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SIDNEY L. STRICKLAND, JR.
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

November 29, 2006

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

**Re: Surface Transportation Board Finance Docket No. 34970,
BNSF Railway Company —Trackage Rights Exemption—
Stillwater Central Railroad**

Dear Secretary Williams,

Enclosed for filing in the referenced docket are the original and ten copies of a Verified Notice of Exemption, and a check for \$1,000.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

FEE RECEIVED
NOV 29 2006

**SURFACE
TRANSPORTATION BOARD**

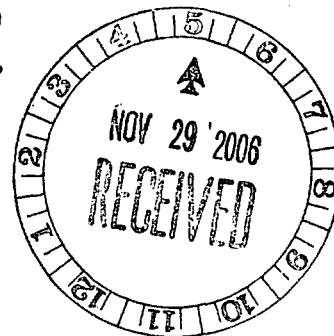
Sidney L. Strickland, Jr.
Sidney L. Strickland, Jr.

SLS/cac
Encls.

cc: Mr. John Sims
Mr. Alan Roach

FILED
NOV 29 2006
**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
NOV 29 2006
Part of
Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34970

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
STILLWATER CENTRAL RAILROAD

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

NOV 29 2006

Part of
Public Record

Sidney L. Strickland, Jr.
Elizabeth E. Waite
Sidney Strickland and Associates, PLLC
3050 K Street N.W.
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(202) 338-1325
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ATTORNEYS FOR STILLWATER CENTRAL RAILROAD

Dated: November 29, 2006

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34970

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
STILLWATER CENTRAL RAILROAD

VERIFIED NOTICE OF EXEMPTION

1. Stillwater Central Railroad (“SLWC”) files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7). Under this notice, SLWC will obtain overhead trackage rights from BNSF Railway Company (“BNSF”) between Tulsa, Oklahoma, Milepost 423.06, and Sapulpa, Oklahoma, Milepost 438.90 a distance of approximately 15.84 miles (referred to herein as “Joint Trackage”). The overhead trackage rights are for the sole purpose of performing interchange service between BNSF and SLWC.

The acquisition of these overhead trackage rights is based on a written agreement. The trackage rights are not sought as a responsive application in a rail consolidation proceeding.

2. The following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii).

BNSF has granted overhead trackage rights to SLWC between Milepost 423.06, and Milepost 438.90 a distance of approximately 15.84 miles. Subject to approval of the Board, the overhead trackage rights will terminate at 11:59 p.m. Central Time on December 31, 2021. SLWC will operate its own trains with its own crews over the Joint Trackage. The carriers involved in this transaction and their business addresses are as follows:

Stillwater Central Railroad
315 West 3rd Street
Pittsburg, KS 66762

BNSF Railway Company
2600 Lou Menk Drive
P. O. Box 961034
Fort Worth, TX 76161

Questions regarding this exemption should be sent to Sidney L. Strickland Jr., Sidney Strickland and Associates, PLLC, 3050 K Street N.W., Suite 101, Washington DC 20007. The telephone number is (202) 338-1325.

Consummation of the transaction will occur on the effective date of Surface Transportation Board ("STB") approval of this transaction. The overhead trackage rights are for the sole purpose of performing interchange service between BNSF and SLWC. The overhead trackage rights will terminate at 11:59 p.m. Central Time on December 31, 2021.

Section 1180.6(a)(5).

The trackage involved in the overhead trackage rights agreement is located in the State of Oklahoma.

Section 1180.6(a)(6).

The required map is attached hereto as Exhibit No. 1.

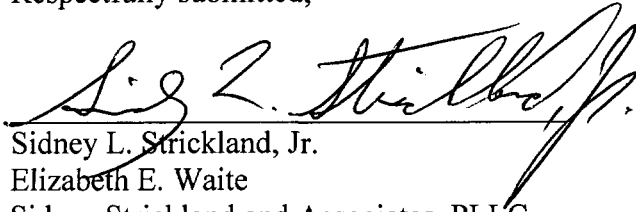
Section 1180.6(a)(7)(ii).

