

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

April 26, 2018

245596

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
April 27, 2018
Part of
Public Record



Re: **Docket No. FD 36190**
Terminal Railway Alabama State Docks -- Temporary Trackage
Rights Exemption -- Norfolk Southern Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Terminal Railway Alabama State Docks Pursuant to 49 C.F.R. § 1180.2(d)(8)**, dated April 26, 2018. A check in the amount of \$1,300.00, representing the appropriate fee for this filing, is attached.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards,

Respectfully submitted,

Thomas J. Litwiler
Attorney for Terminal Railway
Alabama State Docks

TJL:tl

Enclosures

FEE RECEIVED
April 27, 2018
SURFACE
TRANSPORTATION BOARD

FILED
April 27, 2018
SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. FD 36190

TERMINAL RAILWAY ALABAMA STATE DOCKS
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
TERMINAL RAILWAY ALABAMA STATE DOCKS
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

**ATTORNEY FOR TERMINAL RAILWAY
ALABAMA STATE DOCKS**

Dated: April 26, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36190

TERMINAL RAILWAY ALABAMA STATE DOCKS
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY



**VERIFIED NOTICE OF EXEMPTION OF
TERMINAL RAILWAY ALABAMA STATE DOCKS
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Terminal Railway Alabama State Docks ("TASD"), a Class III switching and terminal carrier, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for its acquisition of temporary overhead trackage rights over a 2.9-mile line of railroad of Norfolk Southern Railway Company ("NS") in Mobile, Alabama. The proposed temporary trackage rights will accommodate TASD's emergency detour operations over the NS line while repairs are conducted on a bridge on TASD's parallel rail line. The temporary trackage rights will expire once TASD's bridge is returned to service, but no later than October 18, 2018.

TASD is filing concurrently herewith a petition for waiver of the 30-day effectiveness period of 49 C.F.R. § 1180.4(g) to permit the proposed temporary trackage rights to become effective immediately.

In accordance with the remaining requirements of 49 C.F.R. § 1180.4(g), TASD submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

TASD is a department of the Alabama State Port Authority which operates approximately 75 miles of trackage serving the Port of Mobile and the surrounding area. TASD

has experienced a structural failure at its Viaduct Bridge crossing of Bay Bridge Road north of TASD's main Mobile yards, isolating TASD's Chickasaw Line from the remainder of TASD's system. With the cooperation of NS and rail labor, TASD has initiated emergency detour operations over NS's parallel rail line to reach the Chickasaw Line, with the understanding that TASD would obtain immediate authority from the Board to continue those detour operations as temporary trackage rights.

Thus, pursuant to a written Detour and Temporary Trackage Rights Agreement dated as of April 18, 2018 between NS and TASD, TASD proposes to acquire temporary overhead trackage rights over NS's 3-B South District rail line between the connection with TASD at approximately NS milepost 146.9 MB at CN Crossing and the connection with TASD at approximately NS milepost 144.0 MB at Terminal Junction, a distance of approximately 2.9 miles in Mobile, Alabama. TASD anticipates that repairs to the Viaduct Bridge will be completed by mid-May, at which time TASD will resume operations over its own line. Pursuant to 49 C.F.R. § 1180.2(d)(8), and as provided in the agreement between NS and TASD, the temporary trackage rights authorized herein will automatically expire at that time, but in any event no later than October 18, 2018. See Railroad Consolidation Procedures, 6 S.T.B. 910 (2003).

Under 49 C.F.R. § 1180.4(g), TASD's temporary trackage rights exemption ordinarily would not become effective until thirty days after the filing of this notice – which will likely be after TASD's bridge is repaired and the emergency detour operations over NS's line have ceased. Given those circumstances, the emergency nature of the situation, and the desire to honor the cooperative arrangements with rail labor that accommodated the prompt commencement of TASD's detour operations, TASD is filing concurrently herewith a petition for

waiver of the 30-day regulation that will allow the temporary trackage rights to become effectively immediately.

