

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36306  
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BROOKHAVEN RAIL PARTNERS, LLC, ET AL.  
—CONTROL EXEMPTION—  
PIONEER RAILCORP, ET AL.

VERIFIED NOTICE OF EXEMPTION  
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Counsel for Brookhaven Rail  
Partners, LLC, et al.

Date: June 7, 2019

*CONTAINS COLOR EXHIBITS*

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—CONTROL EXEMPTION—  
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Pursuant to 49 C.F.R. §§ 1180.2(d)(2) and 1180.4(g), Brookhaven Rail Partners, LLC ("Brookhaven")<sup>1</sup>, Related Infrastructure, LLC ("Related Infrastructure"), BRX Transportation Holdings, LLC ("BRX Transportation"), and BRX Acquisition Sub, Inc. ("BRX Acquisition") submit this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. §§ 11323-11325, to acquire control of Pioneer Railcorp ("Pioneer") and its fifteen freight rail carrier subsidiaries described below (the "Pioneer Railroads").

Brookhaven and Related Infrastructure<sup>2</sup> are separate unaffiliated entities except for their joint ownership of BRX Transportation, which is the parent of BRX Acquisition. Brookhaven, Related Infrastructure, BRX Transportation, and BRX Acquisition are noncarriers that do not control and are not affiliated with any rail carriers, nor otherwise own or control any rail line that connects with any of the Pioneer Railroads.

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<sup>1</sup> Brookhaven has no relationship or affiliation with Brookhaven Rail, LLC, a Class III carrier subject to the Board's jurisdiction.

<sup>2</sup> Related Infrastructure is a subsidiary of Related Fund Management, LLC, which is subsidiary of Related Companies, L.P.

**a. 1180.6(a)(1)(i).** A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

Pursuant to the Agreement and Plan of Merger dated May 16, 2019 attached as Exhibit 2, Brookhaven, Related Infrastructure, BRX Transportation, and BRX Acquisition intend to acquire 100% of the equity interests of Pioneer in a reverse subsidiary merger transaction in which BRX Acquisition will merge with and into Pioneer, with Pioneer the surviving corporation (the "Proposed Transaction"). Pioneer is a noncarrier holding company that controls fifteen Class III railroads subject to the STB's jurisdiction. Along with its other non-STB operations, Pioneer operates approximately 700 miles of rail lines in the United States. Pioneer's regulatory authorization to acquire the operating carriers is listed below; the carriers are further described in Appendix A:

Alabama & Florida Railway Co., Inc. ("A&F"), an Iowa corporation also d/b/a Ripley & New Albany Railroad Company (RNA)  
*Pioneer Railcorp—Continuance in Control Exemption—Ala. & Fla. Ry. Co.*, Finance Docket No. 32178 (ICC served Nov. 30, 1992)  
*Ala. & Fla. Ry. Co., Inc. d/b/a Ripley & New Albany R.R. Co.—Acquisition and Operation Exemption—Miss. Tenn. Holdings, LLC and Miss. Tenn. Railroad, LLC*, Finance Docket No. 35569 (STB served Nov. 30, 2011)

Alabama Railroad Co., Inc. (ALAB), an Iowa corporation f/k/a Shawnee Terminal Railroad Co., Inc.  
*Pioneer R.R. Co., Inc.—Continuance in Control Exemption—Ala. R.R. Co.*, Finance Docket No. 31944 (ICC decided Oct. 3, 1991) (56 Fed. Reg. 51237, Oct. 10, 1991)

Decatur Junction Railway Co. (DT), an Iowa corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Decatur Junction Ry. Co.*, Finance Docket No. 32367 (ICC served Oct. 18, 1993)

Elkhart & Western Railroad Co. (EWR), an Iowa corporation and wholly-owned subsidiary of Michigan Southern Railroad Company  
*Pioneer Railcorp and Mich. S. R.R. Co. —Corporate Family Transaction Exemption*, Finance Docket No. 33941 (STB served Oct. 10, 2000)

Fort Smith Railroad Co. (FSR), an Iowa corporation  
*Pioneer Railroad Company, Inc.—Continuance in Control Exemption—Fort Smith Railroad Co.*, Finance Docket No. 31894 (ICC decided July 3, 1991) (56 Fed. Reg. 31421, July 10, 1991)

The Garden City Western Railway, Inc. (GCW), a Kansas corporation  
*Pioneer Railcorp—Acquisition of Control Exemption—The Garden City W. Ry., Inc.*, Finance Docket No. 33743 (STB served May 14, 1999)

Georgia Southern Railway Co. (GS), an Iowa corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Ga. S. Ry. Co.*, Finance Docket No. 35323 (STB served Dec. 2, 2009)

Gettysburg & Northern Railroad Co. (GET), an Iowa corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Gettysburg & N. R.R. Co.*, Finance Docket No. 34010 (STB served Feb. 27, 2001)

Indiana Southwestern Railway Co. (ISW), an Iowa corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Ind. Sw. Ry. Co.*, Finance Docket No. 33858 (STB served Mar. 28, 2000)

Kendallville Terminal Railway Co. (KTR), an Iowa corporation and wholly-owned subsidiary of Michigan Southern Railroad Company  
*Pioneer Railcorp and Mich. S. R.R. Co. —Corporate Family Transaction Exemption*, Finance Docket No. 33941 (STB served Oct. 10, 2000)

Keokuk Junction Railway Co. (KJRY), an Iowa corporation  
*Pioneer Railcorp—Acquisition of Control Exemption—KNRECO, Inc. d/b/a/ Keokuk Jct. Ry.*, Finance Docket No. 32877 (STB served Mar. 26, 1997)

Michigan Southern Railroad Company (MSO), an Iowa corporation also d/b/a Napoleon Defiance and Western Railway (NDW)  
*Pioneer Railcorp and Wabash & W. Ry. Co. —Acquisition of Control Exemption—Mich. S. R.R. Co., Inc.*, Finance Docket No. 33704 (STB served Jan. 28, 1999)  
*Mich. S. R.R. Co.—Acquisition and Operation Exemption—RMW Ventures, LLC and Maumee & W. R.R. Corp.*, Finance Docket No. 35696 (STB served Dec. 14, 2012) (NDW line)

Mississippi Central Railroad Co. (MSCI), a Mississippi railroad corporation f/k/a Natchez Trace Railroad (NTR)  
*Pioneer RailCorp—Acquisition of Control Exemption—Natchez Trace R.R.*, Finance Docket No. 32046 (ICC decided April 30, 1992)

Pioneer Industrial Railway Co. (PRY), an Iowa corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Pioneer Indus. Ry. Co.*,  
Finance Docket No. 33550 (STB served Feb. 20, 1998)  
*Pioneer Indus. Ry. Co.—Lease and Operation Exemption—Peoria, Peoria  
Heights & W. R.R.*, Finance Docket No. 33549 (STB served Feb. 20, 1998)

Vandalia Railroad Company (VRRC), an Illinois railroad corporation  
*Pioneer Railcorp—Continuance in Control Exemption—Vandalia R.R. Co.*,  
Finance Docket No. 32594 (ICC served Oct. 28, 1994)

Brookhaven, Related Infrastructure, BRX Transportation, and BRX Acquisition seek exemption to acquire indirect control of the Pioneer Railroads through control of Pioneer. As a result of the Proposed Transaction, Pioneer will become a wholly-owned subsidiary of BRX Transportation, and (indirectly) Brookhaven and Related Infrastructure will thereby acquire control (as defined in Section 11323) of the Pioneer Railroads. Brookhaven, Related Infrastructure, and BRX Transportation are noncarriers, do not own or control any rail carrier, are not commonly controlled by or with any rail carrier, and are not affiliated (as defined at 49 U.S.C. § 11323(c)) with any rail carrier. Neither Brookhaven, Related Infrastructure, nor BRX Transportation (i) own or control any rail line that connects with any of the Pioneer Railroads; (ii) the Proposed Transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Brookhaven, Related Infrastructure, or BRX Transportation with the Pioneer Railroads or connect any of the Pioneer Railroads with one another; and (iii) the Proposed Transaction does not involve a Class I carrier. Accordingly, the Proposed Transaction qualifies for the class exemption set forth at 49 C.F.R. § 1180.2(d)(2).

The business address and telephone number for Brookhaven Partners, LLC is 5555 DTC Parkway, Suite 205, Greenwood Village, CO 80111, (720) 328-4561. The business address and telephone number for Related Infrastructure, LLC and BRX Transportation Holdings, LLC is 60 Columbus Circle, New York, NY 10023, (212) 419-8539.

Pioneer Railcorp's business address and telephone number are 1318 S. Johanson Road, Peoria, IL 61607, (309) 697-1400. The business address and telephone number for the Pioneer Railroads are provided in Appendix A.

Counsel to whom questions concerning the transaction can be addressed are David F. Rifkind, Stinson LLP, 1775 Pennsylvania Avenue, NW, Suite 800, Washington, D.C. 20006, (202) 969-4218.

**b. 1180.6(a)(1)(ii).** The proposed time schedule for consummation of the proposed transaction.

The parties contemplate that the conditions precedent to closing will be satisfied, and the transaction will be consummated, during the 3rd Quarter of 2019.

**c. 1180.6(a)(1)(iii).** The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The Proposed Transaction is intended to promote the investment objectives of Brookhaven and Related Infrastructure and to improve Pioneer's efficiency, financial strength and ability to meet the needs of shippers. In particular, the Proposed Transaction is expected to enable Pioneer to obtain capital at a lower cost than it can today. This, in turn, will enhance Pioneer's ability to make capital investments in response to future growth in demand for rail services, and enable the Pioneer Railroads to compete more effectively in the transportation marketplace. Moreover, Brookhaven's and Related Infrastructure's industrial development expertise will enhance the Pioneer franchise, and improve the economic vitality of the communities the Pioneer Railroads serve through the attraction of new industry, increased tax base and primary job creation.

Brookhaven, Related Infrastructure, and BRX Transportation have no current plans to make substantial changes in Pioneer's day-to-day operations, to sell any of the Pioneer Railroads

or to abandon any rail lines in connection with the Proposed Transaction. Nor do they contemplate making changes in the current workforces of Pioneer's rail carrier subsidiaries. Brookhaven, Related Infrastructure, and BRX Transportation believe that service to shippers can be improved in the long term through continued investment and improved managerial efficiency.

Because Brookhaven, Related Infrastructure, and BRX Transportation are not currently engaged in providing any freight rail transportation services, the Proposed Transaction cannot result in any lessening of competition in the territory served by the Pioneer Railroads, nor will the Proposed Transaction make possible any abuse of market power by Brookhaven, Related Infrastructure, and BRX Transportation, or any or the Pioneer Railroads.

**d. 1180.6(a)(5).** A list of the State(s) in which any part of the property of each applicant carrier is situated.

The Pioneer Railroads operate in the states of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Mississippi, Ohio, Pennsylvania, and Tennessee.

**e. 1180.6(a)(6).** Map (Exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.

See Exhibit 1. Exhibit 1 contains color maps. To comply with the Board's rules, it has been placed at the back of this pleading. Maps depicting the lines of each Pioneer Railroad are contained in Exhibit 1. The operations of each Pioneer Railroad are described in Appendix A.

**f. 1180.6(a)(7)(ii).** Agreement (Exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

A redacted public version copy of the Agreement and Plan of Merger dated May 16, 2019 is attached hereto as Exhibit 2.

**g. Employee Protection.**

All the Pioneer Railroads are Class III railroads. As such, under 49 U.S.C. § 11326(c), labor protection does not apply to this type of transaction. Nonetheless, Brookhaven, Related Infrastructure, and BRX Transportation do not anticipate that any employees of Pioneer's rail carrier subsidiaries will be adversely affected by the Proposed Transaction.

**h. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §§ 1105.6(c)(1)(i) and 1105.8(b)(3), and thus neither an Environmental Assessment nor an Historic Report is required to be filed.

**i. Interchange commitment.**

Pursuant to 49 C.F.R. § 1180.4(g)(4)(i), Brookhaven, Related Infrastructure and BRX Transportation certify that the Proposed Transaction does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. The terms of agreements between the Pioneer Railroads and third-party railroads will not be altered as part of the Proposed Transaction.

Respectfully submitted,

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Attorneys for Brookhaven Rail Partners, LLC, et al.

### VERIFICATION

I, Alex Yeros, declare under penalty of perjury that I am a Principal of Brookhaven Rail Partners, LLC and am duly designated to verify and file this Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
ALEX YEROS

**APPENDIX A**  
**DESCRIPTION OF PIONEER RAILROADS**

**ALABAMA & FLORIDA RAILWAY CO., INC., d/b/a RIPLEY & NEW ALBANY RAILROAD CO.**

Alabama & Florida Railway Co., Inc. ("A&F"), d/b/a Ripley & New Albany Railroad Company ("RNA"), 200 N. Railroad Avenue New Albany, MS 38652, (800) 914-3810, owns and operates approximately 22.54 miles of rail lines in Mississippi between milepost 325.56 at New Albany, MS and milepost 348.1 at Ripley, MS. *See Exhibit 1-A.* RNA interchanges with BNSF Railway ("BNSF") and Kansas City Southern ("KCS") at New Albany, MS.

A&F owns and has operating authority over 42.9 miles of rail line between milepost 581.3 at Andalusia, AL and milepost 624.2 at Geneva, AL. *See Exhibit 1-A.* A&F sought to abandon the line in July 2011, but abandonment authority for the line expired on December 13, 2018. *See Ala. & Fla. Ry. Co., Inc.—Abandonment Exemption—In Geneva, Coffee and Covington Counties, Ala.*, Docket No. AB 1073X (STB served April 18, 2019).

**ALABAMA RAILROAD CO., INC., f/k/a SHAWNEE TERMINAL RAILWAY CO., INC.**

Alabama Railroad Co., Inc. ("ALAB"), RR2, Box 209, Monroeville, Alabama 36460, (800) 532-2262, owns and has operating authority over approximately 47.47 miles of rail lines in Alabama between milepost 607.73 at Flomaton, AL and milepost 655.2 at Tunnel Springs, AL. *See Exhibit 1-B.* On March 29, 2019, ALAB filed a Notice of Exemption to abandon the entire line from Flomaton to Tunnel Springs. The abandonment is subject to the conditions imposed in the Board's decision on May 17, 2019. *See Ala. R.R. Co.—Abandonment Exemption—In Escambia, Conecuh, and Monroe Counties, Ala.*, Docket No. AB 463 (Sub-No. 2X) (STB served May 17, 2019).

Prior to 2017, ALAB interchanged with CSX Transportation ("CSXT") at Flomaton, AL.

## **DECATUR JUNCTION RAILWAY CO.**

Decatur Junction Railway Co. ("DT"), 308 South Chestnut Street, Assumption, IL 62510, (800) 318-3877, operates approximately 21.94 miles of rail lines in Illinois, as follows: (1) the line leased from Central Illinois Shippers, Inc. between milepost 728.0 at Assumption, IL; and (2) the line it owns between milepost 745.54 near Elwin, IL, and (2) between milepost 745.54 and milepost 749.94 at Decatur, IL. *See Exhibit 1-C.*

DT interchanges with Canadian National Railway ("CN") at Decatur, IL.

## **ELKHART & WESTERN RAILROAD CO.**

Elkhart & Western Railroad Co. ("EWR"), P.O. Box 1468, Elkhart, IN 46515, (800) 682-7245, operates approximately 54.08 miles of rail lines in Indiana, as follows: 1) the line it owns between milepost 0.0 at Elkhart, IN and milepost 9.8 at Mishwaka, IN; 2) the line it owns between milepost 88.42 at Monon, IN and 98.0 at Monticello, IN; 3) the line it leases from NS between milepost 108.6 at Argos, IN and milepost 131.6 at Walkerton, IN; and 4) trackage rights over the rail line owned by Fulton County Railroad between milepost 96.9 at Rochester, IN and milepost 108.6 at Argos, IN. *See Exhibit 1-D.*

EWR interchanges with Norfolk Southern Railway ("NS") at Elkhart, IN and Argos, IN; and with CSXT at Monon, IN.

## **FORT SMITH RAILROAD CO.**

Fort Smith Railroad Co. ("FSR"), 22 North B Street, Fort Smith, AR 72901, (800) 872-4615, leases from Union Pacific Railroad ("UP") and operates approximately 18.36 miles of rail lines in Arkansas between milepost 504.03 at Fort Smith, AR and milepost 522.39 at Fort Chaffee, AR. *See Exhibit 1-E.*

FSR interchanges with UP and KCS at Fort Smith, AR.

## **THE GARDEN CITY WESTERN RAILWAY, INC.**

The Garden City Western Railway, Inc. ("GCW"), 708 North VFW Road, Garden City, KS 67846, (800) 914-7850, owns and operates approximately 39 miles of rail lines in Kansas between 1) milepost 128 at Shallow Water, KS and milepost 156 at Garden City; and 2) milepost 3 at Quinby, KS and milepost 14 at Wolf, KS. *See Exhibit 1-F.*

GCW interchanges with BNSF at Garden City, KS.

## **GEORGIA SOUTHERN RAILWAY CO.**

Georgia Southern Railway Co. ("GS"), 200 East Main Street, Ft. Valley, GA 31030, (800) 336-9479, operates approximately 94.3 miles of rail lines in Georgia, as follows: pursuant to the assumption of Georgia Midland Railroad's lease of lines between 1) milepost 95.5-FV at Atlanta Sand, GA and milepost 105.3-FV at Fort Valley, GA; 2) milepost N-219.7 at Fort Valley, GA and milepost N-232.6 at Perry, GA; and 3) milepost W-57.5 at Dover, GA and milepost W-86.7 at Metter, GA. GS has operating rights between milepost 194.64 at Midville, GA and milepost 152.2 at Vidalia, GA pursuant to a contract with Heart of Georgia Railroad, Inc., although the track between milepost 173.4 at Kirby, GA and Vidalia is currently out of service. *See Exhibit 1-G.*

GS interchanges with NS at Midville, Fort Valley, and Dover, GA.

## **GETTYSBURG & NORTHERN RAILROAD CO.**

Gettysburg & Northern Railroad Co. ("GET"), 750 Mummasburg Road, Gettysburg, PA 17325, (800) 914-3779, owns and operates approximately 23.36 miles of rail lines in Pennsylvania between milepost 7.84 at Mt. Holly Springs, PA and milepost 31.2 at Gettysburg, PA. *See Exhibit 1-H.*

GET interchanges with CSXT at Gettysburg, PA and with NS at Mt. Holly Springs, PA.

## **INDIANA SOUTHWESTERN RAILWAY CO.**

Indiana Southwestern Railway Co. ("ISW"), 1603 Allen Lane, Evansville, IN 47710, (800) 914-3810, owns and operates approximately 4.5 miles of rail lines in Indiana between milepost 240.2 at German Township, IN and milepost 244.7 at Evansville, IN. *See Exhibit 1-I.*

ISW interchanges with CSXT, Ohio Valley Railroad, and NS at Evansville, IN.

## **KENDALLVILLE TERMINAL RAILWAY CO.**

Kendallville Terminal Railway Co. ("KTR"), P.O. Box 239, White Pigeon, MI, 49099, (800) 914-3781, owns and operates approximately 1.07 miles of rail lines in Indiana between milepost 119.0 at Kendallville, IN and milepost 120.07 at Kendallville, IN. *See Exhibit 1-J.*

KTR interchanges with NS at Kendallville, IN.

## **KEOKUK JUNCTION RAILWAY CO.**

Keokuk Junction Railway Co. ("KJRY"), 100 Mississippi Drive, Keokuk, Iowa, 56232, (800) 914-7851, owns and operates approximately 126.5 miles of rail lines in Illinois and Iowa between 1) milepost 118.5 at Hollis, IL and milepost 223.4 at Keokuk, IA; 2) milepost 222.6 at Hamilton, IL and milepost 227.65 at Warsaw, IL; 3) milepost 194.5 at LaHarpe, IL and milepost 206.6 at Lomax, IL; and 4) westward from milepost 0.0 at Keokuk, IA to milepost 4.5. KJRY operates over trackage rights on BNSF between BNSF milepost 218.5 at Lomax, IL and milepost BNSF 234.0 at Fort Madison, IA. KJRY operates over trackage rights on UP located between milepost 118.5 at Hollis, IA and milepost 113.6 at Iowa Junction, IA. *See Exhibit 1-K.*

KJRY interchanges with BNSF at Keokuk, IA; with UP at Sommer, IL; with Toledo, Peoria & Western Railway at Hollis, IL; and with Tazewell & Peoria Railroad, Inc. ("TZPR") at Peoria, IL.

**MICHIGAN SOUTHERN RAILROAD CO., d/b/a NAPOLEON, DEFIANCE & WESTERN RAILWAY**

Michigan Southern Railroad Co. ("MSO"), P.O. Box 239, White Pigeon, MI, 49099, (800) 446-7245, owns and operates as MSO on approximately 17.99 miles of rail lines in Michigan between 1) milepost 406.8 at Sturgis, MI and milepost 421.0 at White Pigeon, MI; 2) milepost 146.86 and milepost 149.75 on the GR&I Industrial Lead near Sturgis; and 3) milepost 28.4 and milepost 29.3 on the former Goshen Branch near Sturgis. MSO also owns and operates as Napoleon, Defiance & Western Railway ("NDW") approximately 51 miles of rail lines between milepost 28.0 at Liberty Center, OH and milepost 79.0 at Woodburn, IN. See Exhibit 1-L.

MSO interchanges with NS at White Pigeon, MI and, as NDW, with NS at Woodburn, IN and with CSXT at Defiance, OH.

**MISSISSIPPI CENTRAL RAILROAD CO.**

Mississippi Central Railroad Co. ("MSCI"), 542 East Van Dorn Avenue, Holly Springs, Mississippi 38635, (800) 442-6877, owns and operates approximately 56.5 miles of rail line in Mississippi and Tennessee between milepost 517.0 at Grand Junction, TN and milepost 573.5 at Oxford, MS. MSCI leases and operates rail lines in Mississippi and Alabama 1) owned by the State of Mississippi between milepost 0.0 at Iuka Wye, MS and milepost 10.0 at Tri-State Commerce Park, MS; and 2) owned by the Mississippi-Alabama Railroad Authority between milepost 529.5 at Corinth, MS and milepost 571.0 at Red Bay, AL. MSCI also operates over incidental trackage rights on NS between milepost 527.3 and milepost IC-529.5 near Corinth, MS. See Exhibit 1-M.

MSCI interchanges with BNSF at Holly Springs, MS; with NS at Grand Junction, TN and Corinth, MS; and with KCS at Corinth, MS.

**PIONEER INDUSTRIAL RAILWAY CO.**

Pioneer Industrial Railway Co. ("PRY"), 1318 South Johanson Road, Peoria, IL 61607, (800) 914-3810, operates over local trackage rights on 2.57 miles of rail lines owned by City of Peoria located between 1) milepost 1.71 and milepost 2.78; and 2) milepost 8.50 and milepost 10.0 in Peoria, IL. *See Exhibit 1-N.*

PRY interchanges at Peoria, IL with UP and via KJRY's interchange agreement with TZPR.