A copy of the overhead trackage rights agreement covering this transaction is attached hereto as Exhibit No. 2.

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3), respectively.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sidney L. Strickland, Jr.", written over a horizontal line.

Sidney L. Strickland, Jr.

Elizabeth E. Waite

Sidney Strickland and Associates, PLLC

3050 K Street N.W.

Suite 101

Washington DC 20007

(202) 338-1325

(202) 295-3854 FAX

ATTORNEYS FOR STILLWATER CENTRAL RAILROAD

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34970

BNSF RAILWAY COMPANY —TRACKAGE RIGHTS EXEMPTION—
STILLWATER CENTRAL RAILROAD

BNSF Railway Company (“BNSF”) has granted overhead trackage rights to Stillwater Central Railroad (“SLWC”). Under this notice, SLWC will obtain overhead trackage rights from BNSF Railway Company (“BNSF”) between Tulsa, Oklahoma, Milepost 423.06, and Sapulpa, Oklahoma, Milepost 438.90 a distance of approximately 15.84 miles (referred to herein as “Joint Trackage”).

The overhead trackage rights are for the sole purpose of performing interchange service between BNSF and SLWC. This transaction will be effective on the effective date of Surface Transportation Board (“STB”) approval of this transaction. The overhead trackage rights will terminate at 11:59 p.m. Central Time on December 31, 2021.

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

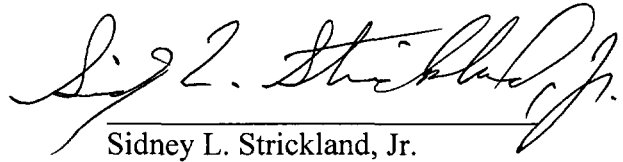
Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

THE DISTRICT OF COLUMBIA, §

Sidney L. Strickland, Jr., being duly sworn, deposes and says that he has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of his knowledge and belief.



Sidney L. Strickland, Jr.

Subscribed and sworn to before me this 29th day of November, 2006.