The full name and address of the applicant carrier herein is as follows:

Terminal Railway Alabama State Docks
126 Industrial Canal Road East
P.O. Box 1588
Mobile, Alabama 36633
(251) 441-7033

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

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Pursuant to TASD's petition for waiver filed concurrently herewith, TASD intends to consummate the temporary trackage rights proposed in this notice immediately on issuance of a Board waiver decision. In the absence of such a decision, the exemption authority invoked by this notice would become effective on May 28, 2018. TASD is currently conducting emergency detour operations over NS's line pending acquisition of temporary trackage rights exemption authority in this proceeding.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed temporary trackage rights will accommodate TASD's emergency detour operations over NS, and the cooperative arrangements with NS and rail labor that permitted immediate institution of those operations, while repairs are conducted on TASD's out-

of-service Viaduct Bridge. The temporary TASD operations on NS's parallel line preserve rail service for customers on TASD's Chickasaw Line.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

TASD operates rail property in the State of Alabama. NS owns and operates over rail property in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia and in the District of Columbia.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

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

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A copy of the Detour and Temporary Trackage Rights Agreement dated as of April 18, 2018 between NS and TASD is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, TASD agrees to the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980). TASD's discontinuance of operations upon expiration of the temporary trackage rights no later than October 18, 2018 (but likely in mid-May) will be subject to the employee protective conditions established in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). See Railroad Consolidation Procedures, 7 S.T.B. 587 (2004).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

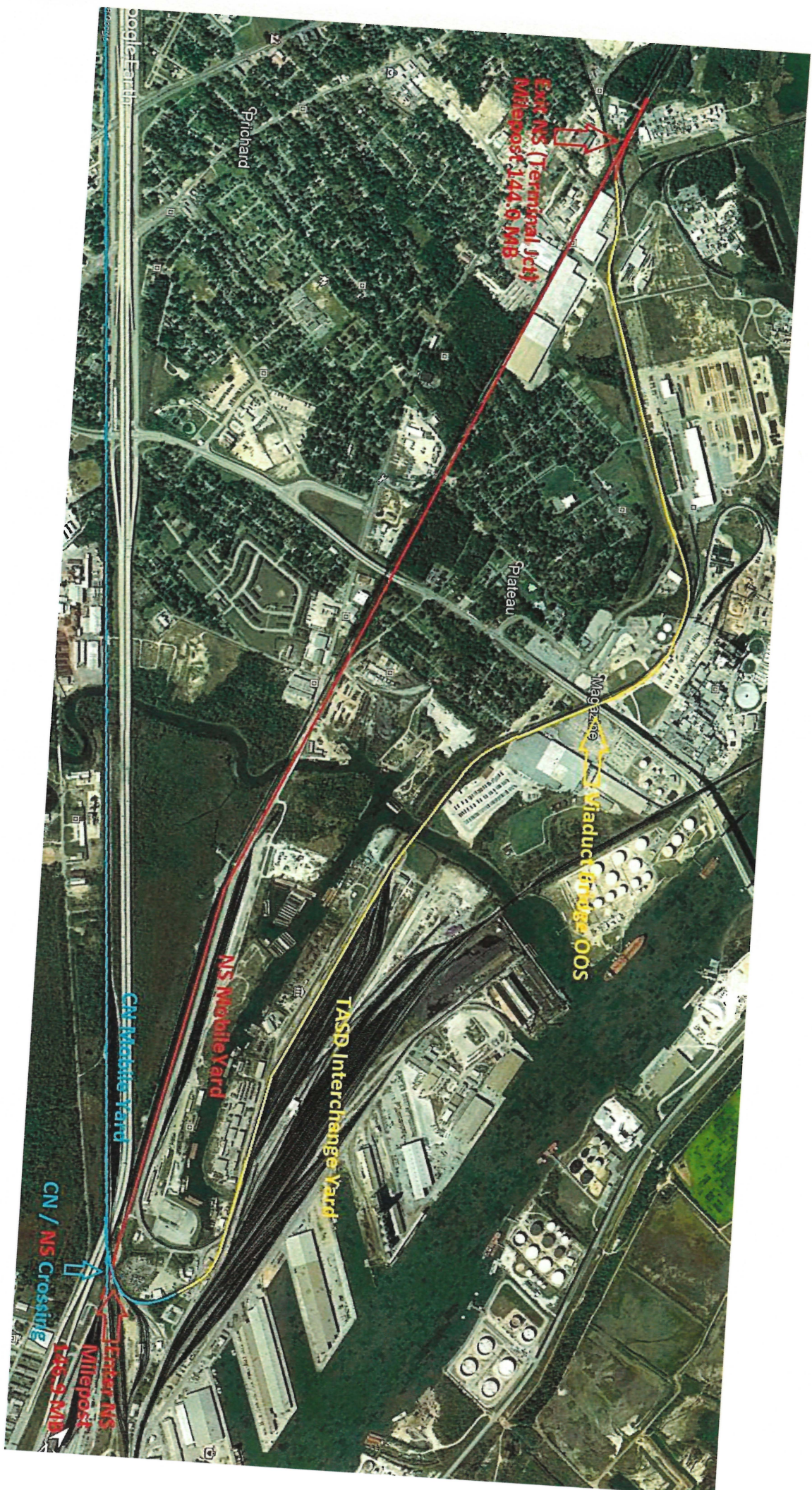
Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of temporary trackage rights by TASD is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), TASD's proposed temporary trackage rights also are exempt from historic preservation reporting requirements.