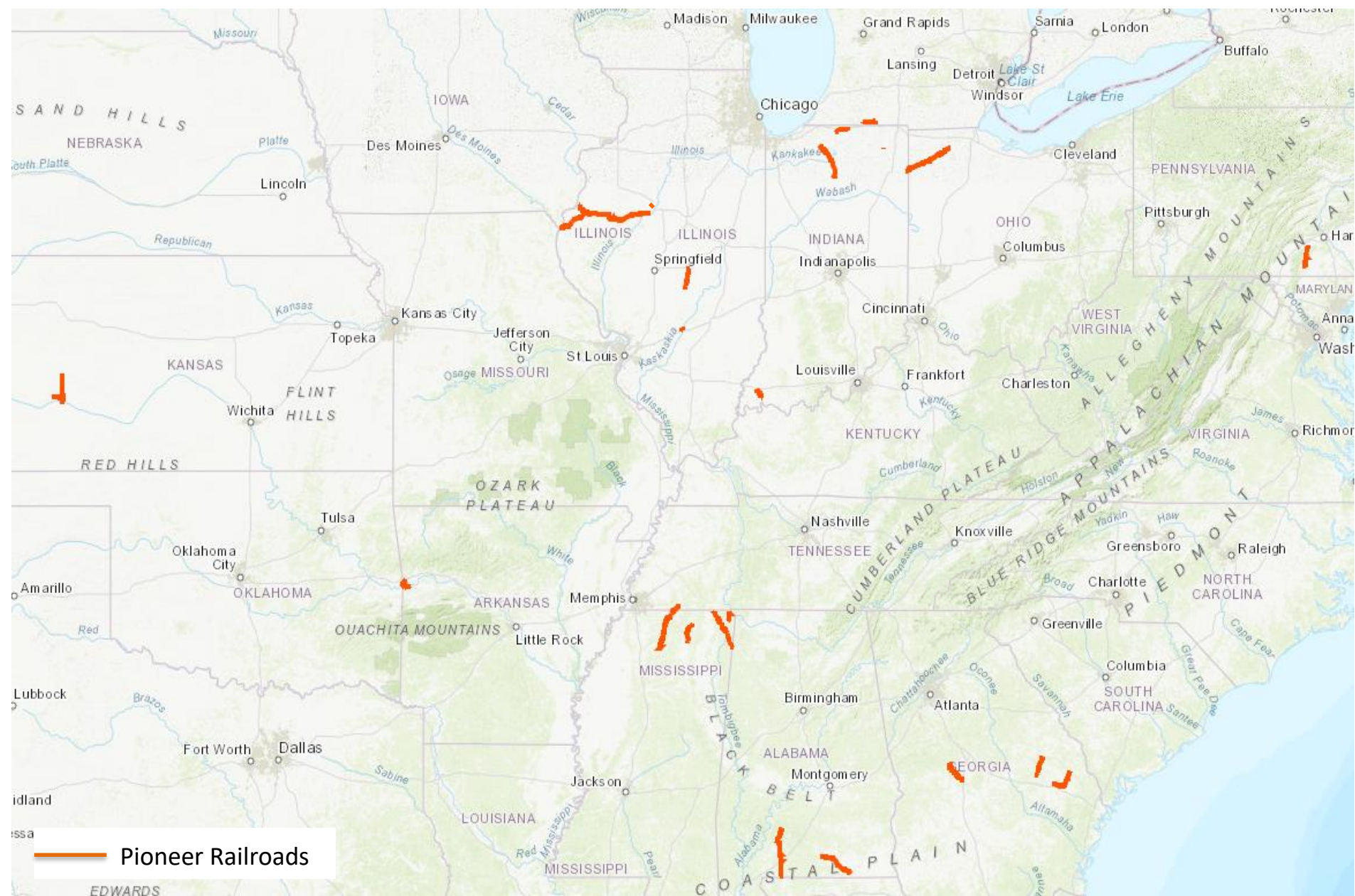
**VANDALIA RAILROAD COMPANY**

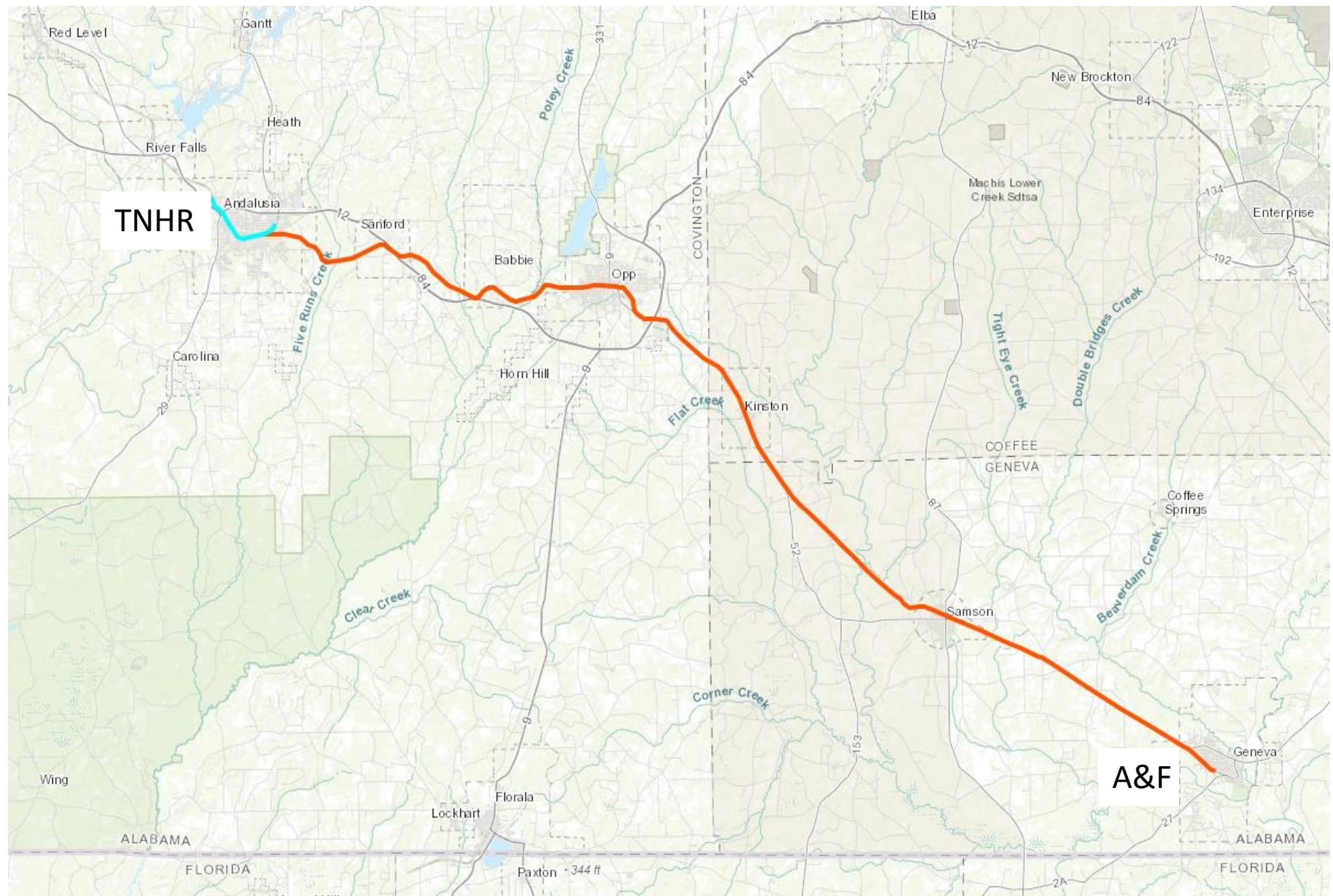
Vandalia Railroad Company ("VRRRC"), 609 West Main Street, Vandalia, IL, 62471, (800) 446-7245, leases from the City of Vandalia and operates approximately 2.71 miles of rail line in Illinois between milepost 689.83 and milepost 692.54 in Vandalia, IL. *See Exhibit 1-O.*

VRRRC interchanges with CSXT at Vandalia, IL.

**EXHIBIT 1**  
**MAPS**

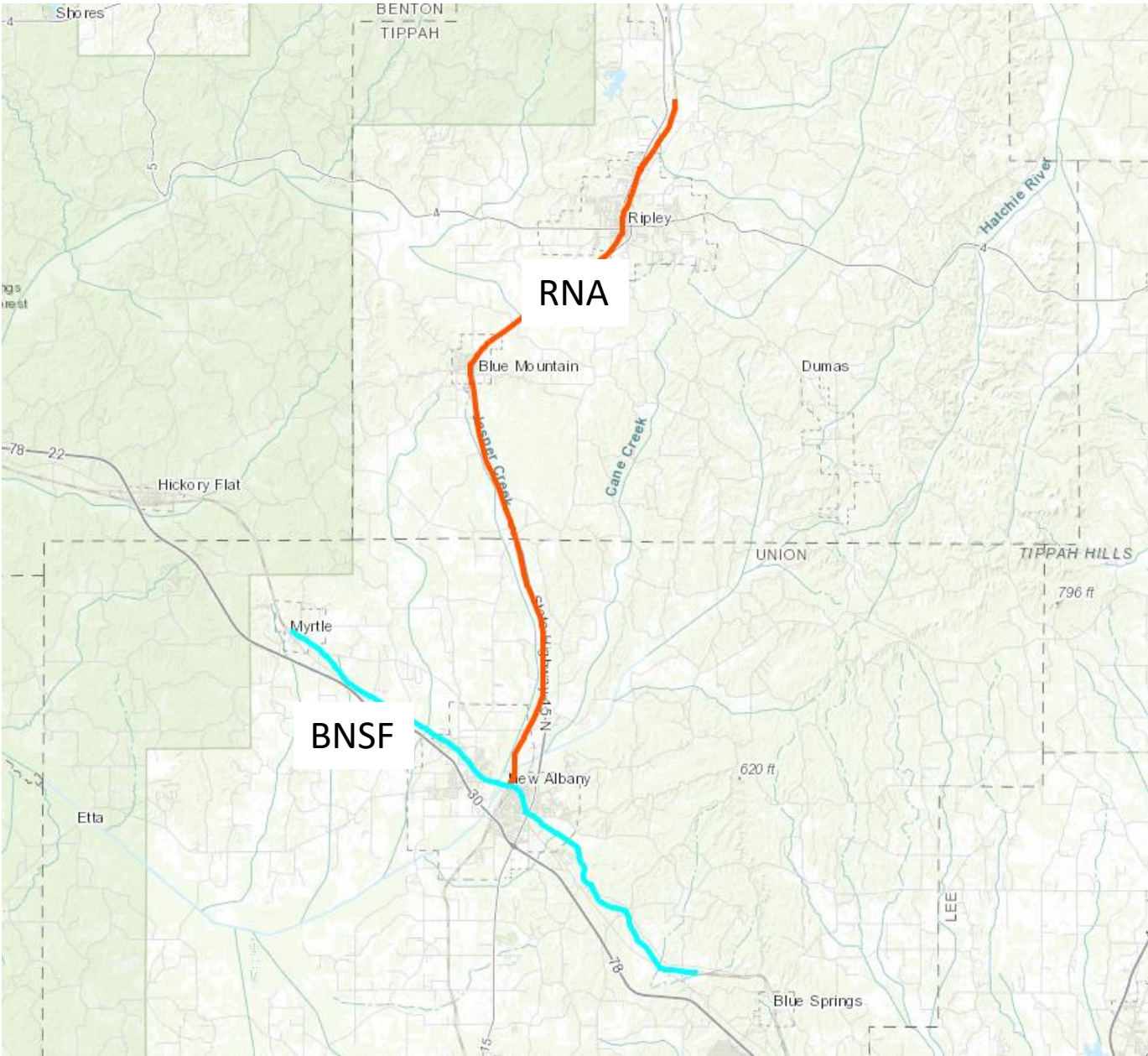
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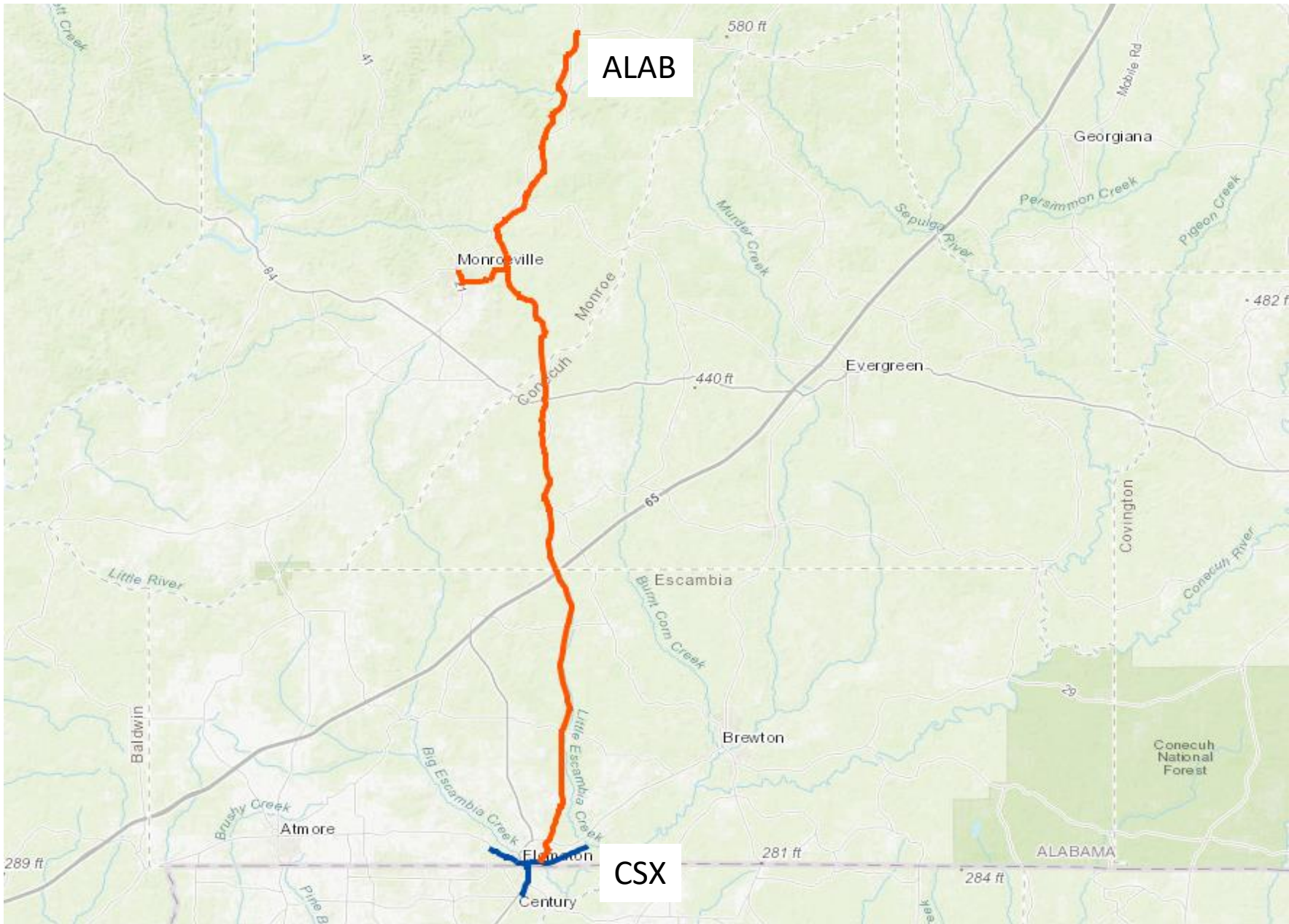


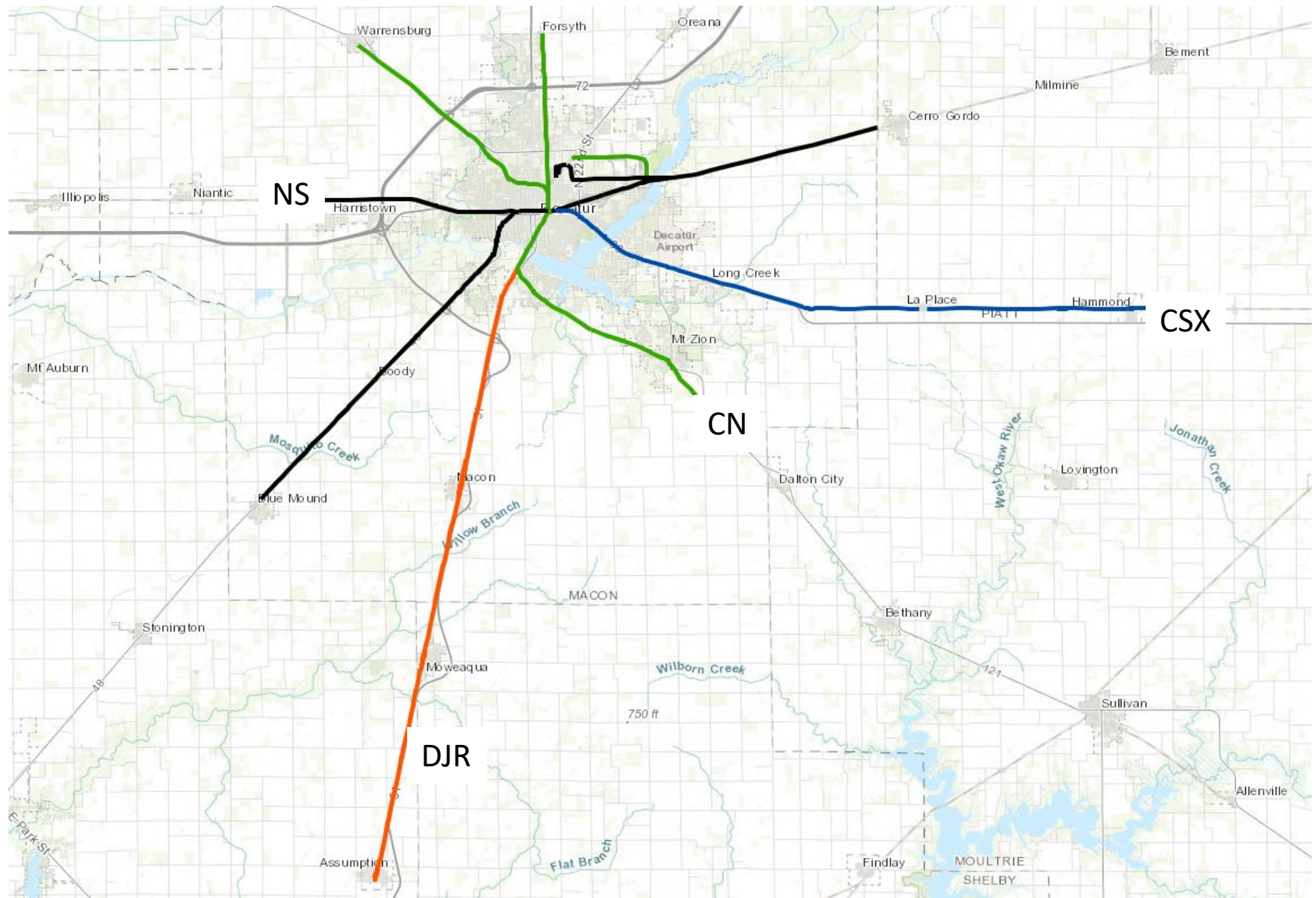


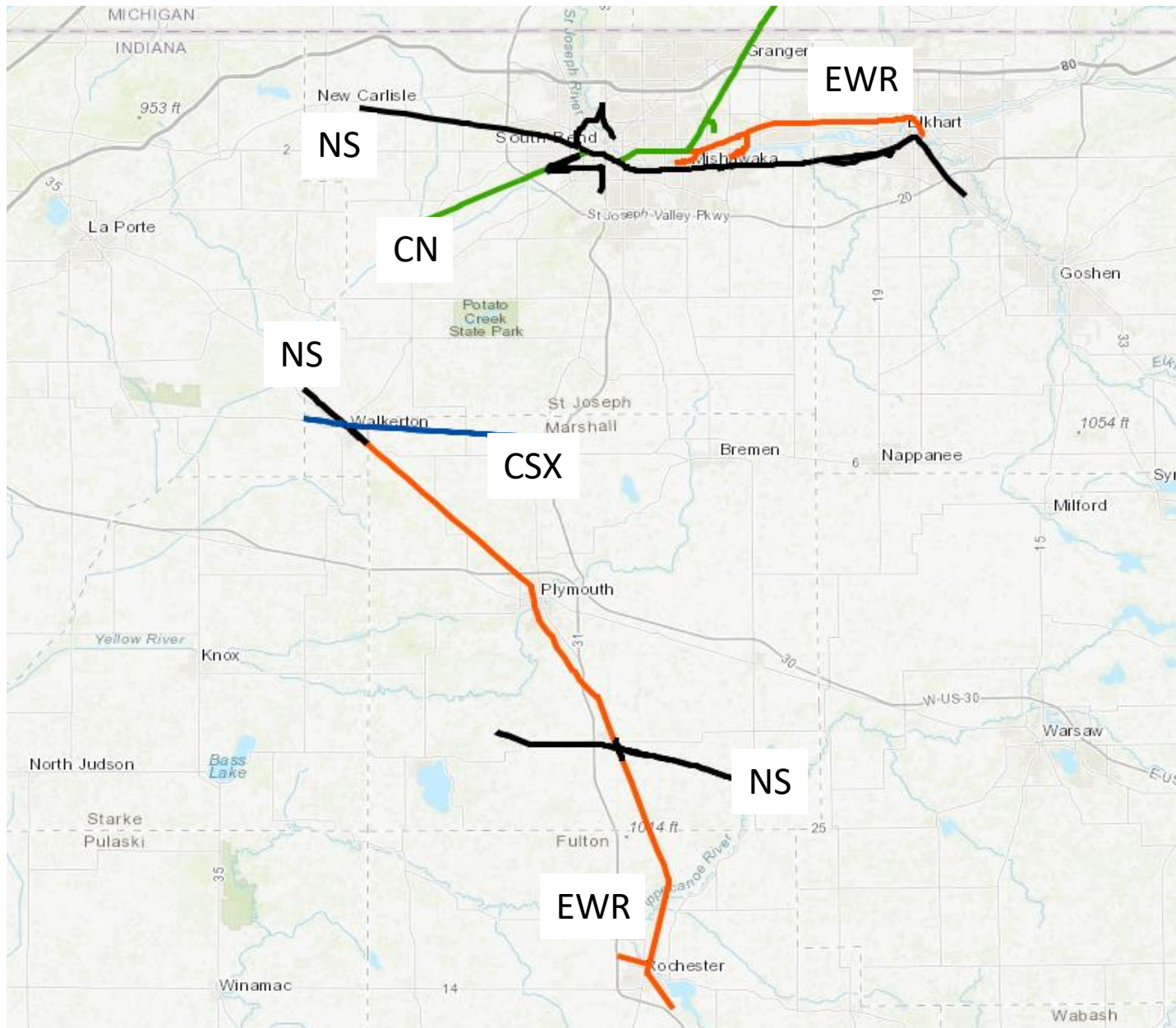
**Alabama and Florida Railway Co (A&F) d/b/a  
Ripley and New Albany (RNA)**

