNSF nonexclusively sublets to PNWR its rights of operation of the PTR Trackage, the Willamette River Steel Bridge Trackage, and the East Portland-Labish Trackage, all as described in Article I (a) above, it being expressly understood that BNSF shall continue to retain operating rights in addition to and along with PNWR along the PTR Trackage, the Willamette River Steel Bridge Trackage, and between East Portland and Willsburg Jet. In the exercise of operating rights over such trackage, PNWR shall assume all obligations, whether contractual or otherwise, related to the operation of said trackage. All terms and conditions of the relevant operating agreements related to the PTR Trackage, the Willamette River Steel Bridge Trackage, and the East Portland-Labish Trackage are attached hereto and collectively marked as Exhibit B and made a part hereof, and PNWR agrees to assume and bear and indemnify, defend, and hold harmless BNSF from and against any and all liabilities or indemnities (including, without limitation, liability for breach of the terms of said agreements, and liabilities for personal injury, death, or property damage) arising under said agreements as a result of PNWR's exercise of operating rights over such trackage.

Article II Operations on Joint Trackage

PNWR's use of the Joint Trackage shall be for the sole and exclusive purpose of moving trains and equipment over the Joint Trackage that prior to this First Amendment was interchanged at Salem or Albany, OR pursuant to the Original Agreement.

The General Conditions covering the grant of the overhead trackage rights are set forth in Exhibit C and all terms of Exhibit C are incorporated herein. If any conflict between Exhibit C

and the main body of this Agreement shall arise, the provisions of the main body of this Agreement shall govern. Subject to the terms and conditions contained herein, PNWR shall have the nonexclusive right to use the Joint Trackage for the limited operation of PNWR's trains, locomotives, cabooses and cars with PNWR's own employees over the Joint Trackage in common with BNSF, it being understood and agreed that PNWR shall not have the right to:

1. Set out, pick up or store cars, or switch industries upon the Joint Trackage, or any part thereof, except as necessary for handling locomotives, cabooses or cars bad ordered enroute; or
2. Serve any industry, team or house track now existing or hereafter located along or which may become connected to the Joint Trackage; or
3. Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage or any portion thereof, the trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of PNWR; provided, however, that the foregoing shall not prevent PNWR, pursuant to a run-through agreement with any railroad from using the locomotives of another railroad as its own under this agreement; or
4. Connect with itself or any other railroad except to the extent expressly authorized pursuant to this First Amendment; or
5. Build-in to or build out from any point on or along the Joint Trackage; or
6. Interchange with any other railroad or perform haulage services for any other railroad on or along the Joint Trackage.

Article III Effective Date and Term

This First Amendment shall become effective as of the later of the Execution Date or the date all required governmental approvals required to effect the terms hereof are obtained and shall continue through May 30, 2016 unless otherwise sooner terminated as hereinafter provided. In the event any one or all of the agreements between BNSF, UP and/or PTR (Resolution of the Portland Terminal Company Board for the use of the PTR Trackage, Second Supplemental Agreement for the use of the Willamette River Steel Bridge Trackage or First Amendment for the use of the East Portland-Labish Trackage) as described and defined in Article I (a) 2., 3., and 4. above are terminated, this First Amendment shall also terminate. In the event the Original Agreement terminates for whatever reason prior to May 30, 2016, the terms of this First Amendment shall terminate.

Article IV
Supplemental Division of Revenue

(a) BNSF and PNWR agree that for the Initial Term or Extended Term, as the case may be, BNSF shall pay PNWR in addition to any divisions of revenue paid pursuant to the Original Agreement the following supplemental division of revenue for the BNSF traffic handled by PNWR to the new Interchange location:

1.	
2.	
3.	
4.	
5.	

REDACTED

(b) Commencing on January 1, 2007, and each January 1 thereafter for the Initial Term or Extended Term, as the case may be, the supplemental divisions set forth in subsection (a) above shall be adjusted according to Section 12.B. of the Original Agreement. Billing and payment of the divisions of revenue set forth above shall be made in the same manner as set forth in Section 3.E. of the Original Agreement.

(c) BNSF and PNWR agree that for the Initial Term or Extended Term, as the case may be, BNSF and PNWR shall apportion any car mile fees assessed by the UP and payable on interchange trains operated by PNWR on the Joint Trackage as follows:

1. As reimbursement of trackage rights fees assessed by the UP,:

--

REDACTED

2. PNWR shall pay these fees to the BNSF on a quarterly basis, in arrears, based on its own mileage records. BNSF shall have the right to audit PNWR's mileage records at any time.