Respectfully submitted,

By: _____
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR TERMINAL RAILWAY
ALABAMA STATE DOCKS**

Dated: April 26, 2018



DETOUR AND TEMPORARY TRACKAGE RIGHTS AGREEMENT

Between

NORFOLK SOUTHERN RAILWAY COMPANY

And

TERMINAL RAILWAY ALABAMA STATE DOCKS

THIS DETOUR AND TEMPORARY TRACKAGE RIGHTS AGREEMENT, (“Agreement”), entered into as of this 18th day of APRIL, 2018 (the “Effective Date”), by and between **TERMINAL RAILWAY ALABAMA STATE DOCKS**, an agency of the State of Alabama operated by the Alabama State Port Authority (hereinafter referred to as “User”), and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (hereinafter referred to as “NSR”). Each of User and NSR shall individually be referred to as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, NSR owns and operates a rail line in the vicinity of Mobile, AL running roughly parallel to a rail line owned and operated by User; and

WHEREAS, User’s rail line has been made impassible by reason of a bridge failure that will require up to six (6) months of repair work to be returned to service; and

WHEREAS, User has requested and NSR is agreeable to granting User detour and temporary trackage rights for the overhead movement of traffic over NSR’s parallel rail line to bypass User’s impassible bridge for the duration of the bridge rehabilitation work, subject to the terms and conditions set forth herein.

NOW, THEREFORE, User and NSR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF DETOUR AND TEMPORARY TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, NSR hereby grants to User the right to operate in overhead service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the “Trackage Rights”) over the following segments of NSR’s railroad (hereinafter referred to as the “Subject Trackage”):

 (a) Between the connection of NSR and User’s lines of railroad at or near the point commonly referred to as CN Crossing, at or near milepost 146.9MB on the NSR 3B South District, and the connection of NSR and User’s lines of railroad at the point commonly referred to as Terminal Junction, at or near milepost 144.0MB on the NSR 3B South District, a total distance of 2.9 miles.

1.2 Such rights shall include the right to enter and exit the Subject Trackage only at the

named terminal points in Article 1.1 above.

ARTICLE 2. USE OF LINE

- 2.1 User's use of the Subject Trackage shall be in common with NSR and any other user of the Subject Trackage and NSR's right to use the Subject Trackage shall not be diminished by this Agreement. NSR shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- 2.2 Except as may be otherwise provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein will, upon prior approval of NSR, preclude the emergency use by User of such auxiliary tracks as may be designated by NSR for such purposes.
- 2.3 NSR shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against NSR for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- 2.4 User shall have the right to operate in either direction over the Subject Trackage.
- 2.5 For purposes of compliance with federal law and/or regulations regarding Positive Train Control ("PTC"), User shall provide the following information to NSR on a quarterly basis: (1) the gross tonnage User is moving over the Subject Trackage; and (2) the volume of Toxic by Inhalation or Poisonous by Inhalation commodities User is moving over the Subject Trackage, if any; provided, however, that this provision does not require User to disclose, and User shall not provide, any confidential or commercially sensitive information, such as customer identities or commercial terms, concerning such traffic.