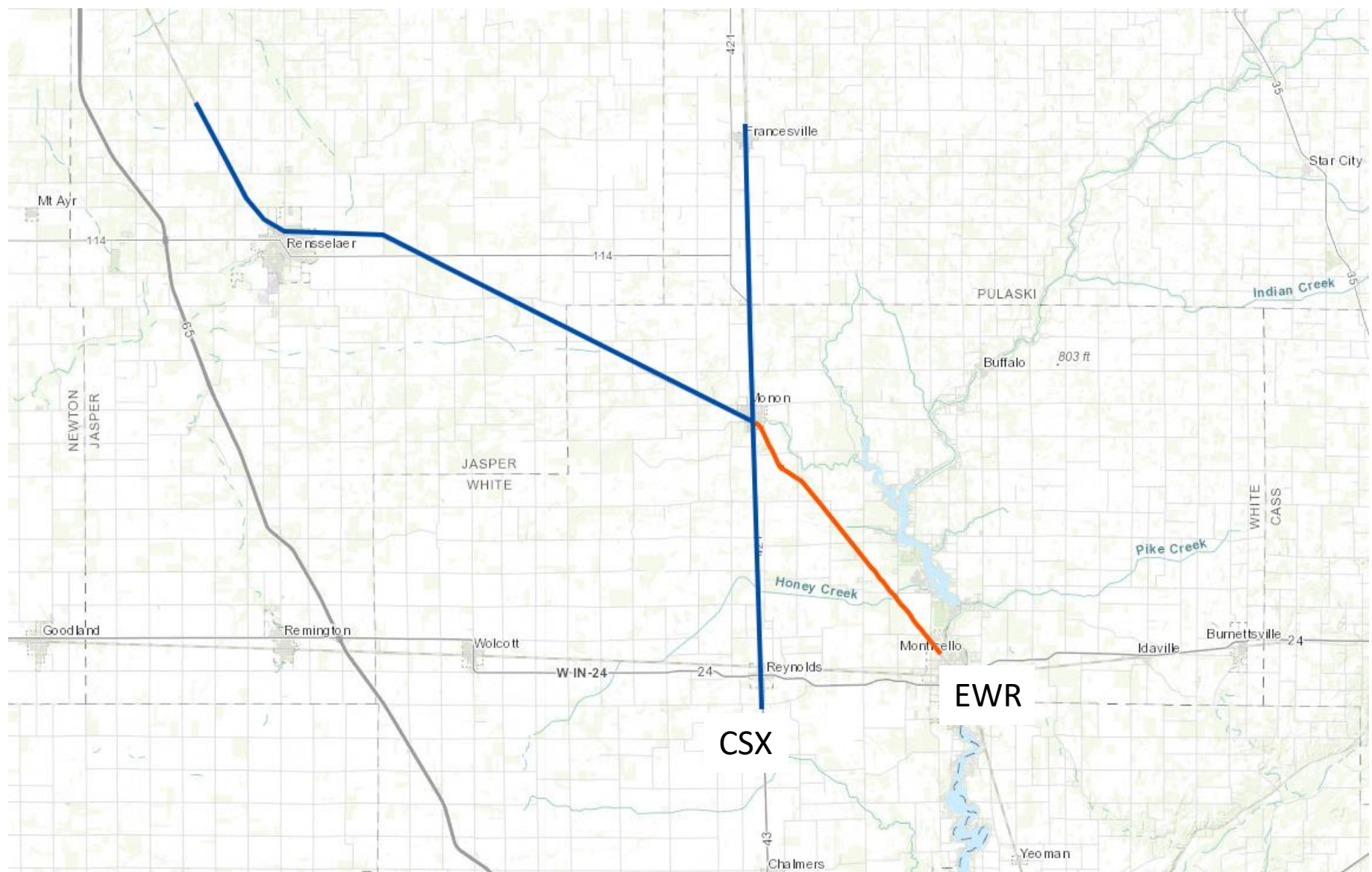
**EXHIBIT 1-A**

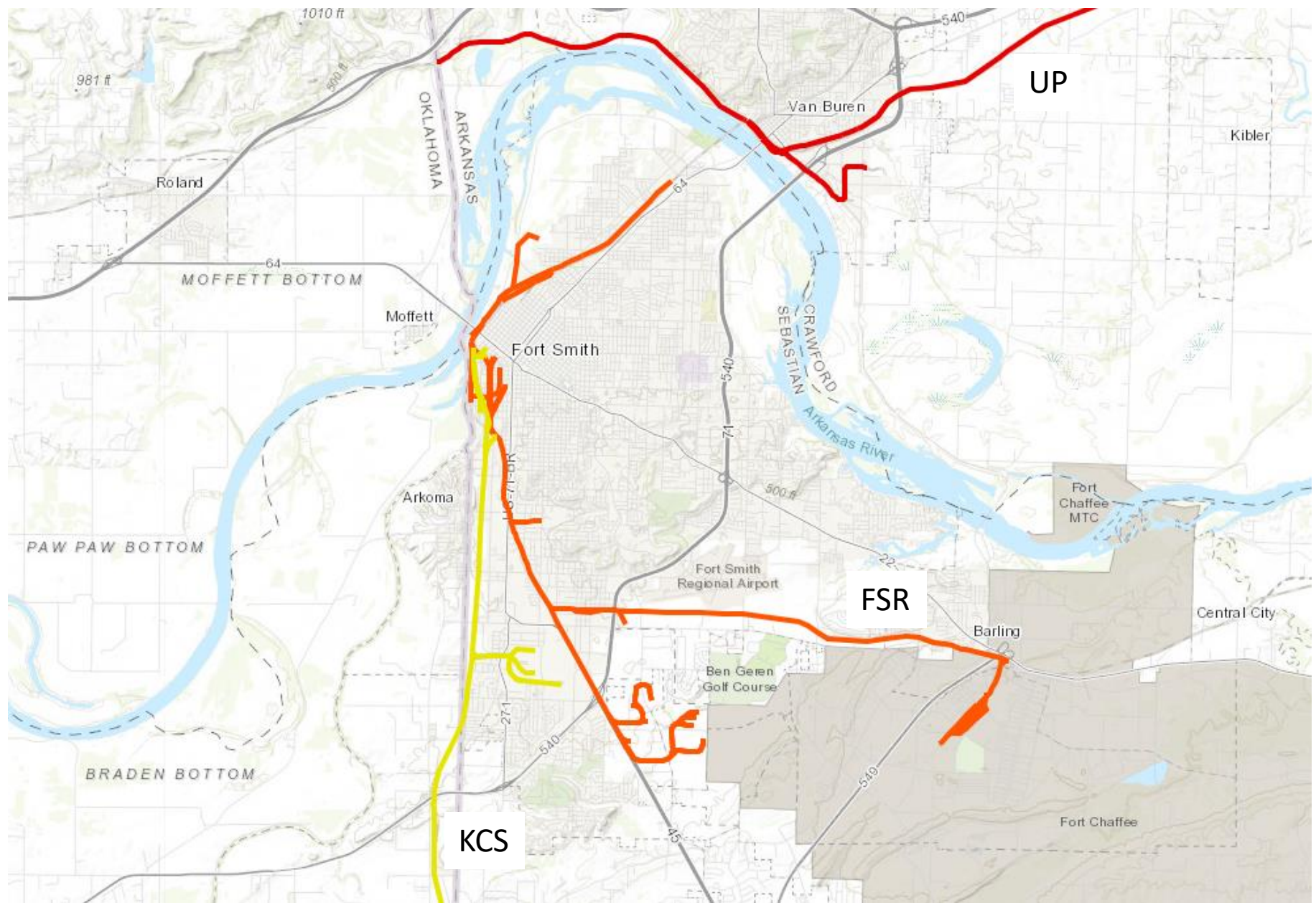


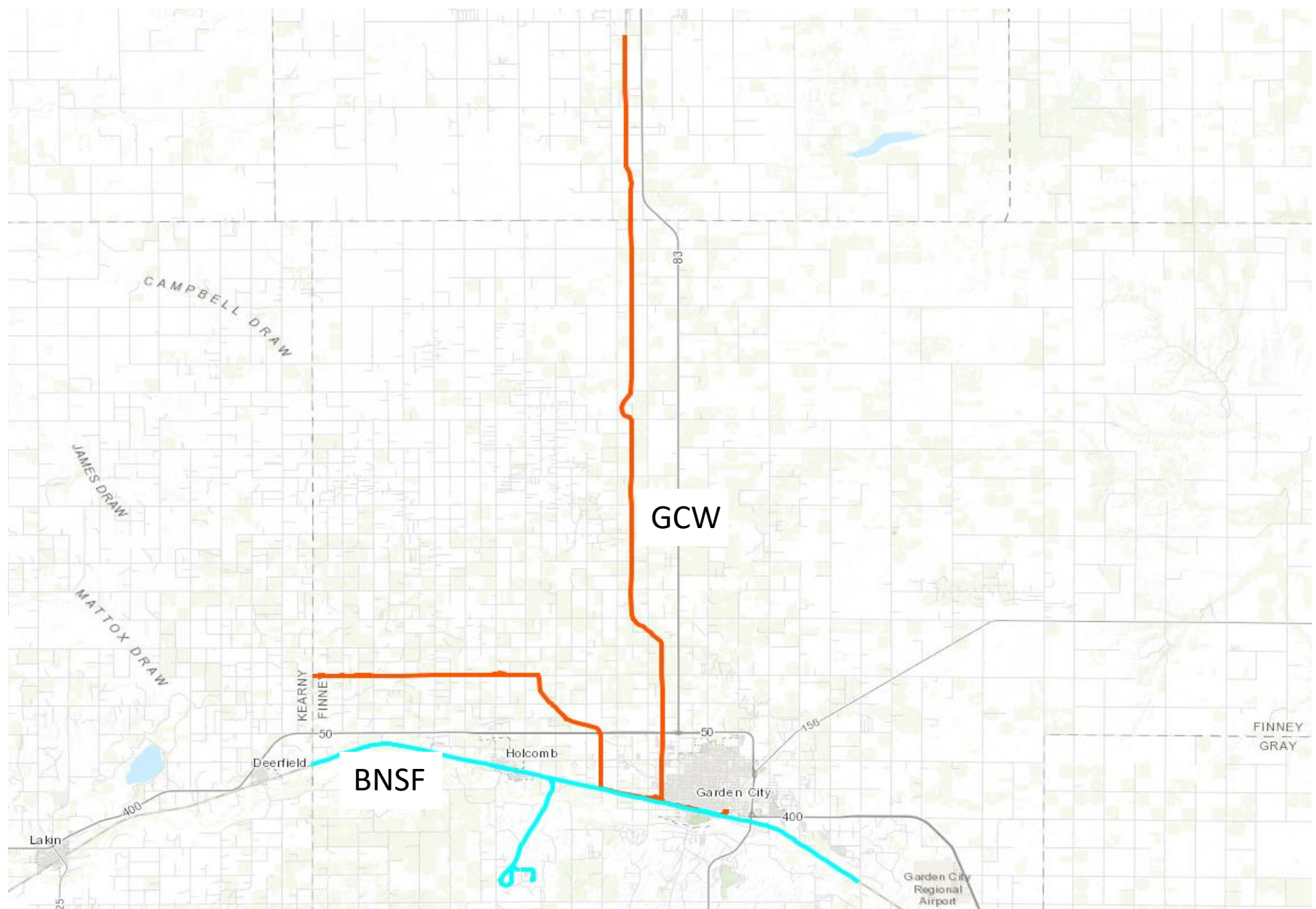


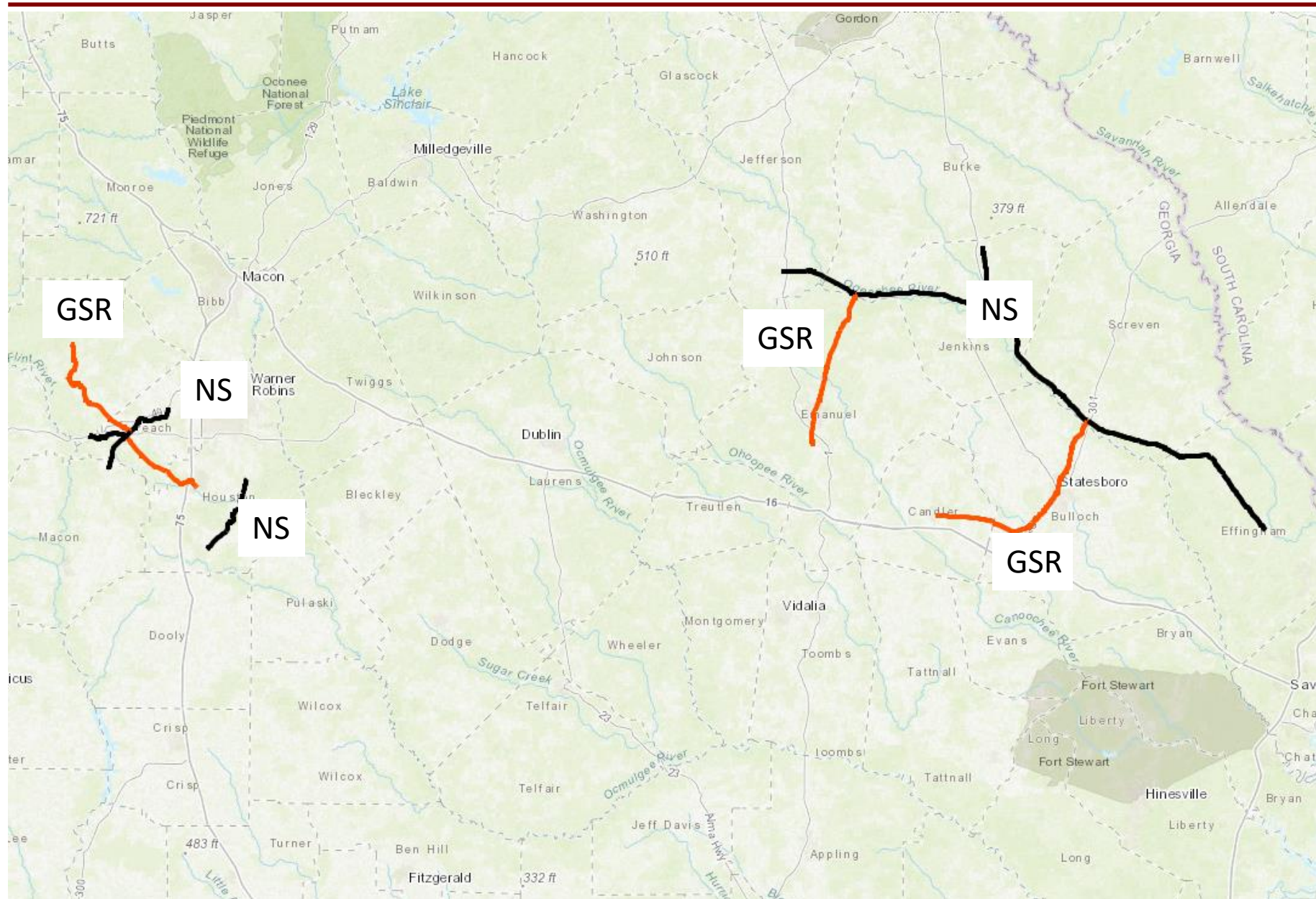


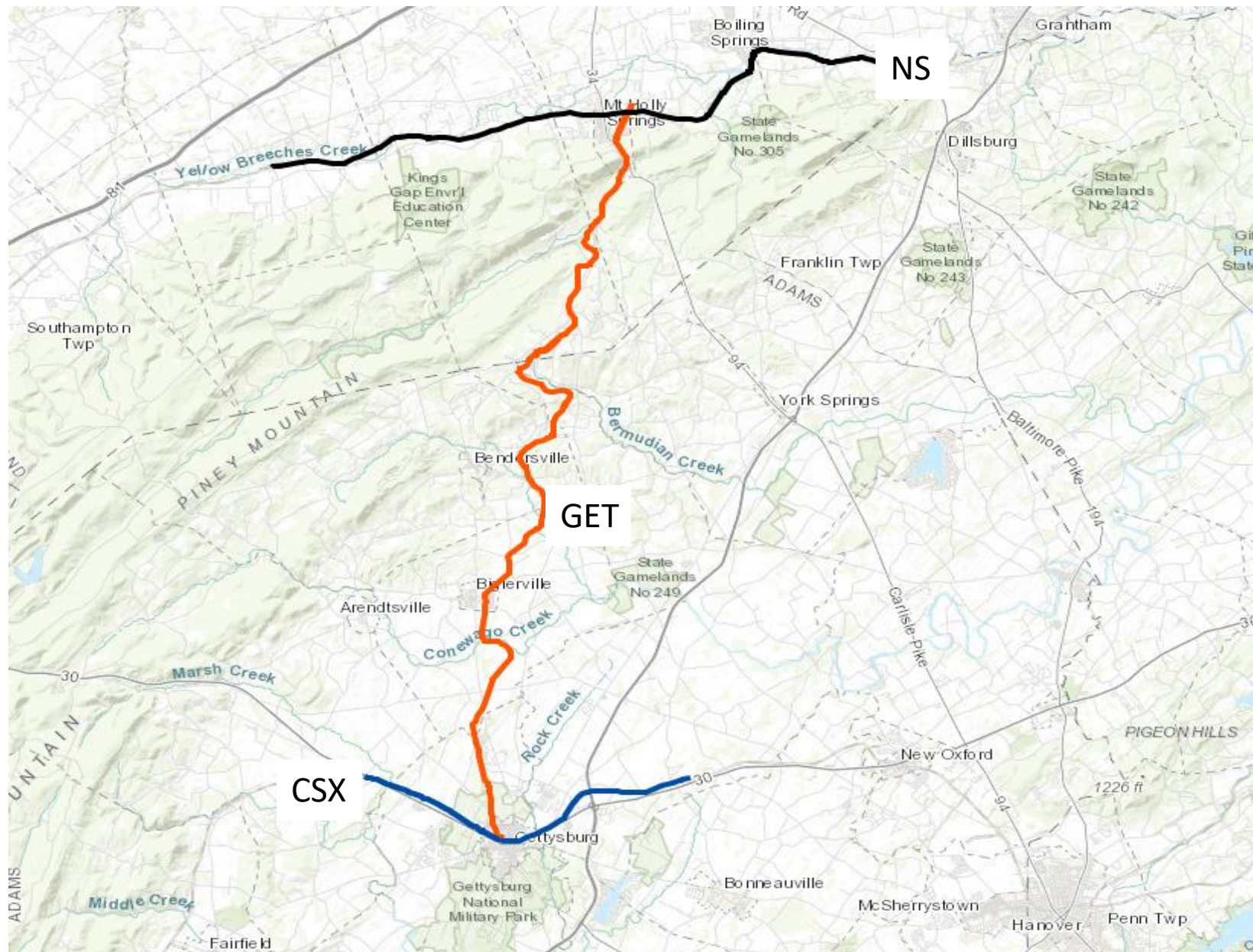


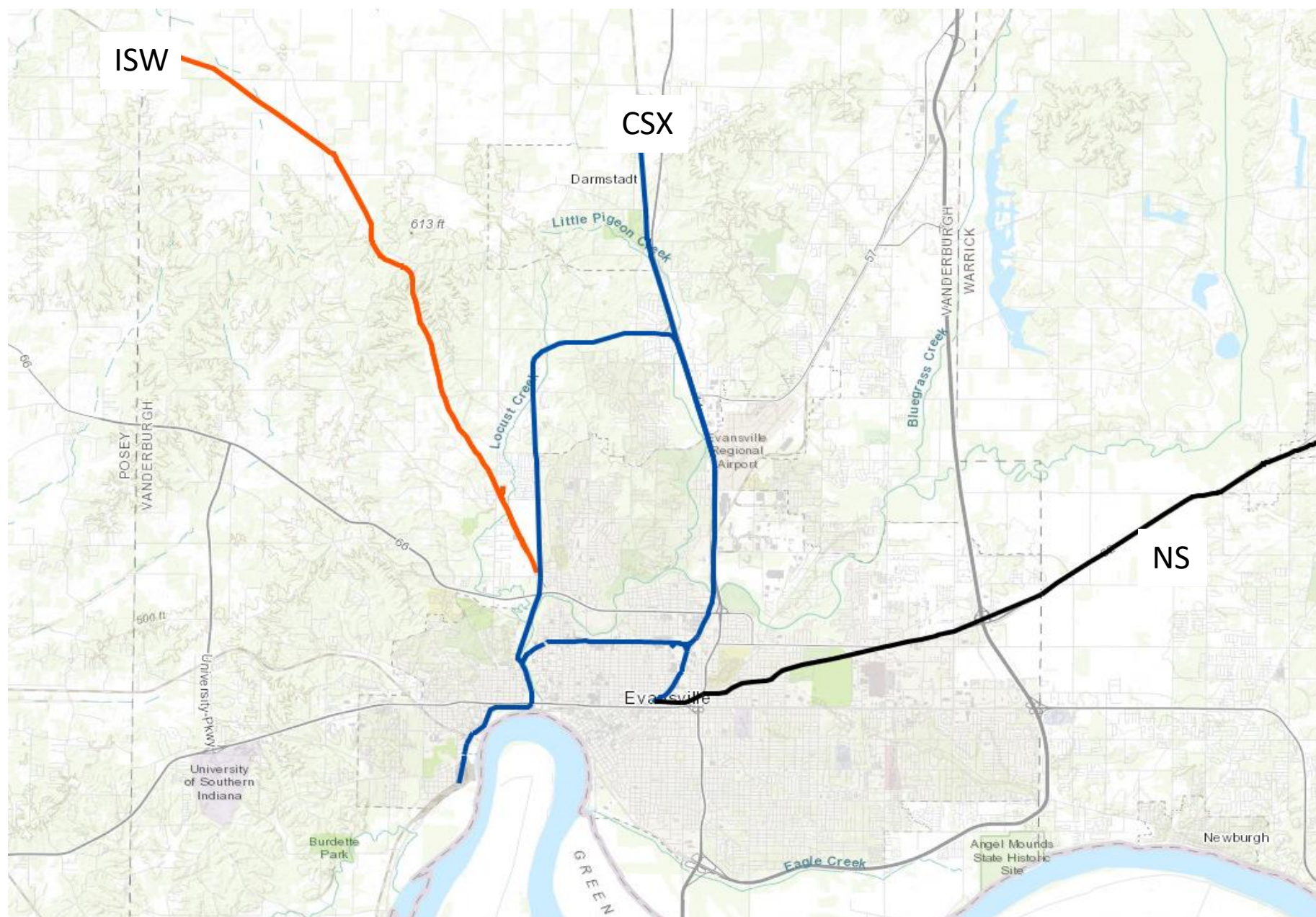








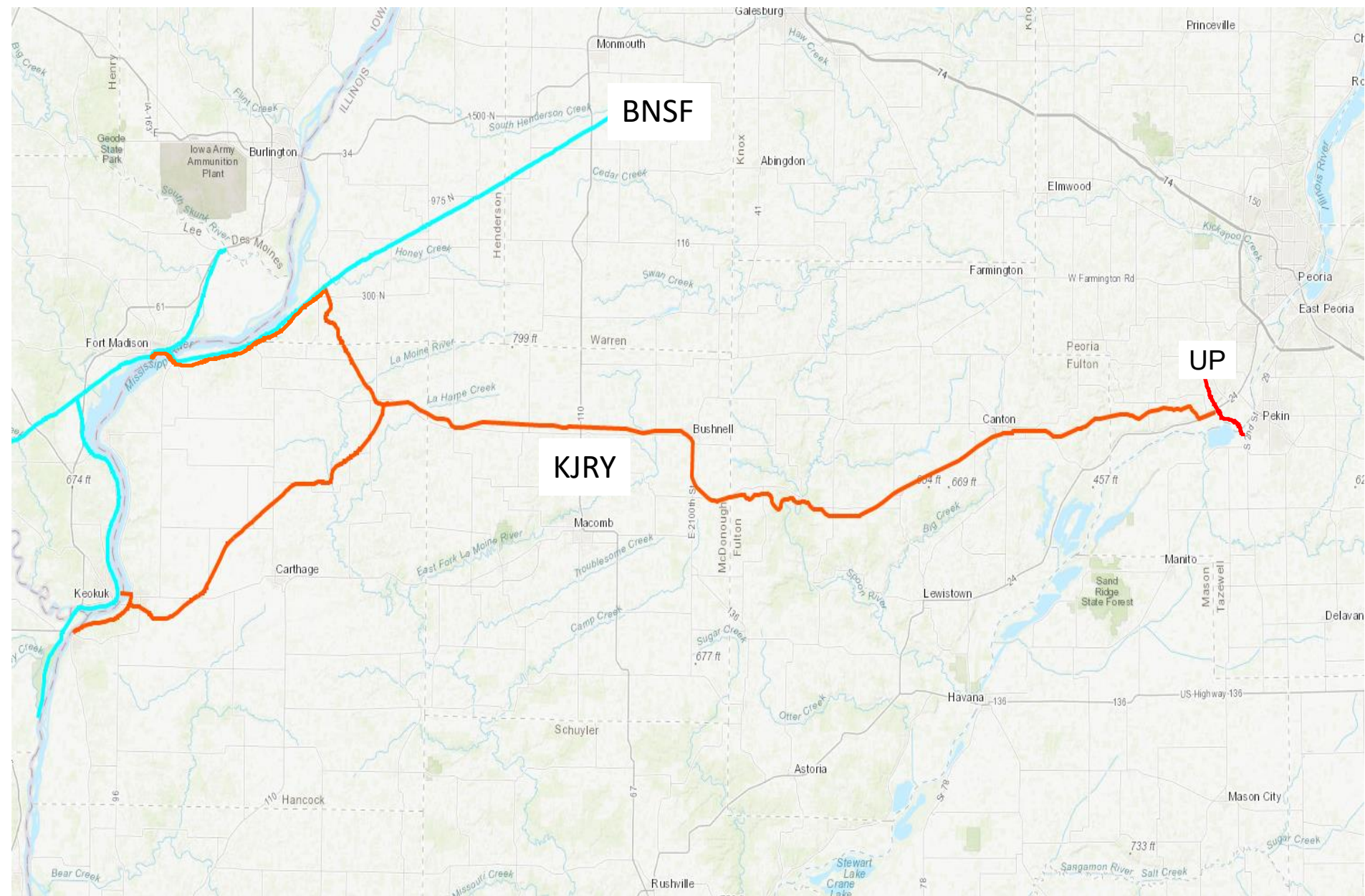






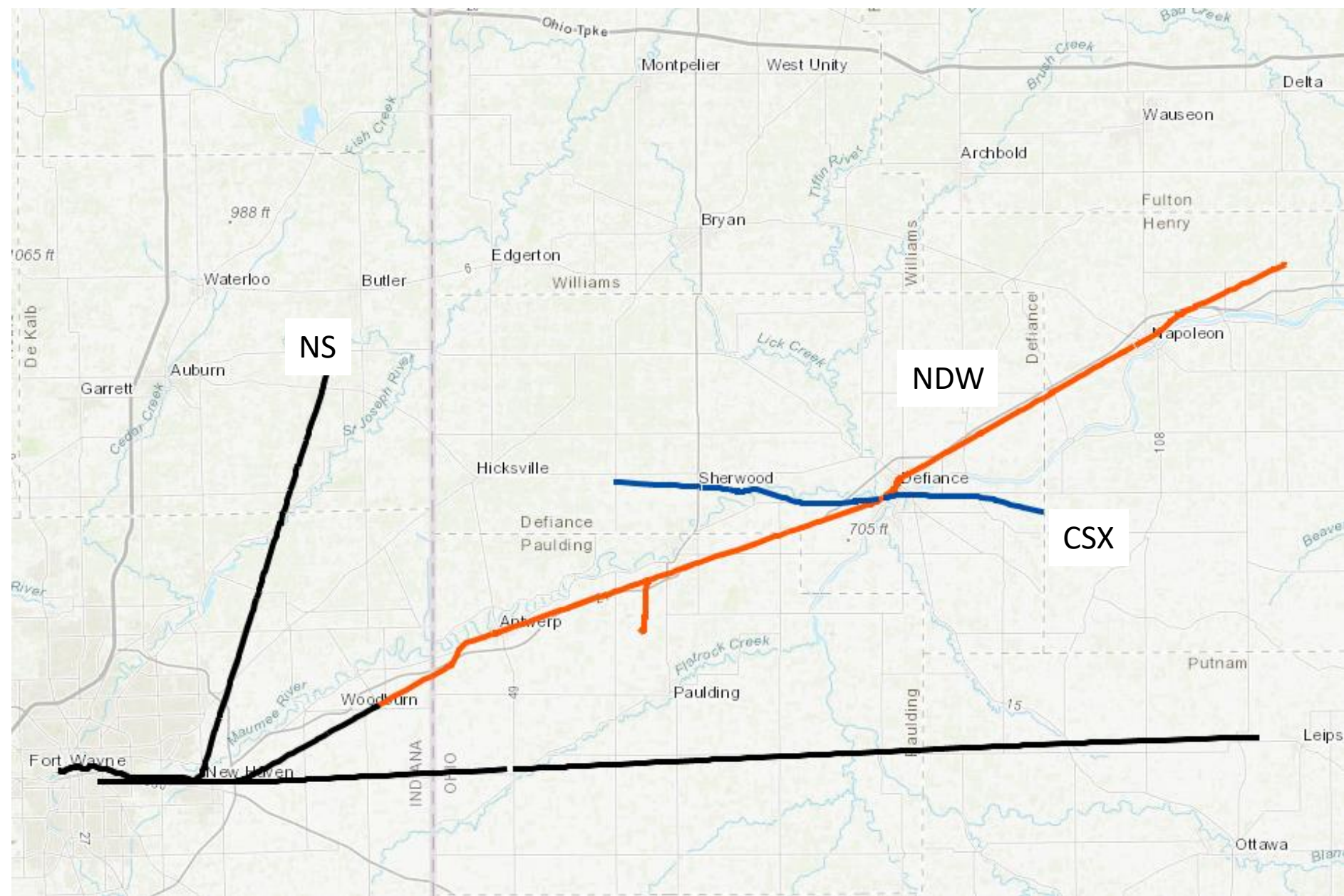
**EXHIBIT 1-K**

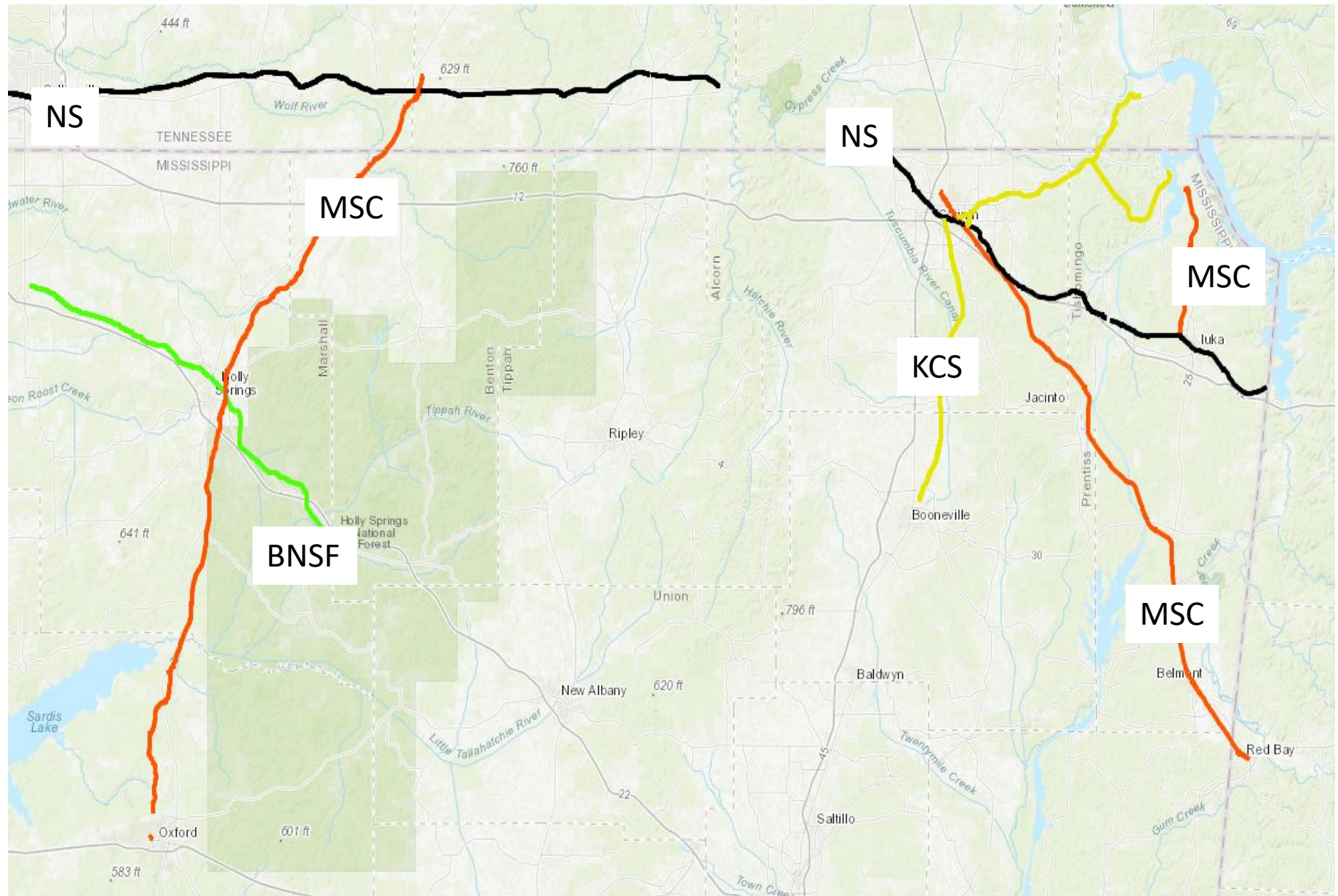
## Keokuk Junction Railway (KJRY)

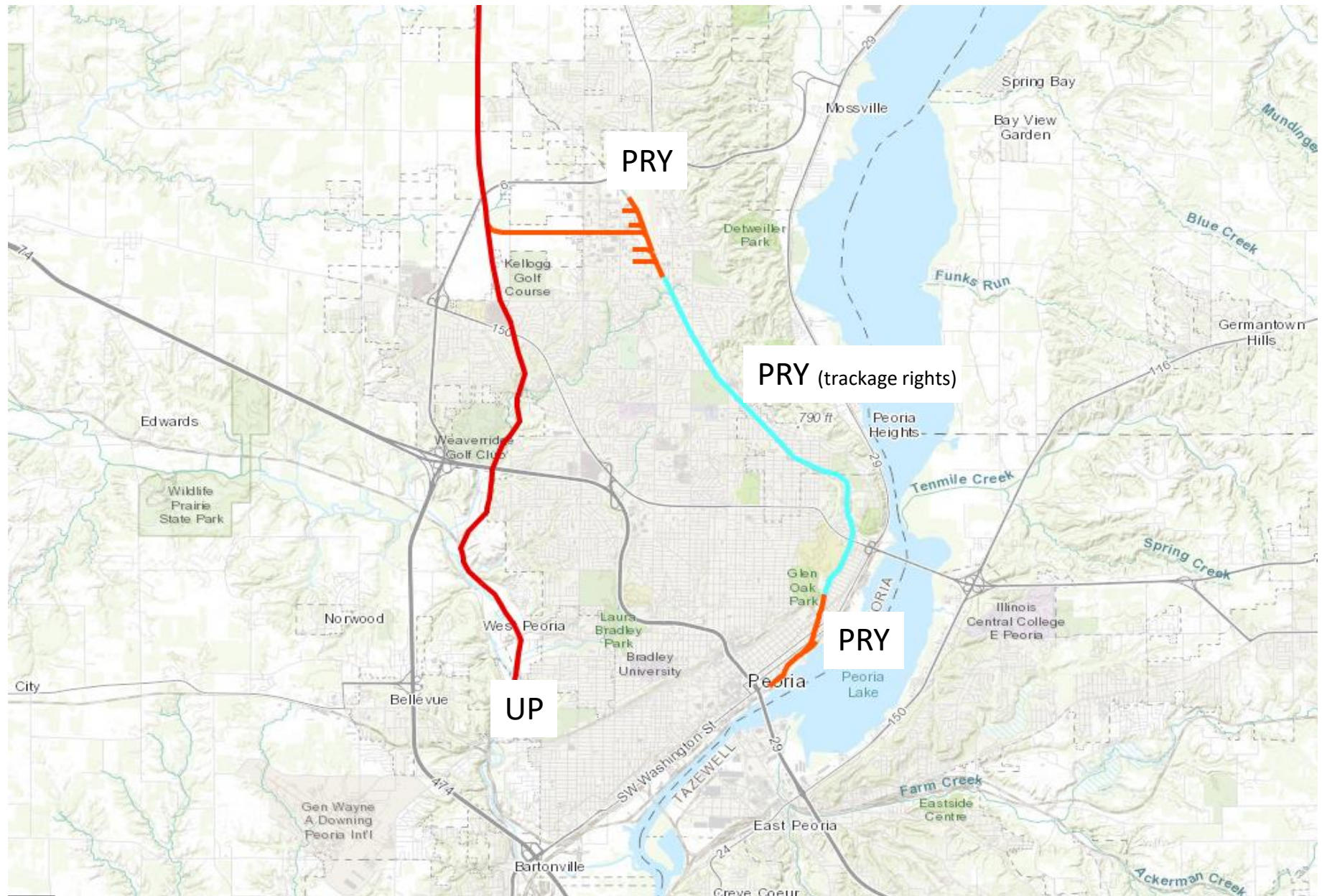


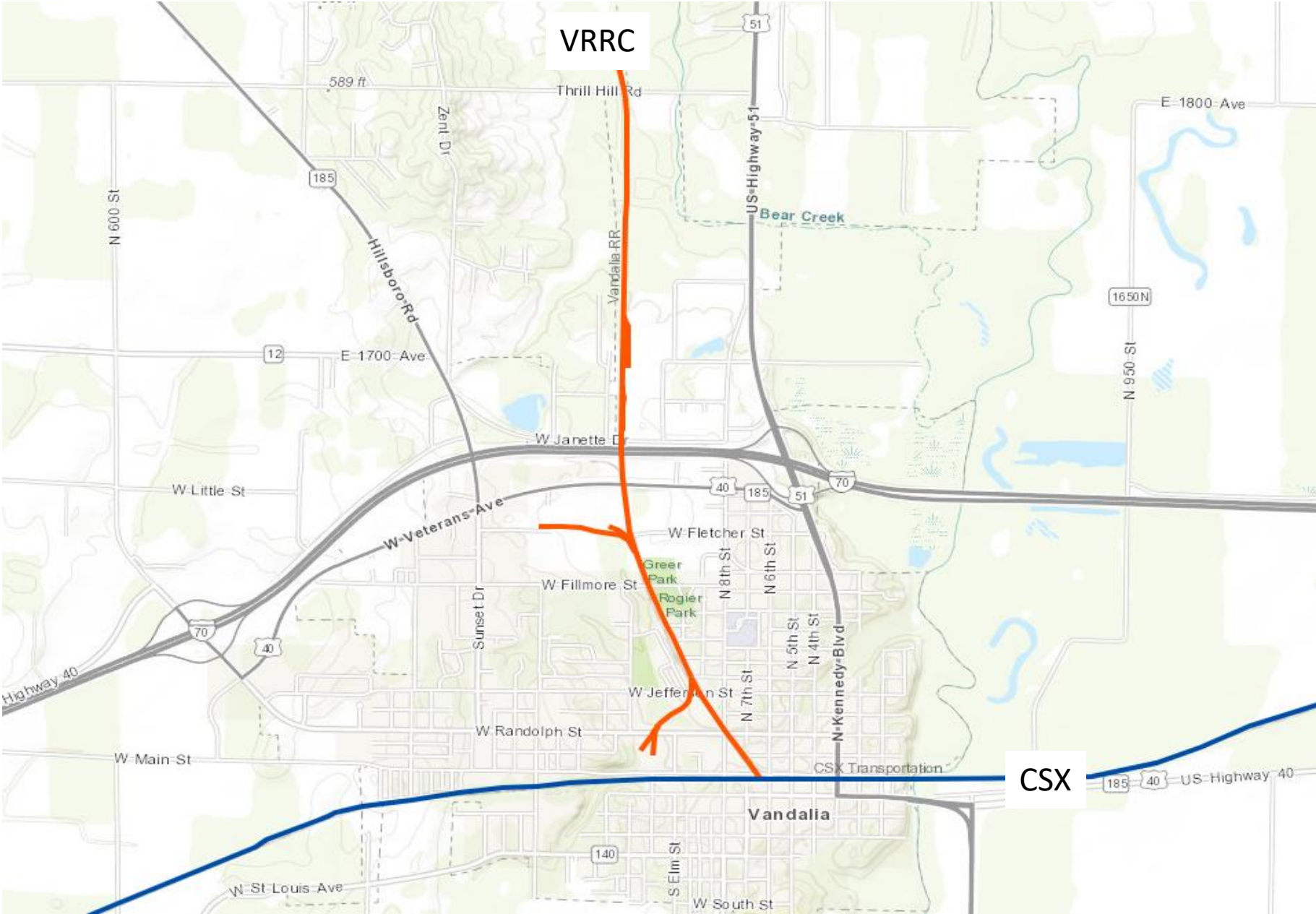


# Michigan Southern Railroad (MSO) operating as Napoleon, Defiance & Western Railway (NDW)









**EXHIBIT 2**  
**AGREEMENT (REDACTED)**

**AGREEMENT AND PLAN OF MERGER**

by and among

**BRX TRANSPORTATION HOLDINGS, LLC,**

**BRX ACQUISITION SUB, INC.,**

and

**PIONEER RAILCORP**

dated as of

**MAY 16, 2019**

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## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this “**Agreement**”) is made and entered into as of May 16, 2019 (the “**Execution Date**”), by and among BRX Transportation Holdings, LLC, a Delaware limited liability company (“**Parent**”), BRX Acquisition Sub, Inc., an Iowa corporation (“**Merger Sub**”), and Pioneer Railcorp, an Iowa corporation (the “**Company**” and together with Parent and Merger Sub, the “**Parties**”).

### RECITALS

**WHEREAS**, the respective boards of directors or managers, as applicable, of Parent, Merger Sub and the Company have approved and adopted this Agreement and declared advisable the merger of Merger Sub with and into the Company with the Company continuing as the surviving corporation (the “**Merger**”) upon the terms and subject to the conditions of this Agreement and in accordance with the Iowa Business Corporation Act, as amended (the “**IBCA**”);

**WHEREAS**, in the Merger, upon the terms and conditions set forth in this Agreement, each share of the Company’s Class A Common Stock, par value \$0.001 per share (“**Class A Common Stock**”) will be cancelled and converted into the right to receive the Closing Per Share Merger Consideration;

**WHEREAS**, the boards of directors of the Company and Merger Sub have recommended this Agreement for adoption and approval by their respective shareholders;

**WHEREAS**, the sole shareholder of Merger Sub has adopted and approved this Agreement in accordance with the IBCA;

**WHEREAS**, following the execution of this Agreement, the Company shall submit this Agreement to the Shareholders for approval in accordance with the IBCA;

**WHEREAS**, concurrently with the execution of this Agreement, Parent has entered into Support Agreements, in the form attached hereto as **EXHIBIT A-1** (the “**Support Agreements**”), with certain Shareholders pursuant to which, among other things, each such Shareholder agreed to vote in favor of this Agreement and the Merger;

**WHEREAS**, concurrently with the execution of this Agreement, members of the Company Board who own Class A Common Stock have executed and delivered Support Agreements to Parent in the form attached hereto as **EXHIBIT A-2**;

**WHEREAS**, concurrently with the execution of this Agreement, Heartland Rail Investments, LLC (“**Heartland**”) has executed and delivered a Support Agreement to Parent in the form attached hereto as **EXHIBIT A-3**;

**WHEREAS**, concurrently with the execution of this Agreement, [REDACTED]

[REDACTED], in the form attached hereto as **EXHIBIT B** [REDACTED]



**“Audited Financial Statements”** has the meaning set forth in Section 4.5(a).

**“Book-Entry Share”** has the meaning set forth in Section 3.1(c).

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in Chicago, Illinois are authorized or required by Law to be closed for business.

**“Cancelled Shares”** has the meaning set forth in Section 3.1(a).

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**“Certificate”** has the meaning set forth in Section 3.1(c).

**“CIC Agreements”** has the meaning set forth in Section 6.7.

**“CIC Payments”** has the meaning set forth in Section 6.7.

**“Class A Common Stock”** has the meaning set forth in the recitals.

**“Class B Common Stock”** means the Company’s Class B Common Stock, par value \$0.001 per share.

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**“Closing”** has the meaning set forth in Section 2.2.

**“Closing Date”** has the meaning set forth in Section 2.2.

**“Closing Merger Consideration”** means the aggregate Closing Per Share Merger Consideration.

**“Closing NWC”** means an amount equal to the Company’s Closing NWC Current Assets, minus the Company’s Closing NWC Current Liabilities.

**“Closing NWC Current Assets”** means accounts and trade receivable, inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Parent will not receive the benefit following the Closing and (b) receivables from any of the Company’s Affiliates, directors, employees, officers or shareholders and any of their respective Affiliates that are Permitted Obligations, each determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end.

**“Closing NWC Current Liabilities”** means accounts and trade payable, accrued expenses, and accrued interest, but excluding (a) payables to any of the Company’s Affiliates,

directors, employees, officers or shareholders and any of their respective Affiliates that are Permitted Obligations, (b) unpaid Closing Transaction Expenses up to an amount of [REDACTED] and (c) any unpaid Other Company Transaction Expenses, each determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end.

**“Closing Per Share Merger Consideration”** means \$18.81.

**“Closing Transaction Expenses”** means (i) the expenses and amounts payable to [REDACTED], (ii) the [REDACTED] currently accrued on the Consolidated Financial Statements payable to [REDACTED], (iii) the expenses and amounts payable to [REDACTED], (iv) any fees payable to a proxy solicitor engaged by the Company and (v) the cost of the D&O Tail Policy.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Company”** has the meaning set forth in the preamble.

**“Company Articles of Incorporation”** has the meaning set forth in Section 4.1(c).

**“Company Benefit Plans”** has the meaning set forth in Section 4.17(a).

**“Company Board”** means the board of directors of the Company.

**“Company Capital Stock”** means the Class A Common Stock and the Class B Common Stock.

[REDACTED]

**“Company Charter Documents”** has the meaning set forth in Section 4.1(c).

**“Company Competing Proposal”** means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**“Company Intellectual Property”** has the meaning set forth in Section 4.11(a).

**“Company Intervening Event”** means any material fact, occurrence, effect, change, event or development that occurs or arises after the date of this Agreement that was not known or reasonably foreseeable by the Company Board as of the date of this Agreement (or, if known or reasonably foreseeable, the magnitude or material consequences of which were not known or reasonably foreseeable by the Company Board as of the date of this Agreement); provided, however, that in no event shall (i) the receipt, existence or terms of an actual or possible Company Competing Proposal or (ii) any change, in and of itself, in the price or trading volume of shares of Company Capital Stock (it being understood that the underlying facts giving rise or contributing to such change may be taken into account in determining whether there has been a Company Intervening Event, to the extent otherwise permitted by this definition) constitute a Company Intervening Event.

**“Company IP Registrations”** means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing.

**“Company Recommendation”** has the meaning set forth in Section 4.3(a).

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**“Company Systems”** has the meaning set forth in Section 4.11(d).

“**Company Termination Fee**” means a cash amount equal to [REDACTED]