(d) [REDACTED]

✓ REDACTED

Article V Amendments to Interchange Provisions

Section 9.A. Interchange of the Original Agreement shall be deleted in its entirety and replaced with the following:

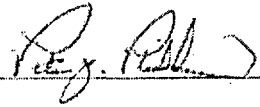
9. Interchange

A. Interchange Agreement. Lessee and Lessor shall interchange rail freight cars and equipment to and from each other pursuant to the terms of an Interchange Agreement to be executed in substantially the form as attached Exhibit B at BNSF's Vancouver, WA rail yard for cars destined to or originating from points on the leased line. Lessor and Lessee shall also interchange certain unit train traffic between themselves at Willsburg Jet., OR as may be mutually agreed upon from time to time between Lessor's and Lessee's local operating officers. Lessor shall have the right to change the location at which such interchange occurs if Lessor determines that such change is necessary for operational purposes. Interchange between Lessee and any other party other than Lessor, AERC, or CORP (including CORP traffic routed via UP at Eugene) will not be permitted at any location along the Leased Premises. The trackage upon which such interchange takes place shall be referenced hereinafter as "Interchange Track". Lessee will block traffic for interchange with Lessor in accordance with written instructions to be furnished by Lessor.

Nothing in this First Amendment shall alter the rights or obligations of the parties except as specifically set forth above, and all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement on the date first written above.

BNSF RAILWAY COMPANY

By: 

Its: Vice President, Network Development

Date: 10/30/06

THE PORTLAND & WESTERN RAILROAD, INC

By: 