ARTICLE 3. RESTRICTIONS ON USE

- 3.1 User shall only have the right to operate continuous, overhead train service over the Subject Trackage, and shall have no right to service any customers, or to perform any switching operations of any kind along the Subject Trackage.
- 3.2 User's use of NSR's railroad shall be permitted at NSR's sole pleasure, and NSR may permit or deny User's operation pursuant to this Agreement at NSR's sole discretion, without penalty or remedy of any kind available to User.

ARTICLE 4. COMPENSATION

- 4.1 As compensation for User's exercise of the Trackage Rights granted herein, User agrees to
for the entire period during which this Agreement remains
in effect, said charges being those described in the electronic mail communication

attached hereto as Exhibit A, and made a part hereof this Agreement..

ARTICLE 5. PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing.
- 5.2 Bills rendered pursuant to the provisions of this Agreement, if any, other than those set forth in Article 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by the performing party at the time any work is performed by one Party for the other Party.

ARTICLE 6. MAINTENANCE OF LINE

- 6.1 Except as provided by this Article, NSR shall be responsible for all maintenance of the Subject Trackage, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment as applicable. NSR shall maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but NSR does not guarantee the condition of the Subject Trackage, or that operation thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 12 hereof, User shall not by reason of failure or neglect on the part of NSR to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against NSR or its parent corporation, subsidiaries and affiliates and any or all of their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by a party resulting from any such failure or neglect. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, NSR shall with reasonable diligence restore the Subject Trackage for the movement of cars.

ARTICLE 7. INTENTIONALLY OMITTED

ARTICLE 8. INTENTIONALLY OMITTED

ARTICLE 9. MANAGEMENT AND OPERATIONS

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.
- 9.2 Before its locomotives enter onto the Subject Trackage, User shall request permission from NSR's dispatcher or other designated representative at NSR's rail traffic control center or such other location as NSR may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify NSR's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified NSR's representatives that it has cleared the Subject Trackage, User will not reenter the Subject Trackage without again obtaining permission from NSR's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by NSR to permit User to use NSR's trackage.
- 9.3 User shall comply with the provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act, and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless, to the extent permitted by law, NSR and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NSR and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees under such laws, rules, and regulations by any public agency, authority, or court having jurisdiction over the Subject Trackage or over User's operations on the Subject Trackage, when attributable to the failure of User to comply with its obligations in this regard.
- 9.4 User in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions. While using the Subject Trackage, User shall comply in all respects with the operating rules, timetables, and special instructions of NSR, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NSR; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of NSR shall not unjustly discriminate between the Parties. NSR will not make any rule or restriction applying to User's trains that does not apply equally to NSR's trains. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations, without the prior consent of NSR.

The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All User trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.

- 9.5 User shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to NSR, upon receipt of bills therefor, any reasonable cost incurred by NSR in connection with the qualification of such employees of User, as well as the reasonable cost of pilots furnished by NSR, until such time as such employees are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- 9.6 NSR shall have the right to exclude from its tracks any employee of User, except officers, determined by NSR to be in violation of NSR's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by NSR in its timetable or otherwise, and provided in advance to User. The decision to bar any employee of User from its tracks will not be interpreted as a request for User to fire the individual(s). User shall release, indemnify, defend, and save harmless, to the extent permitted by law, NSR from and against any and all claims and expenses resulting from such exclusion.
- 9.7 The trains, locomotives, cars and equipment of User, NSR, and any other present or future user of the Subject Trackage or any portion thereof, will be operated without prejudice or partiality to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- 9.8 User shall insure that the locomotives are fueled to a capacity that enables User's trains to traverse the Subject Trackage without having to be fueled.
- 9.9 In the event that (i) one of User's trains is forced to stop on the Subject Trackage and is unable to proceed due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, (ii) one of User's trains fails to maintain the speed required by NSR on the Subject Trackage; or (iii) in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, NSR will have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User will reimburse NSR for the cost incurred by NSR in rendering any such assistance.
- 9.10 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, NSR will have the option to perform such work, and User will reimburse NSR for the cost incurred by NSR with respect thereto.