**“Confidentiality Agreement”** has the meaning set forth in Section 6.3.

**“Consolidated Balance Sheet”** has the meaning set forth in Section 4.5(a).

**“Consolidated Balance Sheet Date”** has the meaning set forth in Section 4.5(a).

**“Consolidated Financial Statements”** has the meaning set forth in Section 4.5(a).

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notices, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding agreements, whether written or oral.

**“Current Liabilities”** means accounts payable, accrued expenses, and accrued interest, but excluding (a) payables to any of the Company’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (b) Other Company Transaction Expenses, (c) Closing Transaction Expenses and (d) the current portion of any Indebtedness of the Company, each determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end.

**“Data Room”** has the meaning set forth in Article IV.

**“D&O Indemnified Person”** has the meaning set forth in Section 6.10(a).

**“D&O Tail Policy”** has the meaning set forth in Section 6.10(b).

**“Debt Commitment Letter”** means the commitment letter and corresponding redacted fee letter, in the form attached hereto as **EXHIBIT D**.

**“Disclosure Schedule”** means the Disclosure Schedule delivered by the Company concurrently with the execution and delivery of this Agreement.

**“Dissenting Shares”** has the meaning set forth in Section 3.7(a).

**“Dollars or \$”** means the lawful currency of the United States.

**“Effective Time”** has the meaning set forth in Section 2.2.

**“Environmental Claim”** means any action, suit, claim, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**“Environmental Law”** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term **“Environmental Law”** includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended

by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.

**“Environmental Notice”** means any written directive, notice of violation or infraction, or other written notice respecting any Environmental Claim relating to actual or alleged Release of Hazardous Material, non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**“Environmental Permit”** means any Permit, letter, authorization, notice of intent, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

**“Exchange Agent”** means [REDACTED]

**“Exchange Agent Agreement”** means the Agreement between Parent and the Exchange Agent entered into on or prior to the Closing.

**“Execution Date”** has the meaning set forth in the preamble.

**“Financing”** means the financing to provide Parent with the amounts set forth in the Debt Commitment Letter to fund a portion of the payment of the Closing Merger Consideration.

**“Financing Sources”** means the lender and other any other entity (including the parties to the Debt Commitment Letter (other than Parent and Merger Sub)) that have committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Financing or other financings in connection with the transactions contemplated hereby, including the parties to any joinder agreements or credit agreements entered pursuant thereto or relating thereto, together with their respective Affiliates and their and their respective Affiliates’ officers, directors, employees, controlling Persons, advisors, agents, attorneys and representatives and their respective successors and assigns, it being understood that neither the Parent nor the Merger Sub shall be deemed a Financing Source for any purpose hereunder.

**“FINRA”** means Financial Industry Regulatory Authority, Inc.

**“GAAP”** means United States generally accepted accounting principles in effect from time to time.

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**“Hazardous Materials”** means: (a) any material, substance, chemical, waste, product, commodity, derivative, compound, mixture, solution, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, reactive, flammable, radioactive, toxic, or words of similar import or regulatory effect or as defined under Environmental Laws, regardless of amount or volume; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls, regardless of amount or volume.

**“Heartland”** has the meaning set forth in the recitals.

**“IBC”** has the meaning set forth in the recitals.

**“Indebtedness”** means, without duplication and with respect to the Company and its Subsidiaries, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Closing NWC Current Liabilities taken into account in the calculation of Closing NWC); (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) Unaccrued Pre-Closing Taxes; (h) guarantees made by the Company or any of its Subsidiaries on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (h); and (i) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (h).

**“Insurance Policies”** has the meaning set forth in Section 4.12.

**“Intellectual Property”** means any and all: (i) trademarks and service marks, including all applications and registrations and goodwill related to the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; and (v) internet domain name registrations.

**“Interim Financial Statements”** has the meaning set forth in Section 4.5(a).

**“[REDACTED]”** has the meaning set forth in the recitals.

**“Knowledge of Company or Company’s Knowledge”** or any other similar knowledge qualification, means the actual knowledge of [REDACTED] after due inquiry.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Lawsuits”** means, collectively, [REDACTED]  
[REDACTED]  
[REDACTED]

**“Leases”** has the meaning set forth in Section 4.8(b).

**“Letter of Transmittal”** has the meaning set forth in Section 3.3(a).

**“Liens”** means, with respect to any specified asset, any and all liens, claims, encumbrances, options, pledges and security interests thereon except for Permitted Encumbrances.

**“Losses”** means out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company or any of its Subsidiaries, or (b) the ability of the Company to consummate the Transactions on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions or conditions affecting the railroad industry generally; (ii) any changes in financial or securities markets in general; (iii) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (iv) any change in the Company’s stock price or trading volume (provided that such exclusion shall not apply to the event, occurrence, fact, condition or change giving rise or contributing to such change); (v) any failure by the Company to meet revenue or earnings projections (provided that such exclusion shall not apply to the underlying event, occurrence, fact, condition or change giving rise or contributing to such failure to meet any such projections); (vi) any event, occurrence, fact, condition or change caused by the announcement or pendency of the Merger; or (vii) the performance of this Agreement and the Transactions; provided further, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company or any of its Subsidiaries, compared to other participants in the industries in which the Company or any of its Subsidiaries conducts its businesses.

**“Material Contracts”** has the meaning set forth in Section 4.7(a).

**“Merger”** has the meaning set forth in the recitals.

**“Merger Articles”** has the meaning set forth in Section 2.2.

**“Merger Sub”** has the meaning set forth in the preamble.

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**“Organizational Documents”** has the meaning set forth in Section 4.1(c).

**“Other Company Transaction Expenses”** means (i) the ██████████ payable to ██████████ ██████████ for the fairness opinion delivered to the Company and the advisory fee, (ii) bonuses payable to employees of the Company in respect of service to the Company or its Subsidiaries in connection with the Transactions in the current fiscal year that are Permitted Obligations, ██████████, and (v) the employer portion of any Taxes and other costs payable in connection with the items in clauses (ii) through (iv).