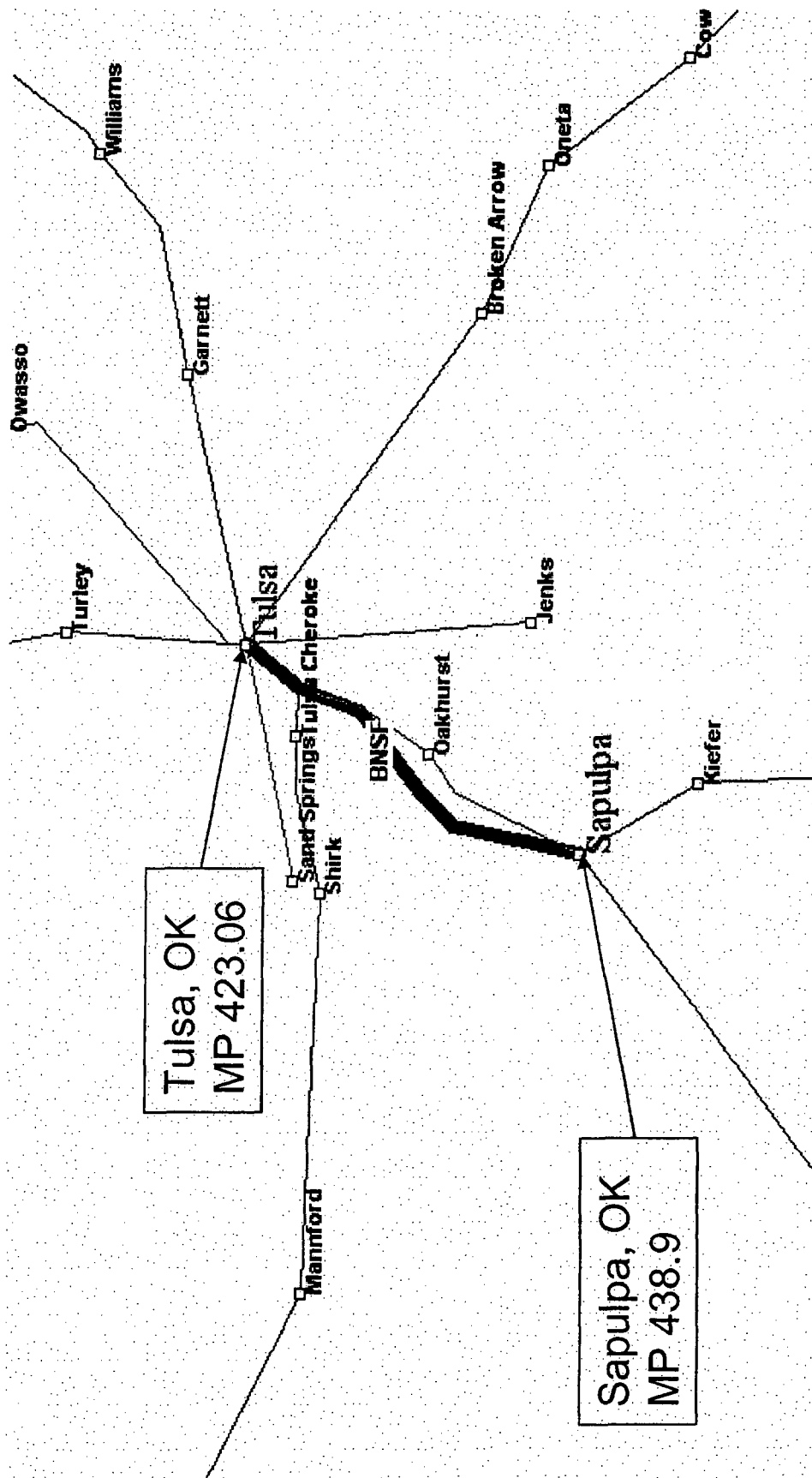


Notary Public WENDY HUBER

My Commission expires:

My Commission Expires
August 14, 2008

Exhibit B-1



Contract # _____ EXHIBIT "B" of Contract _____

**OVERHEAD TRACKAGE RIGHTS AGREEMENT
BETWEEN BNSF RAILWAY COMPANY and
STILLWATER CENTRAL RAILROAD
TULSA and SAPULPA, OKLAHOMA**

THIS AGREEMENT, made and entered into this **30th day of December, 2006**, (the "Execution Date"), by and between **BNSF RAILWAY COMPANY**, formerly known as The Burlington Northern and Santa Fe Railway Company, a Delaware corporation (hereinafter referred to as "BNSF" or "Owner") and **STILLWATER CENTRAL RAILROAD**, a Kansas Corporation, (hereinafter referred to as "SLWC" or "User"); and

WITNESSETH:

WHEREAS, BNSF owns a line of railroad which extends between Tulsa, Oklahoma , Milepost 423.06 and Sapulpa, Oklahoma, Milepost 438.9, a distance of approximately 15.84 miles, as illustrated on the print marked "Exhibit B-1", and referred to hereinafter as the "Joint Trackage"; and

WHEREAS, SLWC desires to use the Joint Trackage between Tulsa, OK and Sapulpa, OK; and

WHEREAS, BNSF is willing to allow SLWC limited use of the Joint Trackage for the sole purpose of performing interchange service between BNSF and SLWC; and

WHEREAS, BNSF and SLWC wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

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

Section 1. General Conditions; Conflicts between Provisions:

The General Conditions set forth in Exhibit B-2 attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

Section 2. SLWC's Rights:

(a) Subject to the terms and conditions contained herein, BNSF grants to SLWC the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in SLWC's account over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered BNSF for the purposes of this Agreement, it being understood and agreed that SLWC shall not have the right to:

- (i) Switch industries or transload upon the Joint Trackage; or
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.12, 2.13 and 2.14 of Exhibit B-2; or
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (iv) 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 Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of SLWC; or
- (v) Connect with itself at any location along the Joint Trackage except as expressly provided otherwise herein; or

- (vi) Connect with itself or any other railroad at any location along the Joint Trackage except to the extent expressly provided herein; or
- (vii) Build-in to or build out from any point on or along the Joint Trackage; or
- (viii) Provide any passenger service; or
- (ix) Interchange with any other railroad other than BNSF or perform haulage services for any other railroad on or along the Joint Trackage; or
- (x) Use these rights except for the accommodation of bridge traffic moved between SLWC and BNSF pursuant to a written and executory handling carrier agreement between BNSF and SLWC.