Its: President AGM

Date: 10/27/2006

Exhibit A

**Map of the Track Segments Used to Effectuate
Interchange at Vancouver, WA**

#12

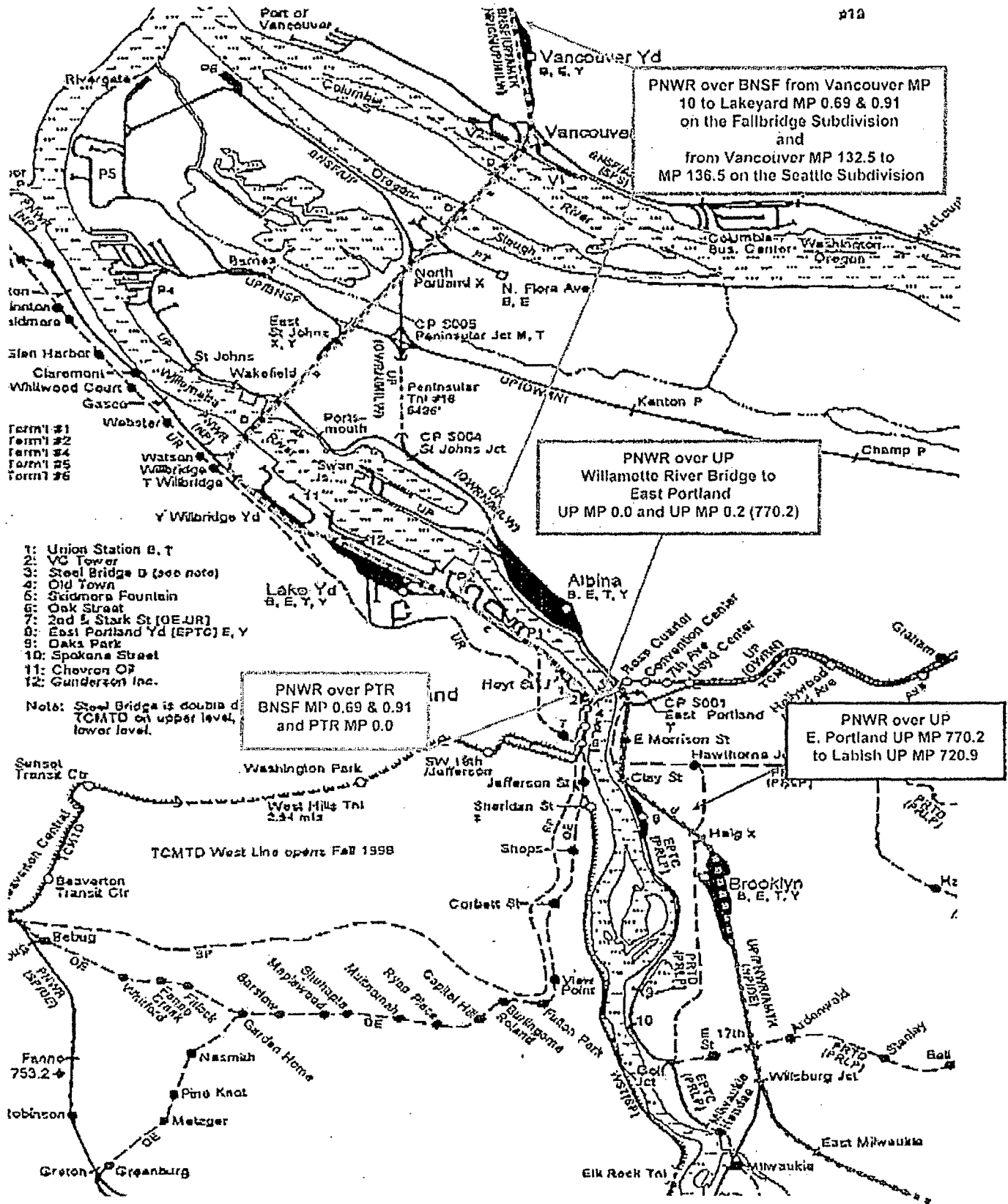


Exhibit B

Copies of Agreements Described in Article I(a)

Portland Terminal Railway Company

Board Resolution, dated June 1, 2006
Basic Operating Agreement, dated December 31, 1932

Willamette River Bridge Agreement

Second Supplemental Agreement, dated May 30, 2006
Willamette River Bridge Agreement, dated March 1, 1920

Oregon Trackage Rights Agreement

First Amendment, dated May 30, 2006
Oregon Trackage Rights Agreement, dated May 26, 1994
General Conditions

Exhibit C

**General Conditions
Overhead Trackage Rights over the Joint Trackage**

**EXHIBIT C
GENERAL CONDITIONS TO
TRACKAGE RIGHTS AGREEMENT
PORTLAND TO VANCOUVER**

Section 1. DEFINITIONS

1.1 "Original Agreement" shall mean that certain Trackage Rights Agreement dated _____, 2006, to which this Exhibit C is appended. Except where expressly provided otherwise, the term "Original Agreement" shall include this Exhibit "C."

1.2 "Owner" shall mean BNSF Railway Company, its successors and assigns. The designated nomenclature of "Owner" is a term of convenience used by the parties hereto and shall not signify or imply actual ownership status of any particular piece of property or trackage.

1.3 "User" shall mean the party reserving the right to use the Joint Trackage.

1.4 "Joint Trackage" shall mean trackage described in this 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; provided, however, that each platform in an articulated rail car of two (2) or more platforms 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 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 this 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 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own or maintain 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. User reserves a license over that portion of Owner's right of way 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 be responsible for 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, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

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. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint 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 Owner has heretofore admitted or may hereafter admit to use of 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 this 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 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 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.

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

2.8 Owner may from time to time substitute any track or tracks for those delineated in this agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, this agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 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.

2.10 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 be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or any applicable charges accruing on Equipment in User's account on the Joint 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 Joint Trackage.

2.12 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.

2.13 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 and 2.12 of these General Conditions.

2.14 User shall insure that all its employees engaged in or connected with the operations of User on or along the Joint Trackage shall, at all times, be in compliance with the Code of Federal Regulations 49, Part 240 - Qualifications and Certification of Locomotive Engineers as may be amended from time to time and shall 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.

2.15 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.

2.16 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 Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) 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.

2.17 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 C.

2.18 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.

2.19 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 DEFAULT

3.1 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, 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 this 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 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; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) 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 So much of the unprivileged books, accounts, and records of each party hereto as are reasonably related to the subject matter of this agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in Accordance with 49 U.S.C. Section 11161 et seq. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-3, et seq.

3.4 Should any amount become payable by Owner to User under this agreement, the provisions of Section 3.1 through 3.3 of this Exhibit C 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 this agreement, or fail in any other respect to perform as required under this agreement, and such 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, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting therefrom.