**“Outside Termination Date”** has the meaning set forth in Section 10.1(b)(ii).

**“Parent”** has the meaning set forth in the preamble.

**“Parties”** has the meaning set forth in the preamble.

**“Payoff Letters”** means the letters provided by any Person holding Indebtedness listed on Section 6.18 of the Disclosure Schedule setting forth the amount of such Indebtedness and the instructions for the payment of such Indebtedness.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, and consents required to be obtained from Governmental Authorities.

**“Permitted Encumbrances”** has the meaning set forth in Section 4.8(a).

**“Permitted Obligations”** means a receivable, liability or obligation that is (a) reflected on the Consolidated Financial Statements, (b) disclosed on the Disclosure Schedule or (c) incurred in the ordinary course of business consistent with past practice and permitted under Section 6.2.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning on or before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**“Post-Closing Tax Period”** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning on or before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.



directly or indirectly owned or controlled by the subject Person or by one or more of its respective Subsidiaries.

[REDACTED]

**“Support Agreements”** has the meaning set forth in the recitals.

**“STB”** means the United States Surface Transportation Board.

**“Surviving Corporation”** has the meaning set forth in Section 2.1.

**“Tax Return”** means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Taxes”** means all federal, state, local, foreign and other taxes, including income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**“Transaction Documents”** means the Support Agreements, [REDACTED] the Settlement Agreements, [REDACTED] and each other agreement to be executed and delivered in connection herewith and therewith.

**“Transactions”** means the Merger and the other transactions contemplated by this Agreement and the other Transaction Documents.

**“Unaccrued Pre-Closing Taxes”** means any liability for Taxes of the Company for Pre-Closing Tax Periods for which appropriate reserves have not been established in accordance with GAAP. In the case of Taxes that are payable with respect to a taxable period that includes, but does not end on, the Closing Date, the portion of any such Tax that is allocable to the Pre-Closing Tax Period shall:

(a) in the case of Taxes that are either (A) based upon or related to income, receipts, employment or withholding, or (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), be deemed equal to the amount that would be payable if the Taxable year ended on the Closing Date (except that (x) solely for

purposes of determining the marginal Tax rate applicable to income or receipts during such period in a jurisdiction in which such Tax rate depends upon the amount or level of income or receipts, annualized income or receipts may be taken into account if appropriate for an equitable sharing of such Taxes and (y) exemptions, allowances, and deductions that are otherwise calculated on an annual basis shall be apportioned on a daily basis); and

(b) in the case of Taxes not described in subsection (a) above that are imposed on a periodic basis and measured by the amount, value, or level of any item, be deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on the Closing Date and the denominator of which is the number of calendar days in the entire period.

“**WARN**” has the meaning set forth in Section 4.18(d).

## **ARTICLE II THE MERGER**

**Section 2.1 The Merger.** Subject to the terms and conditions set forth herein, and in accordance with the IBCA, at the Effective Time, (a) Merger Sub will merge with and into the Company; (b) the separate corporate existence of Merger Sub will cease; and (c) the Company will continue its corporate existence under the IBCA as the surviving corporation in the Merger and a wholly-owned subsidiary of Parent (sometimes referred to herein as the “**Surviving Corporation**”).

**Section 2.2 Closing.** Upon the terms and subject to the conditions set forth herein, unless otherwise mutually agreed in writing by the Company and Parent, the closing of the Merger (the “**Closing**”) shall take place at the offices of Arnold & Porter Kaye Scholer LLP, 370 Seventeenth Street, Suite 4400, Denver, CO 80202 at 10 a.m. local time no later than 10 Business Days following the satisfaction or waiver of the conditions set forth in Article VIII hereof, other than such conditions that by their nature are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions (the date of the Closing, the “**Closing Date**”). Subject to the provisions of this Agreement, at the Closing, the Parties shall cause the articles of merger in the form attached as **EXHIBIT E** hereto be filed with the Secretary of State of the State of Iowa, which shall be executed in accordance with the relevant provisions of the IBCA (the “**Merger Articles**”). The Merger shall become effective at such time as the Merger Articles have been duly filed with the Secretary of State of the State of Iowa or at such other later time expressly specified in the Merger Articles (the “**Effective Time**”).

**Section 2.3 Effect of the Merger.** Unless otherwise agreed to by Parent and the Company prior to the Closing, at the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Merger Articles and the applicable provisions of the IBCA.

**Section 2.4 Certificate of Incorporation; Bylaws.** At the Effective Time:

(a) The articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by the IBCA.

(b) The bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by the IBCA.

**Section 2.5 Directors and Officers.** At the Effective Time, the directors and officers of Merger Sub shall become the directors and officers of the Surviving Corporation, each to hold office until their respective successors are duly elected or appointed and qualified, or until their earlier death, resignation or removal.

**Section 2.6 Transfers.** At the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further transfers on the stock transfer books of the Company of the Company Capital Stock outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation for transfer, they shall be cancelled and exchanged as provided in Article III and the applicable provisions of the Exchange Agent Agreement.

### **ARTICLE III**

#### **EFFECT OF THE MERGER ON CAPITAL STOCK; MERGER CONSIDERATION**

**Section 3.1 Conversion of Equity Interests.** At the Effective Time, as a result of the Merger and without any further action on the part of Parent, Merger Sub, or the Company or any holder of any capital stock or membership interests of Parent, Merger Sub or the Company:

(a) **Cancellation of Certain Shares of Company Capital Stock.** Each share of Company Capital Stock that is owned by Parent or the Company (as treasury stock or otherwise), or any of their respective direct or indirect Subsidiaries, including, without limitation, by Heartland, as of immediately prior to the Effective Time (the “**Cancelled Shares**”) will automatically be cancelled and retired and will cease to exist, and no consideration will be delivered in exchange therefor.

(b) **Conversion of Company Capital Stock.** Each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than Cancelled Shares and Dissenting Shares) shall be cancelled and shall be converted automatically into the right to receive the Closing Per Share Merger Consideration, in cash, without interest upon surrender of the Certificate or Book-Entry Share and Letter of Transmittal representing such shares as provided in Section 3.3.

(c) **Cancellation of Shares.** At the Effective Time, all shares of Company Capital Stock will no longer be outstanding and all shares of Company Capital Stock will be cancelled and retired and will cease to exist, and, subject to Section 3.4, each holder of: (i) a certificate formerly representing any shares of Company Capital Stock (each, a “**Certificate**”); or (ii) a book-entry share which immediately prior to the Effective Time represented a share of Company Capital Stock (each, a “**Book-Entry Share**”) will, subject to the IBCA in the case of Dissenting Shares, cease to

have any rights with respect thereto, except the right to receive the Closing Per Share Merger Consideration in accordance with Section 3.3 hereof.

(d) **Conversion of Merger Sub Capital Stock.** Each share of common stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid and non-assessable share of common stock, par value \$0.001 per share of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the Effective Time, all certificates representing Merger Sub common stock shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

**Section 3.2 Closing Actions.** In connection with the Closing, subject to Section 2.2:

(a) [REDACTED]

(b) **Parent Closing Deliverables.** Parent shall deliver the following:

(i) the Exchange Agent Agreement, duly executed by Parent and the Exchange Agent;

(ii) immediately following the Effective Time, the CIC Payments on behalf of the Company by wire transfer of immediately available funds to the individuals and in the amounts set forth on Section 6.7 of the Disclosure Schedule, in each case pursuant to wire instructions for such individuals provided by the Company to Parent no later than two Business Days prior to the Closing;

(iii) immediately following the Effective Time, [REDACTED] by wire transfer of immediately available funds to the individuals and in the amounts set forth on Section 6.7 of the Disclosure Schedule, in each case pursuant to wire instructions for such individuals provided by the Company to Parent no later than two Business Days prior to the Closing;

(iv) promptly following the Effective Time, confirmation, in form and substance reasonably acceptable to the Company, of Parent's deposit of the funds contemplated by Section 3.3.

(c) **Company Closing Deliverables.** The Company shall deliver the following:

(i) a duly executed certificate in the form of **EXHIBIT F** that satisfies the requirements of Treasury Regulation Section 1.1445-2(c)(3) certifying that the stock of the Company acquired by Parent is not a U.S. real property interest;

(ii) certificates of good standing for the Company and each its Subsidiaries, dated not more than ten days prior to the Closing Date issued by the appropriate Governmental Authority of the jurisdiction of its organization;

(iii) letters of resignation from each of the directors and officers of the Company and its subsidiaries required to be delivered pursuant to Section 6.9 hereof;

(iv) at least three Business Days prior to Closing, the Payoff Letters required to be delivered pursuant to Section 6.19 hereof; and

(v) a certificate of the Secretary of the Company certifying in his capacity as such, the following: (i) the Company Charter Documents are true, correct and complete and have not been amended since the date of the certification, (ii) the resolutions of the Company Board and the Shareholders which authorize the execution and performance of this Agreement, the Merger and the other transactions contemplated hereunder, and (iii) the incumbency and signatures of the officers of the Company executing this Agreement.

### **Section 3.3 Surrender of Shares; Payments.**

(a) Prior to the Effective Time, Parent shall appoint the Exchange Agent to act as the agent for the purpose of paying the Closing Merger Consideration for the Certificates and the Book-Entry Shares. At or immediately following the Effective Time, Parent shall deposit, or cause the Surviving Corporation to deposit, with the Exchange Agent, sufficient funds to pay the Closing Per Share Merger Consideration that is payable in respect of all of the shares of Company Capital Stock represented by the Certificates and Book-Entry Shares (other than Cancelled Shares and Dissenting Shares) as of the Effective Time. Promptly following the Closing Date, the Exchange Agent shall mail to each holder of record of shares of Company Capital Stock as of immediately prior to the Effective Time (i) a notice of effectiveness of the Merger; (ii) a letter of transmittal in form and substance reasonably acceptable to the Company and Parent (“**Letter of Transmittal**”); and (iii) instructions for use in surrendering the Certificates and Book-Entry Shares and for receiving the applicable portion of the aggregate Closing Per Share Merger Consideration in respect thereof. Upon surrender to the Exchange Agent of a Certificate or Book-Entry Share, together with such Letter of Transmittal duly executed and completed in accordance with the instructions thereto, (i) the holder of such Certificate or Book-Entry Share shall be entitled to receive in exchange therefor the applicable portion of the aggregate Closing Per Share Merger Consideration payable in accordance with Section 3.1(b) hereof and (ii) the Certificate or Book-Entry Share so surrendered shall forthwith be cancelled. The Exchange Agent shall, promptly, in accordance with the Exchange Agent Agreement, following receipt of each properly surrendered Certificate or Book-Entry Share, cause the payment described in the preceding sentence to be made to the holder of such Certificate or Book-Entry Share by check or wire transfer to the account designated by such holder in the Letter of Transmittal delivered with such Certificate or Book-Entry Share.

(b) If any Certificate shall have been lost, stolen or destroyed, the record holder of such Certificate shall deliver to Parent or the Exchange Agent an affidavit with respect to such loss, theft or destruction in a form reasonably acceptable to Parent. The Exchange Agent or the Parent

may, in Parent's sole discretion and as a condition precedent to the delivery of any applicable portion of the Closing Merger Consideration to such holder, require such record holder to post a bond in reasonable and customary amount and upon such terms as may be reasonably required by the Exchange Agent or Parent or to indemnify the Exchange Agent, Parent and the Surviving Corporation against any claim that may be made against the Exchange Agent, Parent or the Surviving Corporation with respect to the Certificate alleged to have been lost, stolen or destroyed. The Exchange Agent shall not deliver to such record holder any portion of the Closing Merger Consideration attributable to any such lost, stolen or destroyed Certificate until such record holder shall have complied with this Section 3.3(b).

(c) Notwithstanding anything to the contrary in this Section 3.1, none of the Exchange Agent, Parent, Merger Sub, the Company, the Surviving Corporation or any other Person shall be liable to any Shareholder for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(d) Any portion of the funds received by the Exchange Agent (including the proceeds of any investments thereof) which remains unclaimed by the Shareholders for one year after the date of delivery to the Exchange Agent shall be delivered to the Surviving Corporation. Any Shareholder that has not theretofore surrendered any Certificate or Book-Entry Share and submitted a Letter of Transmittal in accordance with the requirements set forth in such Letter of Transmittal and this Article III, or otherwise received any portion of the Closing Merger Consideration due and payable to such Shareholder pursuant to this Agreement, shall thereafter look only to Parent (or any successor thereto) and the Surviving Corporation (or any successor thereto) for payment of the applicable portion of the Closing Merger Consideration (after giving effect to any required Tax withholdings and without any interest thereon) upon due surrender of any applicable Certificate, Book-Entry Share (or effective affidavits of loss in lieu thereof).

**Section 3.4 Withholding Rights.** Each of the Exchange Agent, Parent, Merger Sub and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Article III such amounts as may be required to be deducted and withheld with respect to the making of such payment under any Tax Laws. To the extent that amounts are so deducted and withheld by the Exchange Agent, Parent, Merger Sub, or the Surviving Corporation, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Parent, Merger Sub, or the Surviving Corporation, as the case may be, made such deduction and withholding.

**Section 3.5 No Further Ownership Rights.** At the Effective Time, all shares of Company Capital Stock outstanding immediately prior to the Effective Time shall cease to be outstanding and shall be cancelled and retired and shall cease to exist, and each holder of a Certificate or Book-Entry Shares that immediately prior to the Effective Time represented any such shares of Company Capital Stock shall thereafter cease to have any rights with respect to such shares of Company Capital Stock, except in each case the right to receive the applicable portion of the Closing Merger Consideration, without interest pursuant to the terms of this Article III. The applicable portions of the Closing Merger Consideration paid upon the surrender of Certificates or Book-Entry Shares or payable thereafter in accordance with this Agreement and

any other applicable Transaction Document shall be deemed to have been paid in full satisfaction of all rights pertaining to the Company Capital Stock formerly represented thereby or issuable upon exercise or conversion thereof.

**Section 3.6 Taking of Necessary Action; Further Action.** If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Corporation are authorized in the name and on behalf of the Company to take all such lawful and necessary action. Parent shall cause Merger Sub or the Surviving Corporation, as the case may be, to perform all of the obligations of Merger Sub or the Surviving Corporation, as applicable, relating to this Agreement, the other Transaction Documents and the Transactions.

**Section 3.7 Appraisal Rights.**

(a) Notwithstanding any provision of this Agreement to the contrary, other than Section 3.7(b), in the event any holder of shares of Company Capital Stock duly and validly demands appraisal of such shares of Company Capital Stock in accordance with the provisions of Section 490.1302 of the IBCA, is in compliance with all of the provisions of the IBCA concerning the right of such holder to demand appraisal of such shares of Company Capital Stock (all shares of Company Capital Stock held by all such holders with respect to which appraisal is validly demanded and maintained, the “**Dissenting Shares**”), any Dissenting Shares held by such holder shall not be converted into or represent a right to receive any portion of the Closing Merger Consideration pursuant to Section 3.1(b) hereof, but instead shall be converted into the right to receive only the consideration as may be determined to be due with respect to such Dissenting Shares under Section 490.1302 of the IBCA. From and after the Effective Time, a holder of Dissenting Shares shall not be entitled to exercise any of the voting rights or other rights of a shareholder of the Surviving Corporation.

(b) Notwithstanding the provisions of Section 3.1 hereof, if any holder of shares of Company Capital Stock who demands appraisal of such shares under Section 490.1302 of the IBCA shall effectively withdraw or lose (through failure to perfect or otherwise) the right to appraisal, as of the later of the Effective Time and the occurrence of such event, such holder’s shares of Company Capital Stock shall no longer be deemed Dissenting Shares pursuant to this Agreement and shall automatically be converted into, and represent only, the right to receive the applicable portions of the Closing Merger Consideration as provided in Section 3.1 hereof upon surrender of the Certificates or Book-Entry Shares representing such shares of Company Capital Stock in accordance with Section 3.1 hereof.

(c) Prior to the Effective Time, the Company shall give Parent prompt written notice of any written demands for appraisal or purchase of any shares of Company Capital Stock, withdrawals of such demands and any other instruments served pursuant to Section 490.1302 of the IBCA and received by the Company which relate to any such demand for appraisal or purchase. The Company shall not, except with the prior written consent of Parent or as required by applicable law, either (i) voluntarily make any payment with respect to any demands for appraisal or purchase

of shares of Company Capital Stock or offer to settle or settle any such demands or (ii) make any offer to buy, or accept any offer to sell, any shares of Company Capital Stock.

**Section 3.8 Adjustments to Prevent Dilution.** Subject to the restrictions contained in Section 6.2, in the event that the Company changes the number of shares of Company Capital Stock issued and outstanding prior to the Effective Time as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, subdivision, issue tender or exchange offer, or other similar transaction, the Closing Merger Consideration and the Closing Per Share Merger Consideration shall be proportionately adjusted to reflect such change.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

For purposes of this Agreement, the phrase “made available” shall mean that true, accurate and complete copies of the documents or information referred to have been posted, retained and thereby made available to Parent and its Representatives through the online “virtual data room” established by the Company and/or its Representatives (the “**Data Room**”) no later than the day prior to the date hereof. Except as set forth in the applicable section of the Disclosure Schedule, the Company hereby makes the following representations and warranties to Parent and to Merger Sub as follows:

### **Section 4.1 Organization; Subsidiaries.**

(a) The Company and each of its Subsidiaries is a corporation, limited liability company, or other legal entity duly organized, validly existing, and in good standing under the Laws of its jurisdiction of organization, and has the requisite corporate, limited liability company, or other organizational, as applicable, power and authority to own, lease, and operate its assets and to carry on its business as now conducted. Each of the Company and its Subsidiaries is duly qualified or licensed to do business as a foreign corporation, limited liability company, or other legal entity and is in good standing in each jurisdiction where the character of the assets and properties owned, leased, or operated by it or the nature of its business makes such qualification or license necessary, except where the failure to be so qualified or licensed or to be in good standing, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Section 4.1(b) of the Disclosure Schedule sets forth the name and jurisdiction of organization for each Subsidiary. Neither the Company nor any Subsidiary has agreed, is obligated to make or is bound by any written agreement or contract to make any future investment in or capital contribution to any other Person.

(c) The Company has made available copies as of the Execution Date of each of (i) its articles of incorporation, as amended and restated (the “**Company Articles of Incorporation**”), (ii) the bylaws of the Company, as amended (together with the Company Articles of Incorporation, the “**Company Charter Documents**”) and (iii) similar organizational or governing documents of each its Subsidiaries, including, without limitation, LLC Agreements, Operating Agreements, Partnership Agreements, Limited Partnership Agreements, etc. (together with the Company

Charter Documents, the “**Organizational Documents**”). Each Organizational Document is in full force and effect. Neither the Company nor any Subsidiary is in violation of any of the provisions of its Organizational Documents.

(d) The minute books of the Company and each of its Subsidiaries, which have been made available to Parent, contain true, complete and correct records of all meetings and other material corporate actions held or taken since January 1, 2015, of their respective shareholders, stockholders, members, partners or other equity holders and the boards of directors or other governing bodies (including committees of their respective boards of directors or other governing bodies) through the date hereof.

## **Section 4.2 Company Capitalization.**

(a) The authorized capital stock of the Company consists of (i) [REDACTED] shares of Class A Common Stock, of which [REDACTED] shares are issued and outstanding, and (ii) [REDACTED] shares of Class B Common Stock, [REDACTED] are issued and outstanding. Section 4.2(a) of the Disclosure Schedule sets forth the holders of such shares of Class A Common Stock as of the date set forth therein. All of the issued and outstanding shares of Company Capital Stock have been duly authorized, are validly issued, fully paid and non-assessable, and free of preemptive rights.

(b) There are no outstanding or authorized options, warrants, convertible securities, subscriptions, calls, scrip, rights to subscribe to, purchase rights, conversion rights, exchange rights, equity appreciation rights, phantom stock, profits participation or other rights, agreements, arrangements or commitments of any character (i) calling for the purchase, sale, repurchase, redemption or issuance of any shares of Company Capital Stock or any other equity securities of the Company or any securities representing the right to purchase or otherwise receive any shares of Company Capital Stock (including any rights plan or agreement) or (ii) providing a counterparty with redemption or contingent interest or a guaranteed return. Except for the Support Agreements, there are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any shares of Company Capital Stock.

(c) Section 4.2(c) of the Disclosure Schedule lists the number of authorized and outstanding shares of capital stock or equity securities and record and beneficial owners of such capital stock or equity securities for each Subsidiary of the Company. Except as set forth in Section 4.2(c) of the Disclosure Schedule, the Company owns, directly or indirectly, all of the issued and outstanding shares of capital stock of or all other equity interests in each of the Subsidiaries free and clear of any Liens, and all of such shares or equity securities are duly authorized and validly issued, fully paid, nonassessable and free of preemptive rights. Except as set forth on Section 4.2(c) of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has or is bound by any outstanding subscriptions, options, warrants, calls, commitments, contingent interests or agreements of any character calling for the purchase, repurchase, sale, redemption or issuance of any shares of capital stock or any other equity security of any Subsidiary of the Company or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Subsidiary. There are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any shares of any Subsidiary of the Company.

(d) All distributions, dividends, repurchases and redemptions of the Company Capital Stock (or other equity interests of the Company) were undertaken in compliance with the Organizational Documents then in effect, any agreement to which the Company then was a party and in compliance with the IBCA.

#### **Section 4.3 Authority; No Violation.**

(a) The Company has all requisite corporate power and corporate authority to execute and deliver this Agreement and, subject to [REDACTED] and the accuracy of the representations and warranties of Parent and Merger Sub set forth in this Agreement, to consummate the Transactions. The Company Board at a duly held meeting has (i) determined that this Agreement and the Transactions, including the Merger, are in the best interests of the Company and the Shareholders, (ii) approved this Agreement and the Transactions, including the Merger, (iii) approved the execution and delivery of this Agreement, and (iv) subject to Section 6.4, resolved to recommend that the Shareholders approve this Agreement and the Transactions, including the Merger (the recommendation contemplated by this clause (iv) being referred to as the “**Company Recommendation**”), and directed that such matter be submitted for consideration by the Shareholders at the Company Shareholders Meeting. None of the aforesaid actions by the Company Board has been amended, rescinded or modified as of the date of this Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] no other corporate proceedings on the part of the Company are necessary to approve this Agreement or to consummate the Transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors’ rights and remedies generally.

(b) Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the Transactions, including the Merger, will (i) violate any provision of the Organizational Documents, or (ii) assuming that the consents, approvals and filings referred to in Section 4.4 are duly obtained or made, and except as set forth in Section 4.3(b) of the Disclosure Schedules, (A) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, or (B) violate, conflict with, result in a breach of any provision of, or require redemption or repurchase or otherwise require the issuance, purchase or sale of any securities under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any of its

Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected.

**Section 4.4 Consents and Approvals.** No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority or with any third Person are necessary in connection with the execution and delivery by the Company of this Agreement or the consummation by the Company of the Transactions, including the Merger, except for (a) the consent and approval of the STB, (b) any notices required to be filed with FINRA or the OTC Pink Markets, (c) the filing of the Merger Articles with the Iowa Secretary of State and (d) as otherwise set forth in Section 4.3 of the Disclosure Schedule.

**Section 4.5 Financial Statements.**

(a) The Company has delivered to Parent a copy of (A) the audited consolidated balance sheets of the Company and its Subsidiaries as of December 31, 2018, 2017 and 2016, together with the audited consolidated statements of income, cash flows and changes in equity of the Company and its Subsidiaries for the years then ended, and the related notes thereto (the “**Audited Financial Statements**”), and (B) the unaudited consolidated balance sheet of the Company and its Subsidiaries (the “**Consolidated Balance Sheet**”) as of March 31, 2019 (the “**Consolidated Balance Sheet Date**”), together with the related unaudited consolidated statements of income, cash flows and changes in equity of the Company and its Subsidiaries for the three-month period then ended (the “**Interim Financial Statements**” and together with the Audited Financial Statements, the “**Consolidated Financial Statements**”). The Consolidated Financial Statements, together with the notes thereto, (i) have been prepared in accordance with GAAP (except that the unaudited Interim Financial Statements do not contain all notes required by GAAP that, if presented, would not differ materially from those presented in the Audited Financial Statements, and are subject to normal year-end audit adjustments (the effect of which would not be materially adverse)) applied on a consistent basis throughout the periods covered thereby, (ii) are based on the books and records of the Company and (iii) fairly present, in all material respects, the consolidated financial position of the Company and its Subsidiaries at the dates thereof and the consolidated results of the income and cash flows of the Company and its Subsidiaries for the respective periods indicated.

(b) Except as set forth in Section 4.5(b) of the Disclosure Schedule, the Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, except (i) liabilities which are adequately and properly reflected or reserved against in the Consolidated Balance Sheet, and (ii) Current Liabilities incurred in the ordinary course of business since December 31, 2018 and which are not, individually or in the aggregate, material in amount.