(b) The rights granted in Section 2 (a), above, shall be for freight rail traffic, carload and intermodal, of all commodities. Trains will be limited to length, horsepower per trailing ton, gross weight on the rail, and any other restrictions or requirements then in effect that govern BNSF operations on the Joint Trackage.

(c) SLWC agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ("SLWC's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage.

Section 3. GTM Rates:

(a) In addition to any other payment made by SWLC under this Agreement for the use of the Joint Trackage in the operation of its Equipment there along and there over, SWLC shall remit to BNSF \$0.00230 (2.3 mills) per Gross Ton Mile monthly, which sums per GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, operating expenses, interest rental, depreciation and taxes.

(b) The rate cited in Section 3(a) shall not increase due to BNSF raising the allowable Gross Weight on Rail on the Joint Trackage.

(c) The GTM Rates set forth in Section 3 (a) of this Agreement shall be subject to adjustment annually, commencing as of January 1, 2007, as follows:

The GTM Rates shall be adjusted upward or downward effective January 1 of each year during the term of this Agreement, based on 50% of the increase or decrease between the first quarter of 2007 compared to the first quarter of 2006, in the Rail Cost Adjustment Factor,

unadjusted for productivity, as published by the Surface Transportation Board, or, if it ceases to be published, some similar rail cost index as may be mutually agreed upon between the parties as a reasonable substitute, and thereafter as of each January 1 based on 50% of the increase or decrease in the Rail Cost Adjustment Factor Unadjusted for Productivity in the first quarter of the immediately preceding year compared to the first quarter of the year before that.

For purposes of calculating the GTMs under this Section 3, it is mutually agreed that the distance between Tulsa, OK and Sapulpa, OK shall be deemed to be 15.84 miles and the GTM Rates shall apply for the movement of all cars that SLWC moves between Tulsa, OK and Sapulpa, OK.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such re-negotiation, either party may request binding arbitration under Section 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

Section 4. Additions:

Expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: The cost of Changes in and/or Additions to the Joint Trackage made in the first twelve (12) months after SLWC begins permanent operations on the Joint Trackage shall be shared by BNSF and SLWC based on the projected GTM's of BNSF and SLWC in the first twelve months of usage, adjusted for actual GTM's at the end of the twelve (12)-month period. Any Changes in and/or Additions to the Joint Trackage subsequent to the first twelve (12) months of permanent SLWC operations shall be shared by BNSF and SLWC on the basis that the parties' respective GTMs operated over the Joint Trackage bear to total GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to BNSF for purposes of computing respective GTMs for purposes of this Section 4.

If SLWC terminates this Agreement at any time as provided for in Section 9.1 of the General Conditions, SLWC will not be entitled to any refund of any amount paid by it for Changes in and/or Additions to the Joint Trackage.

Section 5. Effective Date, Term and Termination:

Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), if required, this Agreement shall be effective as of date

STB approval is effective ("Effective Date"), and unless earlier terminated by its terms shall continue in full force for an initial term in effect through 11:59 p.m. Central Time on December 31, 2021, subsequent to SLWC having secured all necessary consent, approval or authority from appropriate governmental agencies for the sanction of this Overhead Trackage Rights Agreement upon terms and conditions consistent with this Agreement. BNSF and SLWC agree to cooperate fully to procure all such necessary consent, approval or authority. Notwithstanding the forgoing. The rights granted herein shall terminate in the event that certain Bridge Handling Carrier Agreement between BNSF and SLWC of given date is terminated for any reason.

Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by 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. User shall promptly secure all necessary consent, approval, or authority from the STB or appropriate governmental agency or agencies to discontinue operating under the terms of the Agreement. Owner may also proceed, at its option, to seek such authority on behalf of User, and User shall support and not oppose such actions of Owner and User shall bear all costs therefor, including without limitation, attorneys' fees, filing fees, and related costs. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 6. Effect of Other Trackage Right Agreement:

The parties acknowledge the existence of a separate Trackage Rights Agreement between BNSF and SLWC, dated July 1st, 2004 governing SLWC's exercise of trackage rights between Tulsa and Sapulpa, OK. Nothing herein is intended to modify or amend the terms of the other Trackage Rights Agreement. The Parties intend that the exercise of the rights granted under this Agreement shall be limited to exercise of rights in order to facilitate bridge movements between BNSF and SLWC pursuant to a written handling carrier agreement of given date. All other trackage rights movements not covered by this Agreement shall continue to be governed by the terms of the other Trackage Right Agreement.

Section 7. Notices:

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

If intended for SLWC:

EVP-Strategic Development
Stillwater Central Railroad
315 West 3rd Street
Pittsburg, KS 66762

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

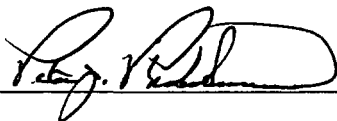
With a copy to:

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

Notice of address change may be given any time pursuant to the provisions of this Section 6.

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

BNSF RAILWAY COMPANY

By: 

Printed: Peter J. Rickenshawen

Title: Vice President Network Development

Date: 11/20/2006

STILLWATER CENTRAL RAILROAD

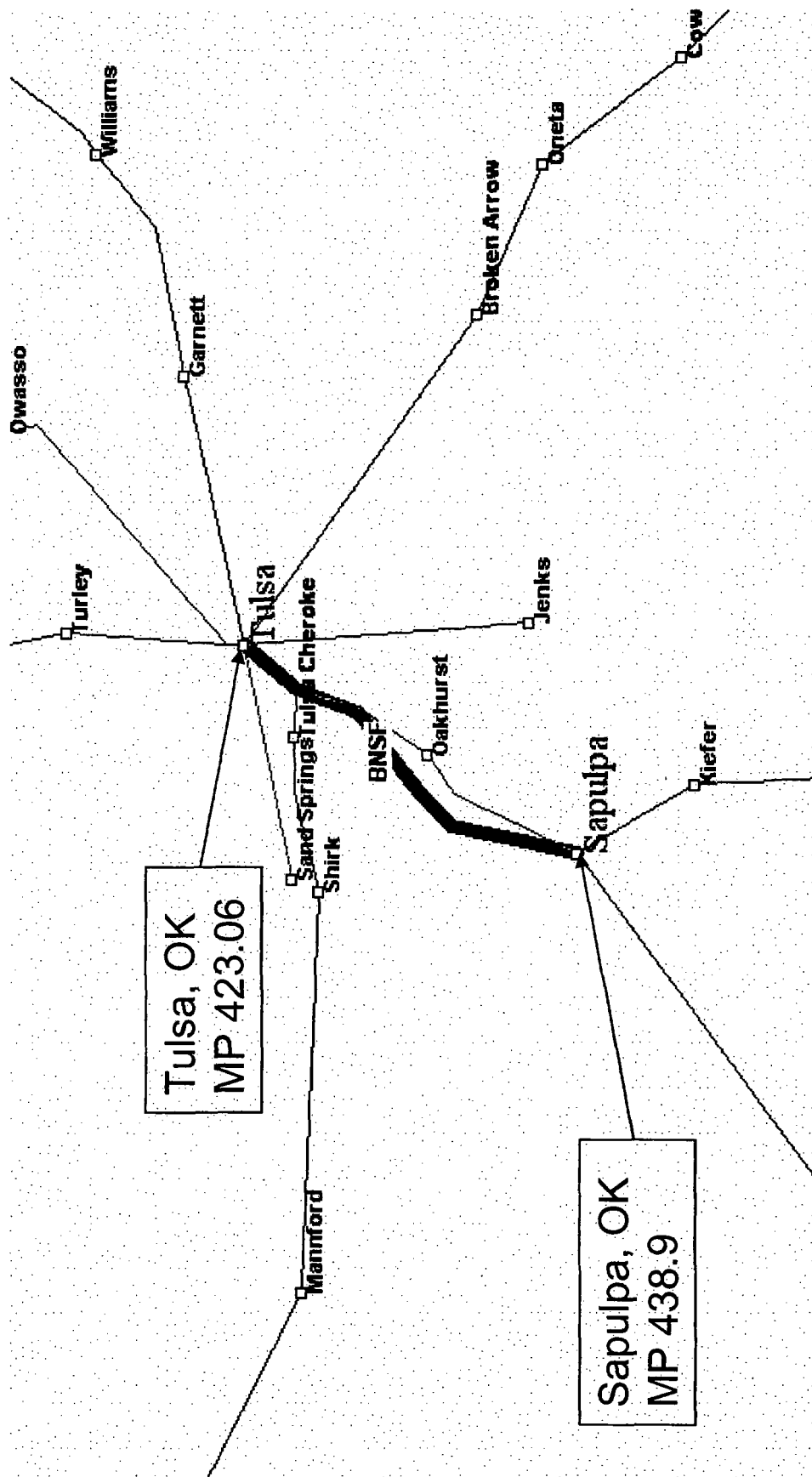
By: 

