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



June 27, 2006

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

Re: Surface Transportation Board Finance Docket No. 34883; Portland and Western
Railroad, Inc. --Trackage Rights Exemption -- Union Pacific Railroad Company

Dear Secretary Williams:

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

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

Sincerely,

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

FILED

JUN 29 2006

SURFACE
TRANSPORTATION BOARD

SLS/cac
Encls.

ENTERED
Office of Proceedings

cc: John Sims
Adam Frankel
Karl Morell

JUN 29 2006

Part of
Public Record

FSE RECEIVED

JUN 29 2006

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34883

PORTLAND AND WESTERN RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

Karl Morell
Of Counsel
Ball Janik, LLP
1455 F Street, NW
Suite 225
Washington, DC 20005
(202) 638-3307
(202) 783-6947 FAX

Sidney L. Strickland, Jr.
Elizabeth E. Waite
Sidney Strickland and Associates, PLLC
3050 K Street N.W.
Suite 101
Washington, DC 20007
(202) 338-1325
(202) 672-5399 FAX

ATTORNEYS FOR
PORTLAND AND WESTERN RAILROAD, INC

Dated: June 27, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34883

PORTLAND AND WESTERN RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

1. Portland and Western Railroad, Inc. ("PNWR"), files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7). Under this notice, PNWR is acquiring, by assignment from BNSF Railway Company ("BNSF"), nonexclusive trackage rights over the rail line owned by the Union Pacific Railroad Company ("UP") located between East Portland, Oregon, in the vicinity of Milepost 770.3 and Labish, Oregon, in the vicinity of Milepost 720.9, a distance of approximately 49.4 miles (referred to herein as "Joint Trackage") [See Exhibits 1 and 2]. The overhead trackage rights are for the sole purpose of providing PNWR the right to serve as BNSF's agent over the Joint Trackage, including the right to access the Joint Trackage via (1) Portland Terminal Railroad Company ("PTR") trackage between PTR milepost 0.00 and BNSF mileposts 0.69 and 0.91 [See Exhibit 3]; and (2) UP's Willamette River Bridge [See Exhibit 4], collectively hereinafter referred to as the "Access Trackage."

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

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

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

PNWR is acquiring, by assignment from BNSF, overhead trackage rights over: (1) a rail line owned by UP between East Portland, Oregon, in the vicinity of Milepost 770.3 and Labish, Oregon, in the vicinity of Milepost 720.9, a distance of approximately 49.4 miles; (2) the rail line owned by PTR between PTR Milepost 0.0 and BNSF Mileposts 0.69 and 0.91, in Portland, Oregon; and (3) the railroad portion of UP's Willamette River Bridge in Portland, Oregon. Subject to approval of the Board, the overhead trackage rights will remain in effect for a period of ten (10) years from the Execution Date of the agreements ("Initial Term"). The carriers involved in this transaction and their business addresses are as follows:

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

Portland and Western Railroad, Inc
650 Hawthorne Avenue, SE
Suite 220
Salem, Oregon 97301

Union Pacific Railroad Company
MS 1180
1400 Douglas Street
Omaha, NE 68179

Portland Terminal Railroad Company
3500 NW Yeon Avenue
Portland, Oregon 97210

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

Consummation of the transaction will occur on the effective date of this notice. The overhead trackage rights are for the sole purpose of providing PNWR the right to serve as BNSF's agent over the Joint Trackage, including the right to access the Joint Trackage via the

Access Trackage.

Subject to approval of the Board, the overhead trackage rights will remain in effect for a period of ten (10) years.

Section 1180.6(a)(5).

The trackage involved in the overhead trackage rights agreements is located in the state of Oregon.

Section 1180.6(a)(6).