(c) All of the Company’s accounts receivable resulted from bona fide transactions in the ordinary course of business with unrelated third parties, and the Company has no Knowledge of any reason for them, net of any reserves established in accordance with GAAP consistently applied, to be uncollectible in the ordinary course of business, except as set forth in Consolidated Balance Sheet.

**Section 4.6 Absence of Certain Changes, Events and Conditions.** Except as expressly contemplated by the Agreement or as set forth in Section 4.6 of the Disclosure Schedule, since December 31, 2018, the Company and its Subsidiaries have operated in the ordinary course of business consistent with past practices in all material respects and there has not been, with respect to the Company or any of its Subsidiaries, any:

(a) event, occurrence or development that has had or could reasonably be expected to have a Material Adverse Effect, including, without limitation, (i) any damage, destruction or loss to any of the properties or assets of the Company or any of its Subsidiaries, whether or not covered by insurance, that has materially and adversely affected or impaired the ability of the Company or any of its Subsidiaries to conduct its business in the ordinary course consistent with past practices; or (ii) any strikes, work stoppages or other labor trouble affecting the Company or any of its Subsidiaries;

(b) amendment of the Organizational Documents;

(c) split, combination or reclassification of any shares of Company Capital Stock or other equity securities of the Company or any of its Subsidiaries;

(d) issuance, sale or other disposition by the Company or any Subsidiary of the Company of any of Company Capital Stock or other equity securities of the Company or any of its Subsidiaries, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) Company Capital Stock or other equity securities of the Company or any of its Subsidiaries;

(e) redemption, purchase or acquisition by the Company or any Subsidiary of the Company of Company Capital Stock or other equity securities of the Company or any of its Subsidiaries;

(f) record or payment dates set for the payment of any dividends or distributions on the Company Capital Stock or other equity securities of the Company or any of its Subsidiaries, or any dividend or other distribution made, declared or paid on any shares of Company Capital Stock or other equity securities of the Company or any of its Subsidiaries;

(g) change in any method of accounting or accounting practice of the Company, except as required by GAAP or applicable Law as disclosed in the notes to the Audited Financial Statements;

(h) incurrence, assumption or guarantee of any indebtedness for borrowed money, except unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practice;

(i) sale or other disposition of any of the Company's or any of its Subsidiaries' assets, including any Company assets shown or reflected on the Audited Financial Statements or acquired since December 31, 2018, except in the ordinary course of business and except for any assets having an aggregate value of less than \$10,000 that are not required for the operation of the

Company's or any of its Subsidiaries' business in the ordinary course consistent with past practices or that have been replaced;

(j) (1) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of the Company's or any of its Subsidiaries' current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (2) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$5,000, or (3) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(k) hiring or promoting any person as or to (as the case may be) a management-level position or hiring or promoting any employee below a management-level position except to fill a vacancy in the ordinary course of business;

(l) adoption, amendment or modification of any Company Benefit Plan;

(m) loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its shareholders or current or former directors, officers or employees;

(n) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(o) except for the Merger, adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(p) action by the Company or any of its Subsidiaries to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Parent in respect of any Post-Closing Tax Period;

(q) any action taken that would have been prohibited by Section 6.1 or Section 6.2 if such action had been taken after the date hereof and prior to the Closing Date; or

(r) agreement to do any of the foregoing, or any action or omission that would result in any of the foregoing.

#### **Section 4.7 Material Contracts.**

(a) Section 4.7(a) of the Disclosure Schedules lists each of the following contracts and other agreements of the Company (together with all Leases listed in Section 4.8(b) of the Disclosure Schedule, collectively, the "**Material Contracts**"):

- (i) Contracts for the leasing of real property on which the Company and/or a Subsidiary operates railroad lines;
- (ii) each Contract of the Company or any Subsidiary involving aggregate consideration in excess of \$250,000 and ongoing obligations of the Company or any Subsidiary beyond December 31, 2019, and which, cannot be cancelled by the Company without penalty or with less than 60 days' notice;
- (iii) Contracts containing restrictions on the right of the Company or any of its Subsidiaries to engage in activities competitive with any Person or to solicit suppliers, customers or employees anywhere in the world, other than restrictions pursuant to "paper barriers", as such term is generally understood in the railroad industry, that are applicable to the Company or any of its Subsidiaries;
- (iv) all Contracts that relate to the sale of any of the Company's or any of its Subsidiaries' assets, other than in the ordinary course of business, since January 1, 2016;
- (v) all Contracts that provide for the assumption by the Company or any of its Subsidiaries of any Tax or environmental liability of any other Person;
- (vi) Contracts that provide for borrowings in excess of \$250,000 or that relates to a swap or hedging transaction or other derivative agreement for a net amount in excess of \$100,000;
- (vii) all Contracts that obligate the Company to make any capital commitment or capital expenditure, other than acquisition of inventory, in excess of \$250,000;
- (viii) all Contracts that provide the Company or any of its Subsidiaries rights as to operation, management or control of a partnership, joint venture or similar arrangement;
- (ix) all Contracts providing for the acquisition or disposition of any business, stock or assets of any other Person (whether by merger, sale of stock, sale of assets or otherwise) by the Company or any of its Subsidiaries pursuant to which the Company or any of its Subsidiaries has any ongoing or continuing obligations;
- (x) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company or any of its Subsidiaries is a party and which are not cancellable without penalty by the Company or any of its Subsidiaries (as applicable) with less than 60 days' notice;
- (xi) Contracts that relate to transportation or transportation related activities (other than tariffs) pursuant to which the Company generated in excess of \$500,000 during the prior fiscal year;
- (xii) Contracts that are settlement or similar contracts with any Governmental Authority or that are any other settlement or similar contracts pursuant to which the Company or

any of its Subsidiaries is obligated to pay consideration after the date of this Agreement in excess of \$150,000;

(xiii) all Contracts with any Governmental Authority to which the Company or any of its Subsidiaries is a party outside of the ordinary course of business;

(xiv) all guarantees by the Company or any of its Subsidiaries of any indebtedness, contract, or other obligation of another Person;

(xv) all Contracts to which the Company or any Subsidiary is a party concerning the right or authority, or acquisition of the right or authority, to conduct rail operations, interchange or handle freight, deliver rail service to customers, or provide services related to its rail operations;

(xvi) all collective bargaining agreements or agreements with any labor organization, union or association to which the Company or any of its Subsidiaries is a party;

(xvii) all Contracts limiting the future disposition, transfer or sale of any of the Company's or its Subsidiaries' assets or rights, other than general restrictions on the assignment of such Contract; and

(xviii) any other Contract that is material to the Company and not previously disclosed pursuant to this Section 4.7(a).

(b) Each Material Contract is valid and binding on the Company or its Subsidiaries, as applicable, in accordance with its terms and is in full force and effect. None of the Company, any of its Subsidiaries, or, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) has been made available to Parent.

#### **Section 4.8 Title to Assets; Real Property.**

(a) The Company or its Subsidiaries have good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, or valid easements and rights of way to use in the current manner used by the Company and its Subsidiaries, all Real Property and tangible personal property and other assets reflected in the Financial Statements, used in the operation of the Company's and its Subsidiaries' business, or, acquired after December 31, 2018, other than properties and assets sold or otherwise disposed of in the ordinary course of business since December 31, 2018, that are not required for the operation of the Company's or any of its Subsidiaries' business in the ordinary course consistent with past practices or that have been replaced. All such properties and assets (including leasehold interests) are free and clear of Liens except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (i) those items set forth in Section 4.8(a) of the Disclosure Schedules;
  - (ii) Liens for Taxes not yet due and payable;
  - (iii) mechanic's, carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business consistent with past practice relating to amounts that are not yet due and payable;
  - (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property, none of which materially and adversely affect the railroad operations of the Company or any of its Subsidiaries as historically conducted;
  - (v) other than with respect to owned Real Property, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company; or
  - (vi) other minor imperfections of title or non-monetary Liens arising in the ordinary course of business consistent with past practices.
- (b) Section 4.8(b) of the Disclosure Schedule lists: (i) the street address of each parcel of owned Real Property (not including easements, rights of way, or similar interest in real property held by the Company or any of its Subsidiaries for the operation of its railroad track); and (ii) the street address of each parcel of leased Real Property (other than railroad track leases), and a list, as of the date of this Agreement, of all leases for each parcel of leased Real Property (collectively, "**Leases**"), including the identification of the lessee and lessor thereunder.
- (c) The Company and its Subsidiaries, by way of the Contracts disclosed in Section 4.8(c) of the Disclosure Schedule, the owned Real Property, leased Real Property, and other easements has as of the date hereof, and will have as of the Effective Time, sufficient rights over a contiguous right-of-way with no gaps or strips, from one end point of each line to the other end point of each such line, to conduct rail operations substantially in the same manner as the rail operations have been conducted historically by the Company and its Subsidiaries.

#### **Section 4.9 Rail Facilities and Railroad Assets.**

- (a) The Company or one of its Subsidiaries hold valid and sufficient property interests and operating rights in and to the rail lines depicted on the maps referenced in Section 4.9(a) of the Disclosure Schedule, and to the adjacent yards, spur tracks and other rail facility appurtenances thereto (collectively, the "**Rail Facilities**") to permit the Company and its Subsidiaries to conduct rail freight operations on and over the Rail Facilities as such operations are conducted by the Company and its Subsidiaries on the date of this Agreement. None of the Company or any of its Subsidiaries is a party to any Contract or subject to any Order that would deprive any of the Company or its Subsidiaries of the ability to operate substantially as the Company and its Subsidiaries operates over the Rail Facilities on the date of this Agreement.

(b) The Company or one of its Subsidiaries owns, leases or has the legal right to use all assets, properties, and rights (whether real, personal or intangible, and including the Rail Facilities) (the “**Railroad Assets**”) used in the conduct of the business of the Company and its Subsidiaries as currently conducted. The Railroad Assets are in good operating condition and repair (subject to reasonable wear and tear given the age and use of such Railroad Assets) and are suitable for the purposes for which they are used by the Company or its Subsidiaries in its business as currently conducted.

**Section 4.10 Condition and Sufficiency of Assets.** The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company and its Subsidiaries are structurally sound, are in good operating condition and repair (subject to reasonable wear and tear given the age and use of such Railroad Assets), and are suitable for the purposes for which they are used by the Company in its business as currently conducted.

**Section 4.11 Intellectual Property.**

(a) Section 4.11(a) of the Disclosure Schedule contains a correct, current and complete list of all (i) Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and the inventor(s), if any; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration, or application serial number, the issue, registration or filing date; and the current status; (ii) all unregistered trademarks included in the Company’s or any of its Subsidiaries’ Intellectual Property, (iii) all proprietary software of the Company or any of its Subsidiaries; and (iv) all other Intellectual Property used or held for use in the business as currently conducted and as proposed to be conducted. All required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. The Company has made available copies of file histories, documents, certificates, office actions, correspondence and other materials related to the Company IP Registrations. Except as set forth in Section 4.11(a) of the Disclosure Schedules, the Company owns or has the right to use all Intellectual Property necessary to conduct the business as currently conducted (the “**Company Intellectual Property**”).

(b) The Company Intellectual Property and the Company’s and its Subsidiaries’ conduct of its and their business as currently conducted, has not, and does not infringe, violate or misappropriate the Intellectual Property of any Person and no Person is infringing, violating or misappropriating any Company Intellectual Property.

(c) There are, and since January 1, 2015, have been, no Actions (including any opposition, cancellation, revocation, review or other proceeding) settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company or any of its Subsidiaries of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property; or (iii) by the Company, any of its Subsidiaries or any other Person alleging any infringement, misappropriation or violation by any Person of the Company Intellectual Property. The Company is not aware of any facts or circumstances that could

reasonably be expected to give rise to such Action. Neither the Company nor any of its Subsidiaries is subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property.

(d) The computer hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology equipment and related systems, including any outsourced systems and processes, that are owned or used by the Company or any of its Subsidiaries (“**Company Systems**”) are reasonably sufficient for the needs of the Company’s and its Subsidiaries’ business as currently conducted. In the past 18 months, there has been no unauthorized access, use, intrusion, or breach of security, or failure, breakdown, performance reduction, or other adverse event affecting any Company Systems, that has caused or could reasonably be expected to cause any: (i) disruption of or interruption in or to the use of such Company Systems or the conduct of the Company’s business; (ii) loss, destruction, damage, or harm of or to the Company or its operations, personnel, property, or other assets; or (iii) liability of any kind to the Company. The Company has used its reasonable best efforts, consistent with applicable industry best practices, to protect the integrity and security of the Company Systems and the data and other information stored or processed thereon. The Company (i) maintains commercially reasonable backup and data recovery, disaster recovery, and business continuity plans, procedures, and facilities; (ii) acts in compliance therewith; and (iii) tests such plans and procedures on a regular basis, and such plans and procedures have been proven effective upon such testing.

#### **Section 4.12 Insurance.**

(a) Section 4.12(a) of the Disclosure Schedules sets forth a list of all policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, directors’ and officers’ liability, fiduciary liability and other casualty and property insurance maintained by Company or any of its Subsidiaries currently as of the date hereof, and relating to the assets, business, operations, employees, officers and directors of the Company or any of its Subsidiaries or with respect to which the Company or any of its Subsidiaries is a named insured or otherwise the beneficiary of coverage (collectively, the “**Insurance Policies**”), including the deductibles under each Insurance Policy. Copies of the Insurance Policies have been made available to Parent. Such current Insurance Policies are in full force and effect on the date of this Agreement. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company. All such Insurance Policies (i) are valid and binding in accordance with their terms; (ii) are provided by carriers who are financially solvent; and (iii) have not been subject to any lapse in coverage. There are, and since January 1, 2015, have been no claims related to the business of the Company or its Subsidiaries pending under any such Insurance Policies as to which coverage has been denied. Neither the Company nor any of its Subsidiaries is in default under, nor has otherwise failed to comply with, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and its Subsidiaries and are sufficient for compliance in all respects with all applicable

Laws and Contracts to which the Company or any of its Subsidiaries is a party or by which it is bound, except where such non-compliance would not be a material breach or violation of such Laws or Contracts. Section 4.12(a) of the Disclosure Schedules also shows a claims history under insurance policies maintained by the Company and its Subsidiaries since January 1, 2015.

(b) The Company and each of its Subsidiaries, as applicable, have provided proper notice under the Insurance Policies for any claims of injury, damage to property, or other covered events of which it is aware since January 1, 2015, including for those incidents set forth in the Section 4.12(a) of the Disclosure Schedule. To the Company's Knowledge, there are no claims for cumulative injury or exposure, and neither the Company nor any of its Subsidiaries have received any attorneys' liens with regard to said claims.

#### **Section 4.13 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 4.13(a) of the Disclosure Schedules, there are, and since January 1, 2015, have been, no Actions pending or, to Company's Knowledge, threatened (i) against or by the Company or any of its Subsidiaries affecting any of its or their properties or assets or (ii) against or by the Company that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. None of the Actions listed in Section 4.13(a) of the Disclosure Schedule, if adversely determined, would result in a liability of the Company that is not fully covered by insurance or for which the full self-insured retainage has not been accrued as of the Consolidated Balance Sheet Date or will not be accrued on the Closing Statement as a Current Liability.

(b) Except as set forth in Section 4.13(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company, its Subsidiaries or any of its or their properties or assets.

#### **Section 4.14 Operational Matters.**

(a) Except as disclosed in Section 4.14(a) of the Disclosure Schedule, no customer of the Company or any of its Subsidiaries who made payments in excess of \$100,000 during calendar year 2018 has ceased doing business with the Company or its Subsidiary, as applicable, or has advised the Company or its Subsidiary, as applicable, that it contemplates ceasing business with the Company or its Subsidiary or has reduced its business with the Company or its Subsidiary, as applicable, in excess of 25% over the prior calendar year.

(b) Section 4.14(b) of the Disclosure Schedule lists:

(i) All citations, notices of violations or notices of investigation received by the Company or any of its Subsidiaries subsequent to January 1, 2015 resulting in liability (or alleging liability if no final determination of liability has been made) to the Company or any of its Subsidiaries;

(ii) All orders, consent orders, administrative or judicial enforcement proceedings from any Governmental Authority received by the Company or any of its Subsidiaries

since January 1, 2015 relating to safety or health matters involving the business or operations of the Company or any of its Subsidiaries;

(iii) All slow orders currently in effect applicable to the Company or any of its Subsidiaries; and

(iv) All accidents or incidents since January 1, 2015, that have or reasonably could result in a claim of liability against the Company, including any reportable injuries or derailments or damage to property.

#### **Section 4.15 Compliance with Laws; Permits.**

(a) Except as set forth in Section 4.15(a) of the Disclosure Schedules, the Company and its Subsidiaries are, and since January 1, 2015, have been, in compliance with all Laws applicable to them or their business, properties or assets.

(b) All Permits required for the Company and its Subsidiaries to conduct its and their business currently and since January 1, 2015, have been obtained by it and them and are valid and in full force and effect. All fees and charges with respect to such Permits have been paid in full. Section 4.15(b) of the Disclosure Schedule lists all current Permits issued to the Company or any of its Subsidiaries, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.15(b) of the Disclosure Schedule.

#### **Section 4.16 Environmental Matters.**

(a) Except as set forth in Section 4.16(a) of the Disclosure Schedule, the Company and its Subsidiaries are and since January 1, 2015, have been, in compliance with all Environmental Laws and have not received from any Person any (i) Environmental Notice or Environmental Claim, or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of on-going obligations or requirements as of the Closing Date.

(b) The Company and its Subsidiaries have obtained and are and since January 1, 2015, have been, in compliance with all Environmental Permits (each of which is disclosed in Section 4.16(b) of the Disclosure Schedule) necessary for the ownership, lease, operation or use of the business or assets of the Company and its Subsidiaries and all such Environmental Permits are in full force and effect in accordance with Environmental Law. To the Company's Knowledge, there is no condition, event or circumstance relating to Environmental Laws that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Company and its Subsidiaries substantially as currently carried out.

(c) No real property currently or formerly owned, operated or leased by the Company or any of its Subsidiaries is listed on, or has been proposed for listing on, the National Priorities List (or Superfund Enterprise Management System (SEMS)) under CERCLA, or any similar state list.

(d) Except as set forth in Section 4.16(d) of the Disclosure Schedule, (i) there has been no Release of Hazardous Materials in contravention of Environmental Laws with respect to the business or assets of the Company or any of its Subsidiaries or any Real Property currently owned, operated or leased by the Company or any of its Subsidiaries, and (ii) there has been no Release of Hazardous Materials in contravention of Environmental Laws caused by the Company or any of its Subsidiaries with respect to the business or assets of the Company or any of its Subsidiaries or, to the Knowledge of the Company, any Real Property formerly owned, operated or leased by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has received an Environmental Notice that any Real Property currently owned, operated or leased in connection with the business of the Company or any of its Subsidiaries (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been impacted by or contaminated with any Hazardous Material which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Laws or term of any Environmental Permit by, the Company or any of its Subsidiaries.

(e) To the Company's Knowledge, there are no underground storage tanks currently located on the Real Property.

(f) Section 4.16(f) of the Disclosure Schedule lists all environmental reports, audits or inspections that have been conducted by (or at the request of or otherwise concerning) the Company, any of its Subsidiaries or any Governmental Authority with respect to any aspect of the business or operations of the Company. True, correct and complete copies of all of the reports, audits and inspections listed in Section 4.16(f) of the Disclosure Schedule, as well as any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, mitigate, limit or otherwise control pollution and/or emissions, manage waste, stormwater, waste water or otherwise ensure compliance with current Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes), have been made available to Parent.

(g) Section 4.16(g) of the Disclosure Schedules contains a complete and accurate list of all on- and off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company, any of its Subsidiaries, and any predecessors as to which the Company or any of its Subsidiaries may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or SEMS) under CERCLA, or any similar state list, or are otherwise subject to investigation or remediation obligations under any Environmental Law, and neither the Company nor any of its Subsidiaries has received any Environmental Notice regarding potential liabilities with respect to such on- or off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company or any of its Subsidiaries that is pending or unresolved.

(h) None of the Company or its Subsidiaries has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(i) None of the Company or its Subsidiaries is aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or increase in any material

respect the costs associated with the ownership, lease, operation, performance or use of the business or assets of the Company as currently carried out.

#### **Section 4.17 Employee Benefit Matters.**

(a) Section 4.17(a) of the Disclosure Schedule contains a true and complete list of (i) all employee benefit plans as defined in Section 3(3) of ERISA; (ii) all other pension, retirement, group insurance, severance pay, deferred compensation, excess or supplemental benefit, vacation, stock, stock option, equity-based compensation, phantom stock, fringe benefit and incentive plans, contracts, schemes, programs, funds, commitments, or arrangements of any kind; and (iii) all other plans, contracts, schemes, programs, funds, commitments, or arrangements providing money, services, property, or other benefits, whether written or oral, formal or informal, qualified or nonqualified, funded or unfunded, and including any that have been frozen or terminated, which pertain to any employee, former employee, director, officer, shareholder, member, manager, consultant, or independent contractor of the Company or any Company ERISA Affiliate and (i) to which or under the Company or any Company ERISA Affiliate thereof is or has been a party or by which any of them is or has been bound or (ii) with respect to which the Company or any Company ERISA Affiliate has made any payments or contributions since December 31, 2008, or (iii) to which the Company or any Company ERISA Affiliate may otherwise have any liability (including any such plan or arrangement formerly maintained by the Company or any current or former Company ERISA Affiliate) (collectively, the “**Company Benefit Plans**”). For purposes of this Agreement, “**Company ERISA Affiliate**” shall mean any corporation or other entity that is included in a controlled group of corporations within which the Company is also included, as provided in Section 414(b) of the Code; or which is a trade or business under common control with the Company, as provided in Section 414(c) of the Code; or which constitutes a member of an affiliated service group within which the Company is also included, as provided in Section 414(m) of the Code; or which is required to be aggregated with the Company pursuant to regulations issued under Section 414(o) of the Code.

(b) True and complete copies of the Company Benefit Plans (and, if applicable, related trust or funding agreements, insurance policies and service provider agreements) and all amendments not already incorporated thereto and written descriptions if not reduced to a written document, have been made available to Parent together with (i) the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) required to be filed, (ii) the most recent summary plan description and the most recent IRS determination letter or opinion letter issued with respect to any Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code, (iii) the most recent actuarial valuations, if applicable, and latest financial statements for each of the Company Benefit Plans and (iv) all documents filed with the Internal Revenue Service, Department of Labor or Pension Benefit Guaranty Corporation for the last six years.

(c) Each Company Benefit Plan and their related trusts intended to be qualified under Section 401(a) and 501(a) of the Code has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Company Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to the Company’s

Knowledge, no event or omission has occurred that would cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable.

(d)

(i) Each Company Benefit Plan has been operated or administered and is in compliance with its terms and all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder) and has been administered in accordance with applicable Laws and regulations and its terms.

(ii) All benefits, contributions and premiums required by and due under the terms of each Company Benefit Plan or applicable Law have been timely paid or have been accrued in accordance with the terms of such Company Benefit Plan, the terms of all applicable Laws and GAAP, and none of the Company Benefit Plans has any unfunded liabilities as of the date of this Agreement that are not reflected in the Company's audited financial statements.

(iii) With respect to any Company Benefit Plan, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Company or any of its Subsidiaries to a Tax under Section 4971 of the Code or the assets of the Company or any of its Subsidiaries to a lien under Section 430(k) of the Code.

(iv) There has been, nor is there pending or, to the Company's Knowledge, threatened, actions relating to a Company Benefit Plan, other than claims for benefits in the ordinary course, and no Company Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority.

(v) The Company Benefit Plans satisfy the minimum coverage and discrimination requirements under the Code.

(e) Neither the Company nor Company ERISA Affiliate has ever sponsored, maintained, contributed to or been required to contribute to any Company Benefit Plan that (i) is a "multiemployer plan" as defined in Sections 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code, Title IV of ERISA or Section 302 of ERISA, (iii) is a "multiple employer plan" as defined in Section 413(c) of the Code or (iv) is a "multiple employer welfare arrangement" within the meaning of 3(40)(A) of ERISA, and neither the Company nor any Company ERISA Affiliate has ever incurred any liability under Title IV of ERISA that has not been paid in full.

(f) None of the Company Benefit Plans provides for medical, life insurance or other welfare-type benefits to any employees of the Company after their employment is terminated (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state law regarding medical continuation coverage), and the Company has never promised to provide such post-termination benefits.

(g)

(i) Each Company Benefit Plan may be amended, terminated or otherwise modified by the Company to the greatest extent permitted by applicable Law, including the elimination of any and all future benefit accruals thereunder, and no employee communications or provision of any Company Benefit Plan has failed to effectively reserve the right of the Company or any Company ERISA Affiliate to so amend, terminate or otherwise modify such Company Benefit Plan.

(ii) Neither the Company nor any Company ERISA Affiliate has announced its intention to modify or terminate any Company Benefit Plan or to adopt any arrangement or program which, once established, would come within the definition of a Company Benefit Plan.