- 9.11 In the event NSR and User agree that NSR should retain employees or provide additional employees for the sole benefit of User, the Parties will enter into a separate agreement under which User will bear all cost and expense for any such retained or additional employees provided, including recruitment and training cost, and including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 10. MILEAGE AND CAR HIRE

- 10.1 All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by User directly to the owner(s) of such cars.

ARTICLE 11. CLEARING OF WRECKS

- 11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, NSR shall be responsible for the provision of such service, including the repair and restoration of roadbed, track and structures so as to minimize the impact on NSR and User operations. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to User.

ARTICLE 12. LIABILITY

- 12.1 Without changing the responsibility for the provision of emergency services as set forth in Article 11, the responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses, and attorneys' fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:
- (a) If a Loss results from use of the Subject Trackage involving the trains, locomotives or other units of motive power (hereinafter in Article 12, "Locomotives"), cars, and/or equipment of only one Party, then such Party shall

be solely responsible for the Loss, even if caused partially or completely by the other Party.

- (b) Losses involving the trains, Locomotives, cars, and/or equipment of both Parties.
 - (i) Except as otherwise provided in Section 12.1(b)(ii), if a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment of both NSR and User, then: (A) each Party shall be solely responsible for any Loss to its own employees, trains, Locomotives, equipment, and cars in its own account including lading and (B) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
 - (ii) If any damage of the environment, including without limitation land, air, water, wildlife, and vegetation, results from use of the Subject Trackage involving both NSR and User's trains, Locomotives, cars, and/or equipment, then as between themselves, (A) NSR shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such NSR's cars and equipment and/or NSR's Locomotive(s) from which there is a release, (B) User shall be solely responsible for any damage or destruction to the environment and to third parties that results solely from a substance transported in such User's cars and equipment and/or User's Locomotive(s) from which there was a release, and (C) NSR and User shall be responsible, in proportion to the total number of Locomotives, cars, and/or equipment of each Party from which there was a release, for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties that results from one or more substances transported in cars or equipment in the revenue waybill and car hire accounts or Locomotives of both NSR and User from which there were releases.
- (c) If a Loss results from use of the Subject Trackage involving the trains, Locomotives, cars, and/or equipment only one of the Parties and one or more third parties, then such Party hereto shall be solely responsible for such Loss as between the Parties.

12.2 If a Loss occurs other than one resulting from the use of the Subject Trackage by the trains, Locomotives, cars, and/or equipment of either NSR or User, then each of NSR and User is solely responsible for any Loss to its own employees, trains, Locomotives, cars, and/or equipment, even if caused partially or completely by the other Party.

12.3 Except as provided in Section 9.11, each party agrees to indemnify and hold harmless, to the extent permitted by law, the other Party and its parent corporation, subsidiaries and affiliates, and any or all their respective directors, officers, agents and employees from

and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees. Similarly, each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees and litigation expenses, arising out of claims, lawsuits and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

- 12.4 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless, to the extent permitted by law, the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- 12.5 In every case of death or injury suffered by an employee of either User or NSR, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- 12.6 For purposes of determining liability between the parties for purposes of this Section 12 only, liability for any loss to pilots furnished by NSR to User pursuant to this Agreement shall be apportioned as if such NSR employee was an employee of User while such NSR employees are on duty as pilots for User.
- 12.7 If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- 12.8 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim

Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

- 12.9 Notwithstanding any provision of this Agreement to the contrary, for the purpose of this Article 12, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right of way for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.
- 12.10 Notwithstanding any and all of the forgoing provisions of this Article 12, in the event a Loss occurs while the Subject Trackage is being used by NSR and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss. The Parties shall submit disputes involving the determination of whether a Loss is attributable solely to the willful or wanton negligence of one of the Parties to this Agreement, but no other disputes under this Agreement, to binding arbitration under the commercial arbitration rules of the American Arbitration Association.
- 12.11 Under no circumstances will either Party assert a claim for punitive or exemplary damages against the other Party related to the matters contemplated by this Agreement.