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 to the extent they result 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 for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; 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 Owner,

approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint 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. 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 of User 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 C. The total cost Environmental Claims not related to a Derailment shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 4.2 of this Exhibit C.

Section 5. LIABILITY AND INSURANCE

5.1 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 Joint Trackage.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property (as hereinafter defined) or in making Changes in and/or Additions thereto for the benefit of all of the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in and/or Additions thereto for the benefit of all the parties

hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

"Sole Employees" and "Sole Property" shall mean one or more officers, agents, employees, contractors, or 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 Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property 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. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.2 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 Joint Property 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, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, 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.

Loss or Damage to third parties, Joint Employees, or Joint Property contributed to by the acts or omissions, negligent, or otherwise of Sole Employees and/or by defects in the Sole Property of one or more of the parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by the party whose Sole Employees and/or Sole Property contributed to the same, or equally if more than one party's Sole Employee and/or Sole Property shall have contributed to the same. Loss or Damage to third parties, Joint Employees or Joint Property involving only Joint Employees, Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about shall be apportioned equally among all of the parties.

5.3 It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist or may be constructed. User 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 Owner and will hold Owner harmless from any claim, demand, or cause of action arising out of any vehicular or pedestrian

crossing accident on the Joint Trackage in which the engines, cars, or train of User only is involved.

5.4 For the purpose of this Section 5, Equipment of any third party railroad company or companies being detoured over the Joint Trackage and all persons other than Joint 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.

Equipment, and other property being handled for or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purpose of this Section 5.

Each party hereto agrees that the acts and decisions of the party hereto performing any management, maintenance, repair, renewal, removal, improvement, operation, or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

5.5 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.

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.

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. 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.

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.

5.6 For so long as User shall exercise rights under this Agreement, User shall, at its sole cost and expense, procure and maintain insurance coverage sufficient to cover the liability

- (a) Required policies under this Agreement shall contain no other endorsements limiting coverage as respects obligations under this Agreement.
- (b) Annually User 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) User agrees to waive its right of recovery against Owner for all claims and suits against Owner. In addition, its insurers, through policy endorsement, waive their right of subrogation against Owner for all claims and suits. 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, and such requirement and all necessary provisions of this Agreement to administer same shall, where applicable, survive termination of this Agreement until lapse of the third year of such coverage.
- (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 reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry. Further, each of the insurance limits set forth in this Section (excluding those subject to statutory liability requirements) shall be adjusted effective as of an insurance renewal date by a percentage change in the consumer price index for transportation service costs commencing on the date of this Agreement or from the immediately preceding adjustment date, as applicable, rounded to the nearest \$1,000,000, whenever the percentage change in such consumer price index would result in an increase of the then required insurance amount; provided, however, in no event shall the required insurance coverage limits fall below those limits set forth in this Section.
- (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) 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 immediately suspend User's operations over the Joint Trackage until the Material Breach is cured, or terminate this Agreement immediately (or at any time after suspension of operating rights hereunder and failure to cure), without prejudice to Owner's

ability to pursue any other remedies available at law or in equity. In the event Owner elects to suspend User's operating rights and/or terminate the terms of this Agreement for breach of the terms of this Section, User shall indemnify Owner for all costs associated with Owner's effectuation of such suspension and/or termination, including, without limitation, all legal fees expended by Owner to effectuate such suspension and/or termination. 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 User shall bear all costs associated for such coverage and any costs incurred by Owner in obtaining same.

- (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", "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, 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 Parties), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any 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 Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the American Arbitration Association from the CPR List of Distinguished Neutrals or other suitable pool of neutral arbitrators as may be mutually agreed in writing by the parties 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 in the manner heretofore stated.

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 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.

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.

6.2 The non-privileged books and papers of all parties, as far as they reasonably relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s), subject to implementation of usual and customary confidentiality measures afforded business confidential documents or information in commercial arbitration proceedings.

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 this 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 User may terminate this agreement with respect to all or part of the Joint Trackage at any time on thirty (30) days' written notice to Owner. Upon termination of this 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 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 this 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 termination or partial termination. Upon any partial termination of this 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.

7.4 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 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 This agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under this agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

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

8.3 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 addresses in Section 10 of the Trackage Rights Agreement.

8.5 If any covenant or provision of this 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 this agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will affect the purposes and intent of this agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "J-2" and the main body of this agreement, the provisions of the main body of this agreement shall prevail.

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

[End of General Conditions]