(iii) Each asset held under each Company Benefit Plan may be liquidated or terminated without the imposition of any redemption fee, surrender charge or comparable liability

(iv) No Company Benefit Plan provides health or disability benefits that are not fully insured through an insurance contract.

(v) None of the Company Benefit Plans, nor any liability of any kind thereunder or with respect thereto, will be required by operation of Law or otherwise (except as expressly provided herein) to be transferred to Parent and/or its Affiliates as a result of the transactions contemplated hereby.

(h) Each Company Benefit Plan that constitutes in any part a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code has been operated and maintained in operational and documentary compliance with Section 409A of the Code and applicable guidance thereunder. No payment to be made under any Company Benefit Plan is, or to the Company’s Knowledge, will be, subject to the penalties of Section 409A(1) of the Code.

(i) Except as set forth in Section 4.17 of the Disclosure Schedule, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby could (either alone or in conjunction with any other event): (i) result in the payment to any employee, director or consultant of any money or other property; (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any employee, director or consultant; (iii) limit or restrict the ability of Parent or its Affiliates to merge, amend or terminate any Company Benefit Plan, in each case, as a result of the execution of this Agreement; (iv) result in any “parachute payment” within the meaning of Section 280G(b) of the Code; or (v) result in a requirement to pay any tax “gross-up” or similar “make-whole” payments to any employee, director or consultant of the Company or any Company ERISA Affiliate.

#### **Section 4.18 Employment Matters.**

(a) Section 4.18(a) of the Disclosure Schedule sets forth the following: a true, complete and accurate list of each employee, independent contractor, director or consultant of the Company receiving or expected to receive aggregate compensation in excess of \$100,000 in either of the prior or current calendar year, his or her date(s) of hire by the Company, position and title (if any), current rate of compensation (including bonuses, commissions and incentive compensation, if

any), and in the case of an employee, whether such employee is hourly or salaried, whether such employee is exempt or non-exempt, the number of such employee's accrued sick days and vacation days, whether such employee is absent from active employment and, if so, the date such employee became inactive, the reason for such inactive status and, if applicable, the anticipated date of return to active employment. The Company has made available all written employee handbooks, policies, programs and arrangements to Parent.

(b) Except as set forth in Section 4.18(b) of the Disclosure Schedule, neither the Company nor any of its Subsidiaries is or was a party to or is bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization involving any employees of the Company. None of the Company or its Subsidiaries is, and since January 1, 2015, has been engaged in any unfair labor practice and there is (i) no unfair labor practice charge or complaint pending against the Company or any of its Subsidiaries, to the Company's Knowledge, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is pending against the Company or any of its Subsidiaries, or to the Company's Knowledge, threatened, (ii) no strike, labor dispute, slow down or work stoppage pending against the Company or any of its Subsidiaries or, to the Company's Knowledge, threatened against the Company or any of its Subsidiaries and (iii) no union representation campaign, petition or proceeding existing with respect to the employees of the Company or any of its Subsidiaries.

(c) All persons employed by the Company or any Subsidiary are employees at-will or otherwise employed such that the Company or such Subsidiary may lawfully terminate their employment at any time, with or without cause, without creating any cause of action against the Company or any Subsidiary or otherwise giving rise to any liability of the Company or any Subsidiary for wrongful discharge, breach of contract or tort or any other similar cause at law or in equity. A true and correct copy of any form of non-competition, non-solicitation or confidentiality agreement currently in force with any of the employees or consultants of the Company, and any variances therefrom, has been made available to Parent.

(d) The Company and its Subsidiaries are, and have been since January 1, 2015, in compliance with (i) all applicable Laws, rules and regulations relating to labor, labor relations or employment, including, without limitation, any provisions thereof relating to equal employment opportunity, wages, hours, overtime regulation, employee safety and health, immigration control, drug testing, termination pay, vacation pay, fringe benefits, collective bargaining and the payment and/or accrual of the same and all Taxes, insurance and all other costs and expenses applicable thereto, and the Company is not liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing. Without limiting the generality of the foregoing, the Company has not incurred a violation of Part 6 of Subtitle B of Title I of ERISA or other applicable state insurance continuation Law, nor will any such violation occur as a result of the transactions contemplated hereby. As of the Closing Date, the Company will not be, nor has the Company ever been, an enterprise subject to the Worker Adjustment and Retraining Notification Act or any similar state law (collectively referred to as "**WARN**").

(e) Each person whom the Company has retained as an independent contractor qualifies or qualified as an independent contractor and not as an employee of the Company under all applicable Laws and all applicable Company Benefit Plans. Except as otherwise set forth in Section 4.18(e) of the Disclosure Schedule, neither the execution of this Agreement, nor the consummation of the transactions contemplated hereby, shall cause the Company to be in breach of any agreement with any employee, independent contractor or consultant or cause the Company to be liable to pay any severance or other amount to any employee, independent contractor or consultant of the Company.

(f) Since January 1, 2015, there have not been any allegations, charges or complaints concerning employment discrimination, wage payment, overtime obligations or other issues pertaining to unlawful employment practices pending against the Company or, to the Company's Knowledge, threatened.

(g) The Company has in its files a U.S. Citizenship and Immigration Services Form I-9 that was validly and properly completed and, if necessary, that has been properly updated, in accordance with applicable Law for each current or former employee of the Company with respect to whom such form is required to be maintained by the Company under applicable Law. The Company has not knowingly hired or continued to employ unauthorized workers. The Company has not used the services of any individual through a staffing agency, Contract or subcontract knowing that the individual was an unauthorized worker.

**Section 4.19 Taxes.** Except as set forth in Section 4.19 of the Disclosure Schedule:

(a) (i) Each of the Company and its Subsidiaries has (A) duly and timely filed (including pursuant to applicable extensions granted without penalty) all Tax Returns required to be filed by it, and such Tax Returns are true, correct and complete, and (B) timely paid in full all Taxes due and payable by it (including Taxes required to be withheld by it and regardless of whether shown as due on such Tax Returns); (ii) no deficiencies for any Taxes have been proposed, asserted or assessed in writing against the Company or any of its Subsidiaries which deficiencies have not since been resolved; and (iii) there are no Liens for Taxes upon the assets of either the Company or its Subsidiaries except for statutory liens for current Taxes not yet due or Liens for Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

(b) There are no disputes, audits, examinations, investigations or proceedings pending or threatened in writing in respect of any Taxes or Tax Returns of the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries is a party to any litigation or administrative proceeding relating to Taxes, in each case, other than in respect of matters for which adequate reserves have been established in accordance with GAAP.

(c) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period as a result of any: (i) change in method of accounting for a Pre-Closing Tax Period; (ii) use of an improper method of accounting for a Pre-Closing Tax Period; (iii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision

of state, local, or non-U.S. income Tax Law) executed prior to the Closing; (iv) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law); (v) installment sale or open transaction disposition made prior to the Closing; (vi) prepaid amount received on or prior to the Closing Date; or (vii) election under Section 108(i) of the Code.

(d) Neither the Company nor any of its Subsidiaries (i) is a party to any Tax allocation, sharing or indemnity contract or arrangement, (ii) has been a member of an “affiliated group” (other than a group the common parent of which is the Company) filing a consolidated federal income Tax Return, or (iii) has any liability for Taxes of any Person (other than the Company and its Subsidiaries) under Treasury Regulation section 1.1502-6 (or any similar provision of state, local or non-U.S. law), as a transferee or successor, by contract, or otherwise.

(e) Neither the Company nor any of its Subsidiaries has been a “distributing corporation” or a “controlled corporation” in any distribution occurring during the three years prior to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(f) Neither the Company nor any of its Subsidiaries has granted any waiver of any federal, state, local or non-U.S. statute of limitations with respect to, or granted any extension of a period of time for the assessment or payment of, any Tax.

(g) Neither the Company nor any of its Subsidiaries is or has been a party to any “reportable transaction,” as defined in Section 6707A(c)(1) of the Code and Section 1.6011-4(b) of the Treasury Regulations.

(h) The Company and each of its Subsidiaries is not and has never been a “United States Real Property Holding Corporation” within the meaning of Section 897 of the Code.

**Section 4.20 Certain Business Practices.** Since January 1, 2015, none of the Company, any of its Subsidiaries nor any of their respective directors, officers, agents, representatives or employees (in their capacities as directors, officers, agents, representatives or employees) has (a) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity in respect of the business of the Company and its Subsidiaries, (b) directly or indirectly, paid or delivered any fee, commission or other sum of money or item of property, however characterized, to any finder, agent or other party acting on behalf of or under the auspices of a government official of a Governmental Authority, in the United States or any other state, municipality or political subdivision, that is in any manner illegal under any Law of the United States or any other state, municipality or political subdivision having jurisdiction or (c) made any payment to any customer or supplier of the Company or any of its Subsidiaries or any officer, director, partner, employee or agent of any such customer or supplier for an unlawful reciprocal practice, or made any other unlawful payment or given any other unlawful consideration to any such customer or supplier or any such officer, director, partner, employee or agent, in respect of the business of the Company and its Subsidiaries.

**Section 4.21 Brokers.** Except for [REDACTED] neither the Company nor any of its Subsidiaries, nor any of their respective officers or directors on behalf of the Company or

any of the Company's Subsidiaries, has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the Transactions.

**Section 4.22 Opinion of Financial Advisor.** The Company has received the written opinion of [REDACTED], financial advisor to the Company, to the effect that, based upon and subject to the various qualifications, assumptions and limitations set forth in the written opinion, as of the date of such opinion, the Closing Merger Consideration is fair, from a financial point of view, to the holders of the Class A Common Stock.

**Section 4.23 Transactions with Affiliates.** No executive officer or director of the Company or any person owning five percent or more of the outstanding Company Capital Stock (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company or any of its assets, rights or properties or has any interest in any property owned by the Company or has engaged in any transaction with any of the foregoing within the last 12 months.

**Section 4.24 Board Recommendation.** The Company Board, at a meeting duly called and held, has (a) approved this Agreement (including all term and conditions set forth herein) and the Transactions, including the Merger, (b) determined that the Merger is advisable and that the terms of the Merger are fair to, and in the best interests of, the Shareholders, and (c) resolved to recommend that the Shareholders approve and adopt this Agreement and the Transactions, including the Merger.

**Section 4.25 Full Disclosure.** No representation or warranty by the Company in this Agreement and no statement contained in the Disclosure Schedule to this Agreement or any certificate or other document furnished or to be furnished to Parent or any of its Representatives pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**Section 4.26 No other Representation or Warranty.** Except for the representations and warranties expressly set forth in this Article IV, neither the Company nor any other Person on behalf of the Company makes any express or implied representation or warranty with respect to the Company, its Subsidiaries or their respective businesses or with respect to any other information provided to Parent, Merger Sub or their Representatives or Affiliates in connection with the Transactions. Neither the Company nor any other Person will have or be subject to any liability to Parent, Merger Sub or any other Person resulting from the distribution to Parent, Merger Sub or their respective Representatives or Affiliates, or Parent's, Merger Sub's or their Representatives' or Affiliates' use of, any such information, including any information, documents, projections, forecasts or any other material made available to Parent, Merger Sub or their Representatives or Affiliates in certain "data rooms" or management presentations in connection with Parent's and Merger Sub's consideration and review of the Transactions, unless any such information is included in a representation or warranty contained in this Article IV.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Parent and Merger Sub represent and warrant to the Company that the statements contained in this Article V are true and correct as of the date hereof.

**Section 5.1 Organization and Authority of Parent and Merger Sub.** Parent is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of Iowa. Each of Parent and Merger Sub has full limited liability company or corporate power, as applicable, and authority to enter into and perform its obligations under this Agreement and the Transaction Documents to which it is a party and to consummate the Transactions. The execution, delivery and performance by Parent and Merger Sub of this Agreement and any Transaction Document to which they are a party and the consummation by Parent and Merger Sub of the Transactions have been duly authorized by all requisite limited liability company or corporate action, as applicable, on the part of Parent and Merger Sub and no other corporate proceedings on the part of Parent and Merger Sub are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Parent and Merger Sub, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms. When each Transaction Document to which Parent or Merger Sub is or will be a party has been duly executed and delivered by Parent or Merger Sub (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Parent or Merger Sub enforceable against it in accordance with its terms.

**Section 5.2 No Conflicts; Consents.** The execution, delivery and performance by Parent and Merger Sub of this Agreement and the Transaction Documents to which they are a party, and the consummation of the Transactions, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Parent or Merger Sub; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Parent or Merger Sub; or (c) require the consent, notice or other action by any Person under any Contract to which Parent or Merger Sub is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution, delivery and performance of this Agreement and the Transaction Documents and the consummation of the Transactions, except for the filing of the Merger Articles with the Secretary of State of Iowa and the consent and approval of the STB.

**Section 5.3 No Prior Merger Sub Operations.** Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the Transactions.

**Section 5.4 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Parent or Merger Sub.

**Section 5.5 Sufficiency of Funds.** Parent has sufficient sources of funds to enable it to make payment of the Closing Merger Consideration and consummate the Transactions.

**Section 5.6 Legal Proceedings.** There are no actions, suits, claims, investigations or other legal proceedings pending or, to Parent's or Merger Sub's knowledge, threatened against or by Parent, Merger Sub, or any of their respective Affiliates that challenge or seek to prevent, enjoin or otherwise delay the Transactions.

## **ARTICLE VI COVENANTS**

**Section 6.1 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), the Company shall, and shall cause its Subsidiaries, to: (a) conduct its business in the ordinary course and (b) use commercially reasonable efforts to maintain and preserve intact its current organization, business and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business or other third-party relationships with the Company or any of its Subsidiaries, including Governmental Authorities, and retain the services of its present officers and key employees. From the date hereof until the Closing Date, except as consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), the Company shall not take, and shall cause its Subsidiaries not to take any action that would cause any of the changes, events or conditions described in Section 4.6 to occur.

**Section 6.2 Company Forbearances.** Except (i) as set forth in Section 6.2 of the Disclosure Schedule, (ii) as expressly contemplated or permitted by this Agreement, (iii) as required by applicable Law, rule or regulation, or by any Governmental Authority, (iv) as specifically required by a Company Benefit Plan, and (v) with the prior written consent of Parent, during the period from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any of its Subsidiaries to:

(a) (i) adjust, split, combine, reclassify or issue any of its capital stock or other equity securities, (ii) set any record or payment dates for the payment of any dividends or distributions on its capital stock or equity securities or make, declare or pay any dividend or make any other distribution on any shares of its capital stock or equity securities, or any securities or obligations convertible into or exchangeable for any shares of its capital stock or equity securities, except that any wholly owned Subsidiary of the Company may declare and pay dividends to its parent and other wholly owned Subsidiaries of the Company, (iii) directly or indirectly redeem, purchase or otherwise acquire, any shares of its capital stock or other equity securities, or any securities or obligations convertible into or exchangeable for any shares of its capital stock or other equity securities, or (iv) grant any stock appreciation rights or grant any Person any right to acquire any shares of its capital stock or equity securities, or issue, or commit to issue, sell, grant, dispose of,

pledge or otherwise encumber, or authorize or propose the issuance, sale, grant, disposition, pledge or other encumbrance of, any additional shares of capital stock or equity securities, any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any additional shares of capital stock or other equity securities, or any other securities in respect of, in lieu of, or in substitution for, any shares of its capital stock or equity securities outstanding on the date of this Agreement;

(b) sell, transfer, mortgage, encumber or otherwise dispose of any of its material assets or material properties to any Person (other than a direct wholly owned Subsidiary), by merger, consolidation, asset sale or other business combination (including formation of a joint venture) or cancel, release or assign any indebtedness to any such Person or any claims held by any such Person, in each case, except (i) in the ordinary course of business consistent with past practice, including sales of repossessed assets, (ii) dispositions of obsolete or worthless assets, (iii) sales of loans, receivables and other assets in the ordinary course of business consistent with past practice and (iv) sales of immaterial assets which involve the sale of assets with a purchase price of \$100,000 or less in any single case or \$500,000 in all such cases;

(c) make any investment or acquisition, by purchase or other acquisition of stock or other equity interests, by merger, consolidation, asset purchase or other business combination, or by contributions to capital; or make any material purchases of any property or assets, in or from any other Person other than a wholly owned Subsidiary of the Company, except (i) as otherwise permitted by this Section 6.2 and (ii) other acquisitions in the ordinary course of business and, in any case, involving consideration in an aggregate amount not in excess of \$100,000;

(d) enter into, renew, extend, amend or terminate any contract, lease or agreement that is or would be a Material Contract;

(e) (i) increase, or commit to increase, the compensation or severance payable (including by granting or increasing the rate or terms of any salary, bonus, pension or other compensation pursuant to the terms of any Company Benefit Plan), (ii) pay any severance other than in the ordinary course of business consistent with past practice or in accordance with any Contracts in place as of the Execution Date or (iii) except as may be required, or advisable, to comply with applicable Law or contract, amend, establish or enter into any Company Benefit Plan, or other pension, retirement, profit-sharing, severance, retention or welfare benefit plan or agreement or incentive or employment, agreement with or for the benefit of any employee, director or independent contractor or accelerate the vesting of any cash or equity-based compensation;

(f) amend any Organizational Documents;

(g) enter into any new material line of business outside of its existing business;

(h) assign, transfer, lease, cancel, fail to renew or fail to extend any material Permit issued by any Governmental Authority or State Regulator;

(i) incur any indebtedness for borrowed money, issue any debt securities or assume, guarantee or endorse or otherwise become responsible for the obligations of another Person, or

make any loans, advances of capital contributions to, or investments in, any other Person, in each case, except in the ordinary course of business consistent with past practice;

(j) make any material changes in its accounting methods or method of Tax accounting, practices or policies, except as may be required under applicable law, rule, regulation or GAAP;

(k) effect or permit, with respect to the Company and any Subsidiary of the Company, a “plant closing” or “mass layoff”, as such terms are defined under WARN;

(l) account for, manage or treat accounts receivable (including accelerating the collection thereof) or accounts payable (including delaying the payment thereof) in any manner other than in the in the ordinary course of business consistent with past practice;

(m) issue any membership interests of Heartland, including, without limitation, any Class B Interests;

(n) except as permitted by this Agreement, take any action that is intended or would reasonably be expected to result in any of the conditions to the Merger set forth in Section 8.1; Section 8.2 or Section 8.3 not being satisfied; or

(o) agree to, or make any commitment to, take or announce any of the actions prohibited by this Section 6.2.

**Section 6.3 Access to Information.** From the date hereof until the Closing, the Company shall: (a) afford Parent and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, contracts, agreements and other documents and data related to the Company or any of its Subsidiaries; (b) furnish Parent and its Representatives with such financial, operating and other data and information related to the Company and its Subsidiaries as Parent or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company and its Subsidiaries to cooperate with Parent in its investigation of the Company and its Subsidiaries; *provided, however,* that any such investigation shall be conducted during normal business hours upon reasonable advance notice to the Company, under the supervision of the Company’s personnel and in such a manner as not to interfere with the normal operations of the Company. Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement, dated October 10, 2018, between Brookhaven Capital, LLC and the Company (the “**Confidentiality Agreement**”), which shall survive the termination of this Agreement in accordance with the terms set forth therein.

#### **Section 6.4 No Solicitation by the Company.**

(a) The Company will, and will cause its Subsidiaries, and its and their respective directors, officers and Representatives to, immediately cease, and cause to be terminated, any solicitation, encouragement, discussion or negotiations with any Person with respect to a Company Competing Proposal.

(b) Except as otherwise expressly permitted by this Section 6.4, from and after the date of this Agreement until the Effective Time, or if earlier, the termination of this Agreement in accordance with Article X hereof, the Company will not, and will cause its Subsidiaries, and its and their respective directors, officers and Representatives not to, directly or indirectly, (i) initiate, solicit or knowingly encourage or knowingly facilitate any inquiries, proposals, or offers regarding, or the making of a Company Competing Proposal, (ii) engage in any discussions or negotiations with any Person with respect to a Company Competing Proposal, (iii) furnish any non-public information regarding the Company or its Subsidiaries, or access to the properties, assets or employees of the Company or its Subsidiaries, to any Person in connection with or in response to a Company Competing Proposal, (iv) enter into any letter of intent or agreement in principle, or other agreement or commitment in respect of any proposal or offer that constitutes a Company Competing Proposal (other than a confidentiality agreement in accordance with Section 6.4(f)(i)) or (v) resolve, agree or propose to, or permit the Company or any of its Subsidiaries or any of its or their Representatives to agree or propose to take any of the actions referred to in clauses (i) to (iv).

(c) The Company shall not release any third party from, or waive, amend or modify any provision of, or grant permission under, any standstill or confidentiality provision with respect to any such proposal or offer or similar matter in any agreement to which the Company or any of its Subsidiaries is a party; [REDACTED]

[REDACTED] The Company shall promptly inform its Subsidiaries and Representatives of the obligations undertaken in this Section 6.4.

(d) [REDACTED] the Company shall not (i) fail to include the Company Recommendation in the Proxy Statement, (ii) withdraw, modify or qualify, or propose to withdraw, modify or qualify, in a manner adverse to Parent, the Company Recommendation, (iii) recommend, adopt or approve, or propose to recommend, adopt or approve, any Company Competing Proposal or (iv) make any recommendation in connection with a tender or exchange offer for any outstanding Company Capital Stock, other than a recommendation to reject such offer [REDACTED]).

(e) [REDACTED]

[REDACTED]

(f) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

[REDACTED]

(iii)

[REDACTED]

(g)

[REDACTED]

## Section 6.5 Preparation of Proxy Statement.

(a) [REDACTED]

(b) Promptly following the date hereof, (i) the Company and Parent shall cooperate in preparing a mutually acceptable Proxy Statement relating to the matters to be submitted to the holders of Company Capital Stock at the Company Shareholders Meeting. Notwithstanding the foregoing, prior to mailing the Proxy Statement (or any amendment or supplement thereto), the Company will (A) provide Parent with a reasonable opportunity to review and comment on such document (including the proposed final version of such document), (B) include in such document all comments reasonably and promptly proposed by Parent and (C) not mail such document prior to receiving the approval of Parent, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) If at any time prior to the Effective Time, any information relating to Parent or the Company, or any of their respective Affiliates, officers or directors, should be discovered by Parent or the Company that should be set forth in an amendment or supplement to the Proxy Statement, so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other party and an appropriate amendment or supplement describing such information shall be promptly disseminated to the Shareholders.

#### **Section 6.6 Company Shareholders Meeting.**

(a) The Company shall take all action necessary in accordance with applicable Laws and the Organizational Documents of the Company to duly give notice of, convene and hold a meeting of the Shareholders for the purpose of [REDACTED], to be held as promptly as reasonably practicable following the execution of this Agreement. Except as expressly permitted by Section 6.4, the Company Board shall recommend that the Shareholders vote in favor of the approval of this Agreement at the Company Shareholders Meeting and the Company Board shall solicit from the Shareholders proxies in favor of the approval of this Agreement, and the Proxy Statement shall include a statement to the effect that the Company Board has made the Company Recommendation. Notwithstanding anything to the contrary contained in this Agreement, the Company (i) shall be required to adjourn or postpone the Company Shareholders Meeting (A) to the extent necessary to ensure that any supplement or amendment to the Proxy Statement that is required to be disseminated under applicable Law is provided to the Shareholders or (B) if, as of the time for which the Company Shareholders Meeting is scheduled, there are insufficient shares of Company Capital Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct business at such Company Shareholders Meeting; provided, however, that a proxy related to the shares of Company Capital Stock subject to a Support Agreement shall be deemed to have been received by the Company for such purpose; [REDACTED]

██████████ or (B) if, as of the time for which the Company Shareholders Meeting is scheduled, the Company reasonably determines in good faith that there are insufficient shares of Company Capital Stock represented (either in person or by proxy) ██████████ provided, however, that a proxy related to the shares of Company Capital Stock subject to a Support Agreement shall be deemed to be represented and voted for such purpose and provided further that unless otherwise agreed to by the parties, the Company Shareholders Meeting shall not be adjourned or postponed to a date that is more than 30 days after the date for which the meeting was previously scheduled (it being understood that such Company Shareholders Meeting shall be adjourned or postponed every time the circumstances described in the foregoing clause (i)(A) or (i)(B) exist, and such Company Shareholders Meeting may be adjourned or postponed every time the circumstances described in the foregoing clause (ii)(A) or (ii)(B) exist); and provided, further, that the Company Shareholders Meeting shall not be adjourned or postponed to a date on or after two Business Days prior to the Outside Termination Date. The Company shall promptly provide to Parent all voting tabulation reports relating to the Company Shareholders Meeting that have been prepared by the Company or the Company's transfer agent, proxy solicitor or other Representative and shall otherwise keep Parent reasonably informed on a reasonably current basis regarding the status of the solicitation and any material oral or written communications from or to the Shareholders with respect thereto. The parties agree to cooperate and use their reasonable best efforts to defend against any efforts by any of the Shareholders or any other Person to prevent the Company Shareholders Meeting from being held ██████████, provided, that, such agreement shall not prevent the Company from taking any action permitted by Section 6.4.