Printed: A.E. McKechnie

Title: EVP And Chief Commercial Officer

Date: 10/6/2006

Exhibit B-1



Contract # _____ EXHIBIT "B-2" of Contract _____

**GENERAL CONDITIONS TO
OVERHEAD TRACKAGE RIGHTS AGREEMENT
BETWEEN BNSF RAILWAY COMPANY and
STILLWATER CENTRAL RAILROAD
TULSA and SAPULPA, OKLAHOMA**

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated **December 30, 2006**, to which this Exhibit "B-2" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "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.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.8 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Mill" shall mean one-tenth of a cent (\$0.001 US).

1.10 "Owner" shall have the meaning given to it in the Agreement.

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

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

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

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

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

Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

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

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to 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.

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

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

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

2.8 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in 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.

2.9 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.10 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 the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees 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 by 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 arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall

not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.11 If any Equipment of User is bad ordered en-route on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while en-route to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than 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 ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 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; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to re-rail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of re-railing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and

clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

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

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

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the 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 in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

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

to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

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

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

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

Section 4. COMPLIANCE WITH LAWS

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

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

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

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the

Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

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

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

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this

Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" shall mean one or more officers, agents, employees, contractors, while engaged in, en-route to or from, or otherwise on duty incident to performing service solely for the benefit of a single party. Sole Employees shall include, but are not limited to, train crew employees operating trains or other Equipment deemed to be the "Sole Property" of either party. Pilots furnished by Owner to assist in operating trains or Equipment of User shall be considered the Sole Employees of User. All officers, agents, employees, contractors, or Equipment, while engaged in, en-route 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 en-route from performing such repair, re-railing, 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, re-railing, or clearing of a wreck or derailment. Employees operating equipment, railcars (and their lading) and locomotives, owned or controlled by and/or in the account of a third party operating on or over the Joint Trackage under rights or authority granted by another party hereto, by detour or otherwise, shall be deemed to be the Sole Employees of the party admitting such third party's Equipment, railcars and locomotives.
- (c) "Sole Property" shall mean Equipment engaged in, en-route to or from, or otherwise on duty incident to performing service solely for the benefit of a single party. Railcars and their lading, and locomotives, owned or controlled by and/or in the account of or being handled by a party hereto shall be deemed to be the Sole Property of such party. Equipment, railcars (and their lading) and locomotives, owned or controlled by and/or in the account of a third party operating on or over the Joint Trackage under rights or authority granted by another party hereto, by detour or otherwise, shall be deemed to

be the Sole Property of the party admitting such third party's Equipment, railcars and locomotives.