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

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

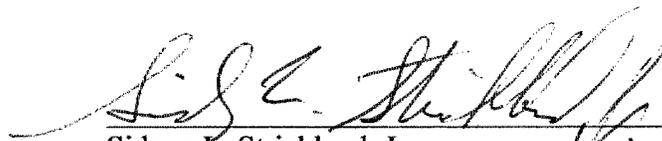
Copies of the three overhead trackage rights agreements covering this transaction are attached hereto as Exhibit No. 2, Exhibit No. 3 and Exhibit No. 4.

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

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

Respectfully submitted,

Karl Morell
Of Counsel
Ball Janik, LLP
1455 F Street, NW
Suite 225
Washington, DC 20005
(202) 638-3307
(202) 783-6947 FAX



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ATTORNEYS FOR
PORTLAND AND WESTERN RAILROAD, INC.

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34883

PORTLAND AND WESTERN RAILROAD, INC. -- TRACKAGE RIGHTS
EXEMPTION -- UNION PACIFIC RAILROAD COMPANY

Portland and Western Railroad, Inc. ("PNWR") is acquiring, by assignment from BNSF Railway Company, ("BNSF") overhead trackage rights over: (1) the rail line owned by Union Pacific Railroad Company ("UP") between East Portland, Oregon, in the vicinity of Milepost 770.3 and Labish, Oregon, in the vicinity of Milepost 720.9, a distance of approximately 49.4 miles (referred to herein as "Joint Trackage"); (2) the rail line owned by Portland Terminal Railroad Company ("PTR") between PTR Milepost 0.0 and BNSF Mileposts 0.69 and 0.91, in Portland, Oregon; and (3) the railroad portion of UP's Willamette River Bridge in Portland, Oregon.

The overhead trackage rights are for the sole purpose of providing PNWR the right to serve as BNSF's agent over the Joint Trackage, including the right to access the Joint Trackage via PTR's rail line and UP's Willamette River Bridge.

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

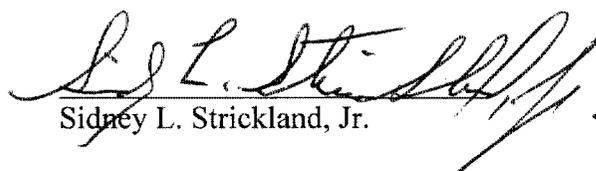
Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

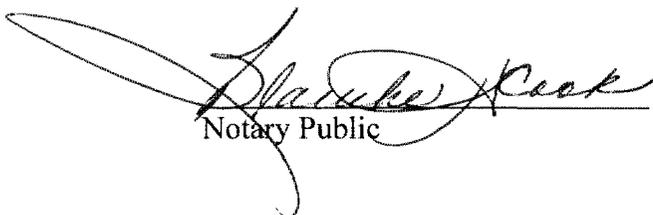
THE DISTRICT OF COLUMBIA, §

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


Sidney L. Strickland, Jr.

Subscribed and sworn to before me this 26th day of June, 2006.




Notary Public

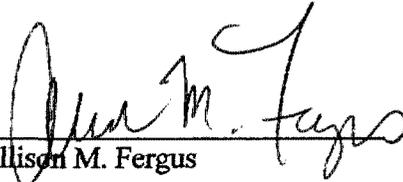
My Commission expires:

July 31, 2007

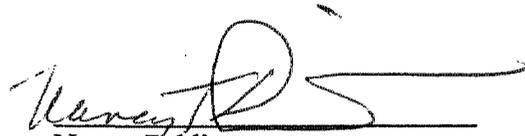
VERIFICATION

FAIRFIELD COUNTY, §
IN THE §
STATE OF CONNECTICUT §

Allison M. Fergus, Senior Counsel and Assistant Secretary of Genesee & Wyoming Inc., being duly sworn, deposes and says that she has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of her knowledge and belief.


Allison M. Fergus

Subscribed and sworn to before me this 28th day of June, 2006.