(b) ██████████  
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(c) The Company hereby acknowledges that pursuant to the Support Agreements, the shareholders of the Company party thereto may appoint and constitute Parent (subject to Section 4 of the applicable Support Agreement) as such shareholder's true and lawful attorney-in-fact and proxy (which proxy is irrevocable and which appointment is coupled with an interest), to the fullest extent of such shareholder's rights with respect to the Subject Securities (as defined in the applicable Support Agreement) beneficially owned by such shareholder, to vote such Subject Securities at the Company Shareholders Meeting, solely on the matters and in the manner specified in the Support Agreement (the "**Shareholder Proxy**"). The Company further agrees that, from and after the date hereof until the termination of the Support Agreements (as provided therein), it shall recognize the grant of the Shareholder Proxy and the exercise thereof by Parent in accordance with its terms at any meeting of the shareholders of the Company (including the Company Shareholders Meeting and any adjournment or postponement thereof), subject to applicable Law.

**Section 6.7 Change of Control Agreements; Heartland.** From the date hereof until the earlier of (i) the Effective Time or (ii) the termination of this Agreement in accordance with Article X, the Company shall not, and shall cause its Subsidiaries to not amend, extend or make any payment pursuant to any agreement set forth on Section 6.7 of the Disclosure Schedule (the “**CIC Agreements**”), except as contemplated by this Agreement or as required by the terms of the CIC Agreements in effect as of the date hereof. Section 6.7 of the Disclosure Schedule sets forth the payments that will be required to be made pursuant to each CIC Agreement in connection with the Closing (the “**CIC Payments**”). Following the Closing, Parent and the Company expressly agree to assume and perform the CIC Agreements in the same manner and to the same extent that the Company would be required to perform if Closing had not taken place. At the Closing, Parent shall pay the CIC Payments on behalf of the Company as contemplated by Section 3.2(b)(ii).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Section 6.8 Regulatory Approvals; Efforts.**

(a) Each of the parties shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other Transactions.

(b) Except for the filings and notifications made pursuant with the STB, which shall be subject to Section 6.8(c) and not this Section 6.8(b), promptly following the execution of this Agreement, the parties shall proceed to prepare and file with the appropriate Governmental Authorities all authorizations, consents, notifications, certifications, registrations, declarations and filings that are necessary in order to consummate the Transactions, including those set forth on Section 6.8(b) of the Disclosure Schedule, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such matters. Neither Party nor its Subsidiaries shall agree to any actions, restrictions or conditions with respect to obtaining any consents, registrations, approvals, permits, expirations of waiting periods or authorizations in connection with the Transactions without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) As promptly as reasonably practicable following the execution of this Agreement, the parties shall make any filings required with the STB. Each of Parent and the Company shall, and shall cause their respective Subsidiaries to, cooperate fully with each other and shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of such filings. Parent and the Company shall each use its commercially reasonable efforts to respond to and comply with any request for information or documentary material from the STB. Each of Parent and the Company shall, and shall cause their respective Subsidiaries to, in connection with the efforts referenced in this Section 6.8, (i) cooperate in all respects with each other in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) promptly notify the other party of any communication concerning this Agreement or any of the Transactions to that party from or with

the STB, and consider in good faith the views of the other party and keep the other party reasonably informed of the status of matters related to the Transactions, including furnishing the other party with any written notices or other communications received by such party from, or given by such party to, the STB regarding any of the Transactions; and (iii) permit the other party to review in draft any proposed communication to be submitted by it to the STB with reasonable time and opportunity to comment, and consult with each other in advance of any in-person or telephonic meeting or conference with the STB and, to the extent permitted by the STB, not participate in any meeting or discussion with the STB relating to any filings or investigations concerning this Agreement or any of the Transactions unless it consults with the other party and its Representatives in advance and invites the other party's Representatives to attend in accordance with applicable Laws. The parties shall take reasonable efforts to preserve the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege with respect to any information shared pursuant to this Section 6.8(c).

**Section 6.9 Resignations.** In connection with the execution of this Agreement, the Company shall deliver to Parent written resignations of all of the officers and directors of the Company and its Subsidiaries, which are listed on Schedule 6.9 hereto, with the resignations to be effective as of the Effective Time.

**Section 6.10 Director and Officer Indemnification and Insurance.**

(a) Surviving Company agrees that all rights to indemnification, advancement of expenses and exculpation by the Company for acts or omissions occurring on or prior to the Closing Date now existing in favor of the current or former directors, officers or employees of the Company or any of its Subsidiaries (each, a “**D&O Indemnified Person**”) under the respective Organizational Documents of the Company and its Subsidiaries and any indemnification agreements between any D&O Indemnified Person and the Company or any of its Subsidiaries as in effect immediately prior to the Closing shall survive the Closing and continue in full force and effect for a period of six years after the Closing Date in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) Prior to the Closing, the Company shall obtain and fully pay for “tail” insurance policies with a claims period of at least six years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the directors and officers of the Company as the Company's existing policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the Transactions) (the “**D&O Tail Policy**”). The Company shall bear the cost of the D&O Tail Policy.

(c) The obligations of the Surviving Corporation under this Section 6.10 shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Person to whom this Section 6.10 applies without the written consent of such affected D&O Indemnified Person (it being expressly agreed that the D&O Indemnified Person to whom this Section 6.10 applies shall be third-party beneficiaries of this Section 6.10, each of whom may enforce the provisions of this Section 6.10).

(d) In the event the Surviving Corporation or any of its respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in this Section 6.10.

**Section 6.11 Closing Conditions.** From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VIII hereof.

**Section 6.12 Public Announcements.** Promptly following the Execution Date, the Company shall issue the press release set forth on Section 6.12 of the Disclosure Schedules. Except as otherwise contemplated by the foregoing sentence, as otherwise contemplated by Section 6.16, as required by applicable Law (based upon the reasonable advice of counsel), or as required by the “Current Reporting of Material Corporate Events” of the OTC Pink Basic Disclosure Guidelines, no party to this Agreement shall make any public announcements in respect of this Agreement or the Transactions or otherwise communicate with any news media without the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate in good faith as to the timing and contents of any such announcement.

**Section 6.13 Notice of Certain Events.**

(a) From the date hereof until the Closing, the Company shall promptly notify Parent in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Article VIII to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions;

(iii) any notice or other communication from any Governmental Authority in connection with the Transactions; and

(iv) any Actions commenced or, to the Company’s Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.6 or that relates to the consummation of the Transactions.

(b) Parent’s receipt of information pursuant to this Section 6.13 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the

Company in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedule.

**Section 6.14 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the Transactions Agreement.

**Section 6.15 Financing.**

(a) Following the date of this Agreement until the Effective Time, upon the written request of Parent, the Company agrees to use commercially reasonable efforts to provide all cooperation reasonably requested by Parent in connection with the Financing, including:

(i) delivering the Required Information;

(ii) assisting with the preparation of a confidential information memorandum and lender presentation and presentations, including (x) providing “authorization letters” and (y) authorizing the distribution of information to prospective lenders and containing representation that the public side versions of such documents, if any, do not include material non-public information regarding the Company or its Subsidiaries or securities and containing customary information;

(iii) assisting in the preparation of definitive financing documents, including guarantee and collateral documents, hedging agreements and other certificates and documents as may be requested by Parent and, to the extent requested by Parent, making available appropriate members of senior management of the Company to (x) assist in the negotiation of such agreements and other documents and instruments, and (y) participation in bank meetings and prospective lender calls in connection with the Financing;

(iv) facilitating the pledge of collateral for the Financing;

(v) using commercially reasonable efforts to obtain from the Company’s existing lenders customary payoff letters, lien releases, instruments of termination or discharge to be delivered at Closing to allow for the payoff, discharge and termination in full on the Closing Date of the Company’s obligations under its existing credit facilities;

(vi) furnishing Parent and its Representatives promptly with all documentation and other information about the Company and its Subsidiaries that are contemplated to be guarantors under the Financing as is reasonably required under applicable “know your customer” and anti-money laundering rules and regulations including the PATRIOT Act, at least three Business Days in advance of Closing;

(vii) delivering at least three Business Days prior to Closing, if the Company qualifies as a “legal entity customer” under the Beneficial Ownership Regulation (31 C.F.R. § 1010.230), a beneficial ownership certificate in relation to the Company, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial

Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association; and

(viii) cooperating with Parent to satisfy the conditions precedent to the Financing to the extent within the control of the Company, and taking all corporate actions, subject to the occurrence of the Closing, reasonably requested by Parent to permit the consummation of the Financing and to permit the proceeds thereof to be made available to the Company immediately upon the Closing.

#### **Section 6.16 FINRA Notifications.**

(a) Upon the Closing, the Company shall issue a press release detailing the Closing through the OTC Disclosure & News Service in compliance with the OTC Pink Basic Disclosure Guidelines. The Company shall provide a draft of such news release to Parent for its review at least three Business Days prior to the Closing Date and shall accept all of Parent's reasonable comments to such news release. The Company shall provide a final draft of such news release to Parent at least one Business Day prior to releasing through the OTC Disclosure & News Service.

(b) At least ten days prior to the record date for the Company Shareholders Meeting, the Company shall provide the required notice to FINRA of the Merger and the Transactions in accordance with Rule 10b-17 of the Exchange Act.

**Section 6.17 OTC Market Delisting.** Prior to the Closing, the Company shall take all action necessary to cause the Company Capital Stock to no longer be traded on the OTC Pink Markets effective as of the Closing.

**Section 6.18 Payoff Letters; Payment of Debt.** At least three Business Days prior to Closing, the Company shall deliver to Parent copies of Payoff Letters for the Indebtedness listed in Section 6.18 of the Disclosure Schedule. At the Closing, Parent will pay by wire transfer, on behalf of the Company, in accordance with the payoff letters delivered by the Company, each such credit facility.

#### **Section 6.19 Voting of Heartland Shares.**

(a) From and after the date hereof until the termination of this Agreement in accordance with Article X of this Agreement, at every meeting of the Shareholders called with respect to any of the following matters, and at every adjournment or postponement thereof, and on every action or approval by written consent of the Shareholders with respect to any of the following matters, the Company shall cause all shares of Company Capital Stock that are beneficially owned by Heartland on any applicable record date (including via proxy), to vote such shares of Company Capital Stock: (i) in favor of (A) the approval of the Merger and adoption of this Agreement, and (B) any proposal to adjourn or postpone such meeting of the Shareholders to a later date if there are not sufficient votes to approve the Merger and adopt this Agreement and (ii) against (A) any action or agreement that would reasonably be expected to result in any condition to the consummation of the Merger set forth in Article VIII of this Agreement not being fulfilled, (B) any Company Competing Proposal, (C) any action which would materially delay, materially postpone or materially adversely affect the consummation of the transactions contemplated by this

Agreement, including the Merger, or dilute, in any material respect, the benefit of the transactions contemplated thereby to Parent or Merger Sub, and (D) any action which would result in a breach of any representation, warranty, covenant or agreement of the Company in this Agreement;

(b) The Company hereby acknowledges that Heartland is entering into a Support Agreement and shall appoint and constitute Parent (subject to Section 4 of the applicable Support Agreement) as Heartland's true and lawful attorney-in-fact and proxy (which proxy is irrevocable and which appointment is coupled with an interest), to the fullest extent of Heartland's rights with respect to the Subject Securities (as defined in the applicable Support Agreement) beneficially owned by Heartland, to vote such Subject Securities at the Company Shareholders Meeting, solely on the matters and in the manner specified above and in the Support Agreement (the "**Heartland Proxy**"). The Company further agrees that, from and after the date hereof until the termination of the Support Agreements (as provided therein), it shall recognize the grant of the Heartland Proxy and the exercise thereof by Parent in accordance with its terms at any meeting of the shareholders of the Company (including the Company Shareholders Meeting and any adjournment or postponement thereof), subject to applicable Law.

**Section 6.20 Data Room Documentation.** As promptly as practicable after the date hereof (but not to exceed five Business Days after the date hereof), the Company shall authorize and instruct [REDACTED] to copy to thumb drives or DVDs all documents and other files posted to the Data Room as of the date hereof and deliver four copies of such thumb drives or DVDs to Parent's legal counsel at the address set forth in Section 11.1

## **ARTICLE VII TAX MATTERS**

**Section 7.1 Tax Covenants.** Without the prior written consent of Parent, prior to the Closing, the Company, a Subsidiary of the Company, their Representatives and the Shareholders shall not make, change or rescind any Tax election, change an annual accounting period, adopt or change any accounting method, amend any Tax Return or take any position on any Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to the Company or any of its Subsidiaries, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company or any of its Subsidiaries, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Parent, the Surviving Corporation or their Subsidiaries in respect of any Post-Closing Tax Period.

**Section 7.2 Termination of Existing Tax Sharing Agreements.** Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date neither the Company nor any of its Representatives shall have any further rights or liabilities thereunder.

### **Section 7.3 Tax Returns.**

(a) The Company and each of its Subsidiaries shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law).

(b) Parent shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company or its Subsidiaries after the Closing Date.

## **ARTICLE VIII CONDITIONS TO CLOSING**

**Section 8.1 Conditions to Obligations of All Parties.** The obligations of each party to consummate the Transactions shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) [REDACTED]

(b) **STB Approval.** The STB shall have approved or exempted the transactions contemplated hereby, and such approval or authorization shall be effective.

(c) **Legal Prohibition.** On the Closing Date, there shall exist no Governmental Order issued by (i) any Governmental Authority or court of competent jurisdiction in the United States of America which prohibits or makes unlawful the consummation of the Transactions or (ii) any other Governmental Authority or court of competent jurisdiction which prohibits or makes unlawful the consummation of the Transactions.

**Section 8.2 Conditions to Obligations of Parent and Merger Sub.** The obligations of Parent and Merger Sub to consummate the Transactions shall be subject to the fulfillment or Parent's waiver, at or prior to the Closing, of each of the following conditions:

(a) **Representations and Warranties of the Company.** Other than the representations and warranties of the Company contained in Section 4.1, Section 4.2, Section 4.3, and Section 4.21, the representations and warranties of the Company contained in this Agreement, the Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure of such representations and warranties to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The representations and warranties of the Company contained in Section 4.1, Section 4.2, Section 4.3, and Section 4.21 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address

matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to the foregoing effect.

(b) **Performance Obligations of the Company.** The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) **No Material Adverse Effect.** Between the Execution Date and the Closing Date, no Material Adverse Effect has occurred.

(d) [REDACTED]

(e) **Working Capital; Company Debt and Company Transaction Expenses.** The (i) total Indebtedness of the Company will not be in excess of an amount equal to [REDACTED] and (ii) the amount equal to total Indebtedness less Closing NWC will not be greater than [REDACTED] in each case as of the Closing. For purposes of this Section 8.2(e), Indebtedness shall not include Other Company Transaction Expenses.

(f) **Officers' Certificate.** Parent shall have received a certificate, dated as of the Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company, that each of the conditions set forth in Section 8.2(a), Section 8.2(b), Section 8.2(c), Section 8.2(d) and Section 8.2(e) have been satisfied.

(g) **Closing Deliverables.** On or prior to the Closing Date, the Company shall have delivered to Parent each of the deliverables contemplated to be delivered pursuant to Section 3.2(c).

(h) **Dissenting Shares.** Dissenting Shares shall represent less than 10% of the outstanding shares of Class A Common Stock held by the Shareholders, other than Heartland, as of the Closing Date.

(i) **Settlement Agreements.** The Settlement Agreements shall be in full force and effect.

(j) **Consents.** All consents, waivers, authorizations, renewals and extensions that are required to be obtained from any State Regulator, Governmental Authority or any third party set forth on Section 8.2(j) of the Disclosure Schedule, which such consents, waivers, authorizations, renewals and extensions when received, will promptly be provided to the other parties hereto, in connection with the Transactions shall have been obtained, shall be in full force and effect and shall be free of any material conditions, statements or conclusions of fact or law adverse to any party hereto or their respective Affiliates and no notice of termination shall have been delivered with respect to any of such agreements or documents.

(k) **No Litigation.** There shall be no Actions pending or threatened (i) against the Company or any of its Subsidiaries affecting any of its or their properties or assets or (ii) against or by the Company that challenges or seeks to prevent, enjoin or otherwise delay the Transactions.

(l) **Company Board Approval.** The Company Board shall have approved this Agreement, the Merger and the Transactions.

**Section 8.3 Conditions to Obligations of the Company.** The obligations of the Company to consummate the Transactions shall be subject to the fulfillment or the Company's waiver, at or prior to the Closing, of each of the following conditions:

(a) **Representations and Warranties of Parent and Merger Sub.** The representations and warranties of Parent and Merger Sub contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Parent's ability to consummate the Transactions.

(b) **Performance Obligations of Parent and Merger Sub.** Parent and Merger Sub shall have performed in all respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date.

(c) **Officer's Certificate.** The Company shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Parent, that each of the conditions set forth in Section 8.3(a) and Section 8.3(b) have been satisfied.

(d) **Closing Deliverables.** On or prior to the Closing Date, Parent shall have delivered to the Company each of the deliverables contemplated to be delivered pursuant to Section 3.2(b).

## **ARTICLE IX SURVIVAL; REMEDIES**

**Section 9.1 Survival.** All covenants and agreements in this Agreement and in any instrument delivered pursuant to this Agreement shall survive the Closing indefinitely or for the period explicitly specified therein. This Section 9.1 shall not affect any other term or provision of the R&W Policy with respect to the survival of any representations, warranties, covenants or agreements provided therein.

**Section 9.2 Exclusive Remedies.** Subject to Article X and Section 11.10, the parties acknowledge and agree that their sole and exclusive remedy from and after the Closing with respect to any and all claims (other than claims arising from fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the R&W Policy, if any. In furtherance of the foregoing, each party hereby waives, effective as of the Closing, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the R&W Policy, if any. Nothing in this Section 9.2 shall limit any Person's right to

seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct. Notwithstanding anything to the contrary in this Agreement, except as specifically set forth in the R&W Policy (if any), any other limitation on Parent's or any Person affiliated with Parent's rights under this Article IX shall not affect or otherwise limit any claim made or available under the R&W Policy (if any).

## ARTICLE X

## TERMINATION

**Section 10.1 Termination.** This Agreement may be terminated and the Transactions may be abandoned by a written notice delivered by the terminating party to the other parties to this Agreement in accordance with Section 10.1, including a description in reasonable detail of the basis for such termination and the provision(s) hereof pursuant to which such termination is effected:

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ARTICLE XI MISCELLANEOUS

**Section 11.1 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given:

(a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.1):

If to the Company:

Pioneer Railcorp  
1318 S. Johanson Rd.  
Peoria, IL 61607

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

with a copy (which shall not constitute notice) to:

Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to Parent or Merger Sub:

Brookhaven Rail Partners, LLC  
5555 DTC Parkway, Suite 205  
Greenwood Village, CO 80111

[REDACTED]  
[REDACTED]

with a copy (which shall not constitute notice) to:

Arnold & Porter Kaye Scholer, LLP  
370 Seventeenth Street, Suite 4400  
Denver, CO 80202

[REDACTED]  
[REDACTED]

and: Related Infrastructure Acquisitions, LLC  
60 Columbus Circle  
New York, NY 10023

[REDACTED]  
[REDACTED]

with a copy (which shall not constitute notice) to: Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004

[REDACTED]  
[REDACTED]

**Section 11.2 Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedule, Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedule and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. Unless the context otherwise requires, references herein to the Company refer to the Company and its Subsidiaries. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedule, Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 11.3 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 11.4 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the greatest extent possible.

**Section 11.5 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, the Exhibits and Disclosure

Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 11.6 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party. No assignment shall relieve the assigning party of any of its obligations hereunder. Notwithstanding anything to the contrary contained herein, Parent and Merger Sub may assign this Agreement or any of their respective rights and/or obligations under this Agreement to the Financing Sources as collateral security for their respective obligations under the Financing, without any requirement of notice or consent of any other party hereto, but any such assignment shall not relieve the Parent or the Merger Sub of their respective obligations under this Agreement.

**Section 11.7 No Third-party Beneficiaries.** Except as provided in Section 6.10, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided, however, that, notwithstanding the forgoing, the Financing Sources shall be express third-party beneficiaries of, and have the right to enforce, Section 11.6, this Section 11.7, Section 11.8, Section 11.9(a) and Section 11.12.

**Section 11.8 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Parent, Merger Sub and the Company at any time prior to the Effective Time; provided, however, that after the Company Required Vote is obtained, there shall be no amendment or waiver that, pursuant to applicable Law, requires further approval of the Shareholders, without the receipt of such further approvals. Any failure of Parent or Merger Sub, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by the Company (with respect to any failure by Parent or Merger Sub) or by Parent or Merger Sub (with respect to any failure by the Company), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Notwithstanding anything to the contrary contained herein, Section 11.6, Section 11.7, this Section 11.8, Section 11.9(a) and Section 11.12 (and any related definitions used in those sections) may not be amended, modified or supplemented in a manner that is adverse in any respect to any Financing Source without the prior written consent of such Financing Source.

**Section 11.9 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware; provided, however, that Article III shall be governed by and construed in accordance with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule (whether of the State

of Iowa or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Iowa with respect to those sections; provided, however, further that, notwithstanding the foregoing, any Action involving any Financing Source or arising out of or relating to the Financing, the Debt Commitment Letter or the transactions contemplated thereby shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS LOCATED IN THE CITY OF CHICAGO, ILLINOIS, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS. IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.9(C).

**Section 11.10 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 11.11 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the

same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 11.12 No Recourse to Financing Sources.** Each of the parties hereto agrees that, notwithstanding anything in this Agreement to the contrary, the Company and each Shareholder, in each case on behalf of itself and each of its Affiliates, and each of its and their controlling persons, shareholders, partners, members, directors, officers, employees, advisors, agents, attorneys, trustees, administrators, managers, representatives and successors and assigns, shall not have, and hereby waives, any rights or claims against any Financing Source in connection with this Agreement, the Debt Commitment Letter or any transaction contemplated hereby or thereby, whether at law or equity, in contract, in tort or otherwise, and the Company and each Shareholder, in each case on behalf of itself and each of its Affiliates, and each of its and their controlling persons, shareholders, partners, members, directors, officers, employees, advisors, agents, attorneys, trustees, administrators, managers, representatives and successors and assigns, agrees not to commence (and if commenced agrees to dismiss or otherwise terminate) any claim, action, suit, litigation, or other proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) against any Financing Source in connection with this Agreement, the Debt Commitment Letter or any transaction contemplated hereby or thereby (including any claim, action, suit, litigation, or other proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) relating to the Debt Commitment Letter and the Financing). In furtherance of and not in limitation of the foregoing waiver, it is agreed that no Financing Source shall have any liability for any claims, losses, settlements, liabilities, damages, costs, expenses, fines or penalties to the Company or any Shareholder (or, in each case, any of their respective Affiliates or any of their respective controlling persons, shareholders, partners, members, directors, officers, employees, advisors, agents, attorneys, trustees, administrators, managers, representatives and successors and assigns) in connection with this Agreement, the Debt Commitment Letter or any transaction contemplated hereby or thereby (including any claim, action, suit, litigation, or other proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) relating to the Debt Commitment Letter or the Financing. Without limiting the foregoing, no Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to the Company or any Shareholder (or, in each case, any of their respective Affiliates or any of their respective controlling persons, shareholders, partners, members, directors, officers, employees, advisors, agents, attorneys, trustees, administrators, managers, representatives and successors and assigns).

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

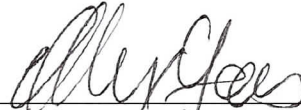
**PARENT:**

**BRX TRANSPORTATION HOLDINGS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
ALEX YEROS

**MERGER SUB:**

**BRX ACQUISITION SUB, INC.**

By: \_\_\_\_\_

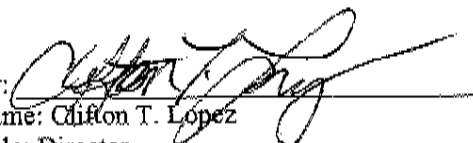
Name: Alex Yeros

Title: President



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized:

**COMPANY:**

By: 

Name: Clifton T. Lopez

Title: Director

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## SCHEDULE 6.9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT A-1**  
**FORM OF SUPPORT AGREEMENT**

[Redacted]

**EXHIBIT A-2**

**DIRECTOR AND OFFICER SUPPORT AGREEMENT**

[Redacted]

**EXHIBIT A-3**  
**HEARTLAND SUPPORT AGREEMENT**

[Redacted]

**EXHIBIT B**

[REDACTED]

[Redacted]

**EXHIBIT C-1**

[REDACTED]

[Redacted]

EXHIBIT C-2

[REDACTED]

[Redacted]

**EXHIBIT D**  
**DEBT COMMITMENT LETTER**

[Redacted]

**EXHIBIT E**  
**FORM OF ARTICLES OF MERGER**

[Redacted]

**EXHIBIT F**

**FIPRTA CERTIFICATE**

[Redacted]