- (d) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties. "Joint Employees" shall not include train crew employees operating trains or other equipment deemed to be the "Sole Property" of either party.
- (e) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;
- (f) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;
- (g) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

- (h) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d), (e) or (g) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (i) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;
- (j) For the purpose of this Section 5, Equipment of foreign lines 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.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns,

from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;
- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage

and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or re-railing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

As between the parties hereto only:

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to fault, negligence or strict liability of either party.
- (b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party) a Joint Employee or an invitee of either party or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Where such Loss or Damage is not caused or contributed to by the Sole Property or Sole Employees of a party (e.g., an incident involving only Joint Employees) or occurs in such a way that it cannot be determined how such Loss or Damage came about, or Loss or Damage not otherwise expressly covered above, shall be shared by the parties equally regardless of the cause of such Loss or Damage. Notwithstanding any provision to the contrary in this Section 5, as between the parties hereto only, Loss or Damage to Joint Property that is 1) wholly attributable to the acts or omissions of a third party and neither the Sole Property nor Sole Employees of either party hereto is involved in the incident giving rise to the Loss or Damage, or 2) occurs in such a way that it cannot be determined how such Loss or Damage came about, shall be shared by the parties based on the proportionate usage of the Joint Trackage as determined by car miles operated in the most recent 12 consecutive months of normal joint operations prior to the month in which such Loss or Damage occurred, or if the month of occurrence cannot be determined, the month in which the Loss or Damage was first discovered, regardless of the cause of such Loss or Damage; provided that User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5, which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault, no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. INSURANCE

USER shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- (a) Railroad liability policy of insurance acceptable to **Railroad** 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,
- seepage and pollution coverage, in the event of railroad accident, derailment or overturn
- contractual liability for the liability assumed in this Agreement
- If the policy is written on a claims made basis the policy shall be endorsed as follows:

If coverage is purchased on a "claims made" basis, User hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually User agrees to provide

evidence of such coverage as required hereunder.

No other endorsements limiting coverage as respects to obligations under this Agreement or work being performed under this Agreement may be included on the policy.

(b) Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation acceptable to **Railroad**
- Additional insured endorsement acceptable to **Railroad**
- Separation of insureds
- The policy shall be primary and non-contributing with respect to any insurance carried by **Railroad**.

(d) All risks property insurance covering all of USER's property including property in the care, custody or control of USER. Coverage shall include the following:

- Issued on a replacement cost basis
- Shall provide that in respect of the interest of **Railroad** the insurance shall not be invalidated by any action or inaction of USER or any other person and shall insure the respective interests of **Railroad** as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by USER or any other person.
- Include a standard loss payable endorsement naming **Railroad** as the loss payee as its interests may appear
- Include a waiver of subrogation in favor of **Railroad**.

Other Requirements:

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.

USER agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. USER further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under USER's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

USER is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by USER in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by USER's insurance will be covered as if USER elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, USER shall furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments.

The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** 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.

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. Not more frequently than once every five years, **Railroad** 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.

If any portion of the operation is to be subcontracted by USER, USER shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming **Railroad** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as USER is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railroad** to terminate this Agreement immediately. Acceptance of a certificate that does

not comply with this section shall not operate as a waiver of USER 's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) 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 **Railroad** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving Railroad arising out of this agreement, USER will make available any required policy covering such claim or lawsuit.

For purposes of this section, **Railroad** shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 7. ARBITRATION

7.1 If at any time a question or controversy shall arise between Owner and User 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 Owner and User 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.

7.2 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 8. GOVERNMENTAL APPROVAL and ABANDONMENT

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

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

8.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence

of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

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

Section 9. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner.

Section 11. DEFAULT

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

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

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

Section 12. OTHER CONSIDERATIONS

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

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

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.8 of these General Conditions shall prevail.

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

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B-2"