ARTICLE 13. CLAIMS

- 13.1 Except as provided in Section 13.1(a) below, all claims, injuries, death, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under Article 12 of this Agreement.
- (a) Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with U.S.C. § 11706 and 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709.
 - (b) In the event a claim or suit is asserted against NSR or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
 - (c) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be

borne by such Party.

- (d) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. § 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

- 13.2 It is understood that nothing in this Article 13 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.

ARTICLE 14. INDEMNITY COVERAGE

- 14.1 As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, subsidiaries, and affiliates of such other Party, and all of their respective directors, officers, agents, and employees.

ARTICLE 15. INSURANCE

- 15.1 User shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under this Agreement. Such insurance shall provide minimum limits of Twenty-Five Million Dollars (\$25,000,000) per occurrence but may be subject to an annual aggregate limit of Twenty Five Million Dollars (\$25,000,000) and a per occurrence deductible not in excess of One Hundred Thousand Dollars (\$100,000).
- 15.2 If the insurance provided under this Article 15 takes the form of a Claims Made Policy, User agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. User further agrees to immediately give written notice to the Director Risk Management, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510-2191, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.
- 15.3 On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Article 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (2,000,000) for each year that this Agreement has been in effect.

- 15.4 Every policy of insurance obtained by User pursuant to the requirements of this Article 15 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days' notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. In addition, said policy or policies shall be endorsed to name NSR as an additional insured and shall include a severability of interests provision. The terms and conditions of each policy of insurance obtained by User to satisfy the requirements of this Article 15 will be subject to the approval of NSR.
- 15.5 Within thirty (30) days of execution of this Agreement, User will furnish to the above referenced Director Risk Management, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510, an accurate copy of insurance obtained pursuant to the requirements of this Agreement. Compliance with this requirement will not relieve User of any other obligation under this Agreement and will in no way limit or modify User's obligation to provide the specific insurance coverage required by this Agreement. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the above referenced Risk Manager as stipulated in Section 15.2 above.

ARTICLE 16. TERM, TERMINATION, AND DEFAULT

- 16.1 This Agreement shall become effective (the "Effective Date") as of the first date executed by both of the Parties. User operations over the Subject Trackage may commence immediately as detour operations pursuant to all the same terms and conditions contained in this Agreement (the "Commencement Date"), provided however that Trackage Rights operations shall commence only upon the effective date of any required Surface Transportation Board ("STB") authorization or exemption of User's trackage rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).
- 16.2 This Agreement shall remain in full force for a period of six (6) months, or until the date on which the out of service bridge on User's railroad is returned to service, whichever comes first.
- 16.3 Termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination thereof.
- 16.4 In the event of any material failure on the part of User to perform its obligations under this Agreement and the continuation of such failure for a period of sixty (60) days after written notice thereof by certified mail from NSR, NSR shall have the right at its option and after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by NSR of any prior breach thereof, to terminate the Agreement and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by NSR

will not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- 17.1 Should implementation of this Agreement require the prior approval and authorization of the STB or other regulatory authority, User, at its own cost and expense, will initiate and thereafter diligently pursue an exemption for temporary trackage rights pursuant to 49 CFR 1180.2(d)(8). Prior to making any submission to the STB, User shall present said submission to NSR for NSR's review and approval prior to filing, which approval shall not be unreasonably withheld or delayed.

ARTICLE 18. FORCE MAJEURE

- 18.1 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party.