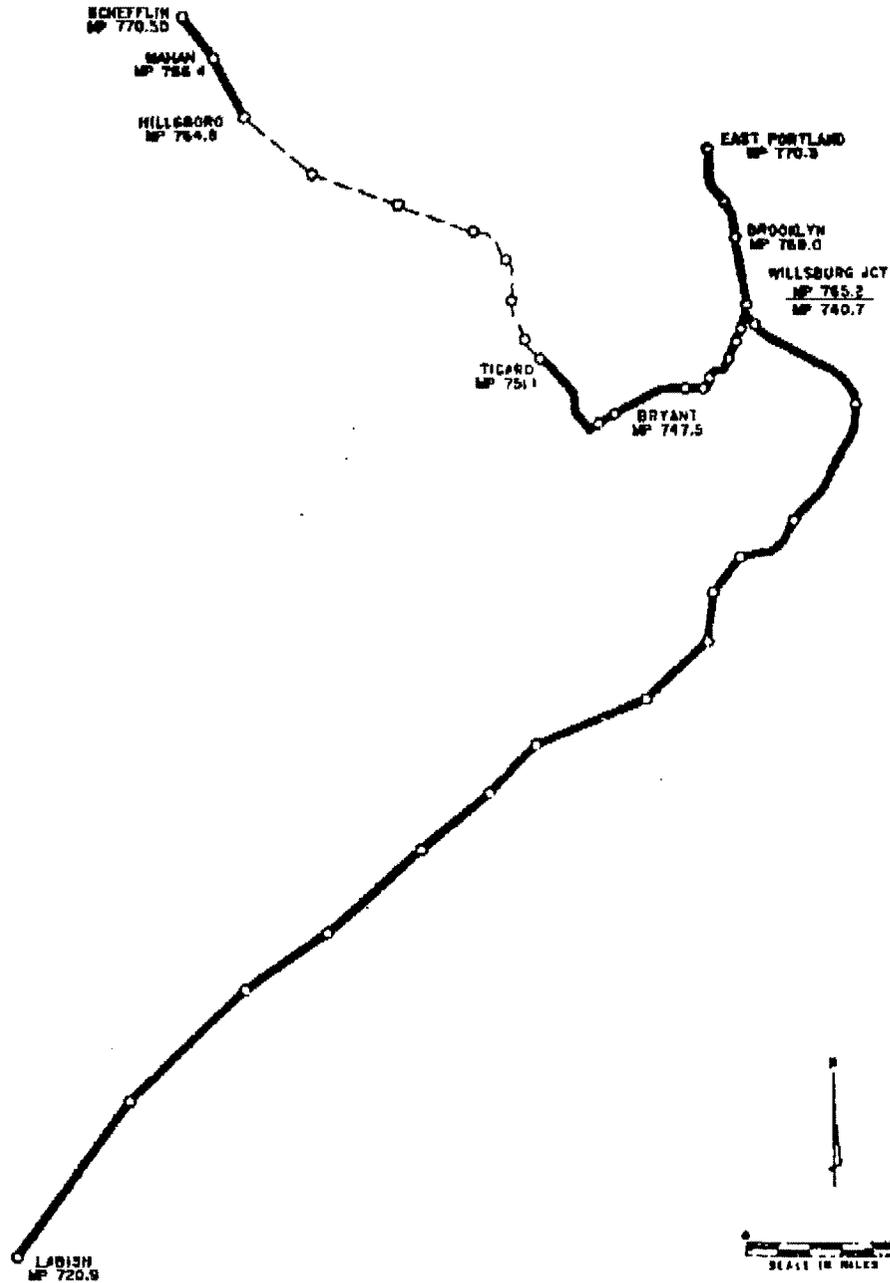

Notary Public

My Commission expires:

6/30/2007

NANCY T. DIBATTISTA
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2007

Exhibit 1



LEGEND

- GRANT OF RIGHTS
- - - - -** EXISTING RIGHTS

SOUTHERN PACIFIC
 Engineering Dept. LINES S&P Bureau
 ENH EAST-PORTLAND TO-LABISH TRACK RIGHTS