ARTICLE 19. ABANDONMENT

- 19.1 Notwithstanding the provisions of Article 16 of this Agreement, NSR may abandon all or part of the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of NSR's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with or oppose NSR's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that NSR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from NSR pursuant to 49 U.S.C. § 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. § 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes NSR's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the

date established by NSR for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that NSR is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 20. SUCCESSORS AND ASSIGNS

- 20.1 Neither Party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of the other party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Article, this Agreement shall be binding upon and inure to the benefits of the Parties hereto, their successors and assigns.

ARTICLE 21. NOTICE

- 21.1 Any notice required or permitted to be given by one Party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to User:

Terminal Railway Alabama State Docks
c/o Alabama State Port Authority
250 North Water Street, Suite 300
Mobile, Alabama 36633

If to NSR:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Executive Vice President Operations
Three Commercial Place
Norfolk, VA 23510-2191

with a copy to:

Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Senior Director – Interline Management
1200 Peachtree Street, NE – Box 158
Atlanta, Georgia 30309

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

ARTICLE 22. GENERAL PROVISIONS

- 22.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- 22.2 This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- 22.3 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by both Parties.
- 22.4 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.
- 22.5 All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.
- 22.6 All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 22.7 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars, or equipment are owned or leased by one Party and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.

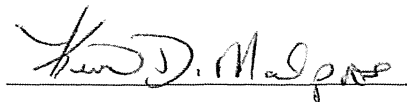
- 22.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- 22.9 This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without giving effect to any choice or conflict of laws provision or rule (whether of the State of Alabama or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Alabama.
- 22.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.
- 22.11 This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

ARTICLE 23. CONFIDENTIALITY

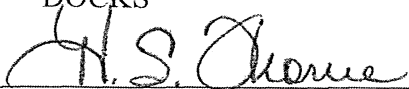
- 23.1 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either NSR or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

Witness for USER:



TERMINAL RAILWAY ALABAMA STATE
DOCKS

By: 
Deputy Director + COO

Witness for NSR:

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____
Vice President Network & Service Management

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36190

TERMINAL RAILWAY ALABAMA STATE DOCKS
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

Pursuant to a written agreement dated as of April 18, 2018, Norfolk Southern Railway Company ("NS") has agreed to grant temporary overhead trackage rights to Terminal Railway Alabama State Docks ("TASD") over NS's 3-B South District rail line between the connection with TASD at approximately NS milepost 146.9 MB at CN Crossing and the connection with TASD at approximately NS milepost 144.0 MB at Terminal Junction, a distance of approximately 2.9 miles in Mobile, Alabama. The temporary trackage rights provide TASD with an emergency detour route between TASD line segments while repairs are conducted to TASD's Viaduct Bridge over Bay Bridge Road in Mobile.

TASD has concurrently filed a petition for waiver of the 30-day period in 49 C.F.R. § 1180.4(g) to allow the proposed temporary trackage rights to become effective immediately. The Board will address TASD's petition in a separate decision. In the absence of action on TASD's petition, the temporary trackage rights will be effective on May 28, 2018. Pursuant to 49 C.F.R. § 1180.2(d)(8), the temporary trackage rights authorized herein will automatically expire by agreement of the parties no later than October 18, 2018.

As a condition to this exemption, any employee affected by the temporary trackage rights will be protected by the conditions imposed in Norfolk & Western Railway --

Trackage Rights -- Burlington Northern, Inc. 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway -- Lease & Operate -- California Western Railroad, 360 I.C.C. 653 (1980).

This notice is filed under 49 C.F.R. § 1180.2(d)(8). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 21, 2018 (at least 7 days before the exemption would ordinarily become effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36190, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our website at WWW.STB.GOV.

Decided: May __, 2018

By the Board, Rachel D. Campbell, Office of Proceedings.

VERIFICATION

State of Alabama)
) SS:
County of Mobile)

Clifford B. Melton, being duly sworn, deposes and says that he is General Manager of Terminal Railway Alabama State Docks, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Clifford B. Melton

SUBSCRIBED AND SWORN TO
before me this 26th day
of April, 2018.



Notary Public

My Commission expires: 4/10/2021