SOUTHERN PACIFIC LINES			
EXHIBIT "B"			
TRACAGE RIGHTS GRANTED TO BURLINGTON NORTHERN BETWEEN EAST PORTLAND AND LABISH LOCATIONS AS SHOWN BY SOLID LINE			
SCALE	AS SHOWN	ENGINEERED - CHECKED BUREAU	
VAL. E.C.	SWGT	DRAWN BY	MC
ROUTE NO.	S.P.	GRADING NO.	
DATE	MAY 12, 1934	SHEET NO.	1 OF 1
		FILE GRADING CROSS	

**FIRST AMENDMENT
OREGON TRACKAGE RIGHTS AGREEMENT**

This **FIRST AMENDMENT** made this 30th day of May, 2006, ("Execution Date") between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, UP owns and operates a line of railroad extending approximately 49.4 miles between East Portland, Oregon, in the vicinity of Milepost 770.3 and Labish, Oregon in the vicinity of Milepost 720.9 ("Joint Trackage"), which BNSF acquired the nonexclusive right to use under The Oregon Trackage Rights Agreement dated May 26, 1994 between UP's predecessor Southern Pacific Transportation Company and BNSF's predecessor Burlington Northern Railroad Company ("Original Agreement"); and

WHEREAS, BNSF has requested the right to permit the Portland and Western Railroad Inc., hereinafter called "PNWR", and its successors and assigns as approved by UP which approval shall not be unreasonably withheld, to operate over the Joint Trackage as BNSF's agent including the right to access the Joint Trackage via certain Portland Terminal Railroad and its successors and assigns ("PTR") main line trackage and UP's Willamette River Bridge, collectively hereinafter referred to as the "Access Trackage"; and

WHEREAS, BNSF will enter into a separate agreement with UP of even date granting UP the right to operate overhead movement of UP freight trains between Portland and North Portland Jct., Oregon; and

WHEREAS, UP is willing to allow PNWR to operate as BNSF's agent over the Joint Trackage and the Access Trackage under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

1. As of the Effective Date, as herein defined in Section 6. of this First Amendment, the parties agree that PNWR shall have the right to serve as BNSF's agent over the Joint Trackage and Access Trackage with all rights and obligations accorded BNSF per the Original Agreement and those agreements covering the Access Trackage. BNSF shall notify UP in writing of the date that PNWR shall commence operations as BNSF's agent over the Joint Trackage ("PNWR Commencement Date"). BNSF shall cease operations over the Joint Trackage as of the PNWR Commencement Date except that BNSF may continue to utilize the Joint Trackage to interchange unit trains with PNWR at Willsburg Jct., Oregon. BNSF shall notify UP in writing of the date that PNWR shall cease operations as BNSF's agent over the Joint Trackage and at such time BNSF shall be entitled to resume operations over the Joint Trackage on its own behalf.
2. BNSF will continue to be responsible for and pay directly to UP all compensation payable to UP under the terms of the Original Agreement.
3. Other than for the employees of UP, BNSF shall indemnify and hold harmless UP from any and all labor claims to the extent said labor claims are as a result of PNWR's exercise of rights to use the Joint Trackage and Access Trackage for and on behalf of BNSF.
4. For purposes of allocating liability and indemnity as provided for in the Original Agreement, PNWR shall be considered to be BNSF, and BNSF shall hold UP harmless from any and all liability of PNWR in the exercise of rights and performance of obligations pursuant to the terms of this First Amendment.
5. BNSF and UP agree to promptly amend the agreements required for PNWR to utilize the Access Trackage in common with UP, BNSF and PTR, under substantially similar terms and conditions as outlined in this First Amendment. Those agreements include the December 31, 1932 Portland Terminal Railroad Operating Agreement, as amended and

supplemented, and the March 1, 1920 Lower Deck Willamette River Bridge Agreement, as supplemented.

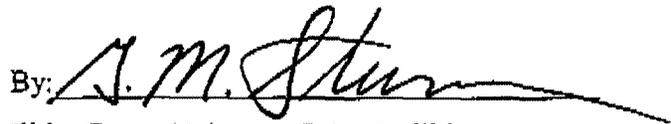
- 6. Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), this First Amendment shall be effective as of the date STB approval is granted ("Effective Date"), and shall remain in effect for a period of ten (10) years from the Execution Date ("Initial Term"). After the Initial Term, this First Amendment shall remain in effect on a year to year basis until terminated by either party serving twelve (12) months written notice to the other party of its intent to terminate this First Amendment. Liabilities created under this First Amendment shall survive the termination.
- 7. Other than as specifically modified herein, the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

UNION PACIFIC RAILROAD COMPANY

By: 
 Title: UP - TRAIN POSITION

By: 
 Title: General Manager Joint Facilities

PORTLAND TERMINAL RAILROAD COMPANY

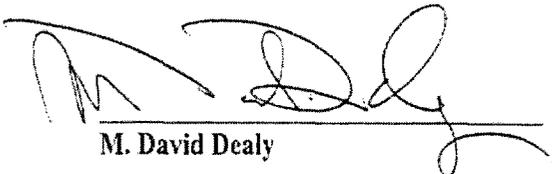
UNANIMOUS ACTION TAKEN BY DIRECTORS WITHOUT A MEETING

The undersigned, being the Directors of Portland Terminal Railroad Company, do in accordance with ORS 60.341, take the following action and consent to this action being taken without a formal meeting of the Board of Directors.

WHEREAS, BNSF Railway Company (BNSF) requests that the Portland & Western Railroad, Inc. (PNWR) operate as BNSF's agent across trackage owned by the Portland Terminal Railroad Company (PTR) between PTR milepost 0.0 and BNSF mileposts 0.69 and 0.91 of the BNSF Fallbridge Subdivision, as indicated on the attached Exhibit, in common with the existing users of this trackage.

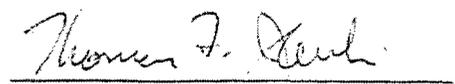
RESOLVED, that effective June 1, 2006, and in accordance with Article III, Section 9 of the December 31, 1932 Portland Terminal Railroad Company (PTR) Basic Operating Contract, as amended, we, the Directors of the PTR, hereby unanimously agree that the Portland & Western Railroad, Inc. (PNWR) may be admitted to and have the right to use the mainline trackage owned by PTR in the City of Portland, Oregon, as indicated on Exhibit A attached hereto, on a non-exclusive basis, for an Initial Term of ten (10) years, and on the condition that all costs and liabilities associated with the operations and activities of PNWR thereon, are deemed to be those of the BNSF as they relate to the operations and activities performed under the PTR Basic Operating Contract, as amended.

After the Initial Term, this Resolution shall remain in effect on a year to year basis until terminated by either BNSF or PTR serving twelve (12) months written notice to the other party. At any time during the term of this Resolution, BNSF shall have the right to terminate it upon one (1) month's prior notice to PTR.


M. David Dealy


George M. Sturm


Debbie B. Valentine


Thomas F. Jacobi

SECOND SUPPLEMENTAL AGREEMENT**WILLAMETTE RIVER BRIDGE AGREEMENT**

This **SECOND SUPPLEMENTAL AGREEMENT** made this 30th day of May, 2006, (“Execution Date”) between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called “BNSF”, and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called “UP” and collectively called “Parties”.

WITNESSETH:

WHEREAS, the Parties hereto entered into an Agreement dated March 1, 1920 as supplemented (“Agreement”), providing for BNSF’s use of the railroad portion of UP’s Willamette River Bridge in Portland, Oregon; and

WHEREAS, BNSF has requested the right to permit the Portland and Western Railroad Inc., hereinafter called “PNWR”, and its successors and assigns as approved by UP which approval shall not be unreasonably withheld, to operate over the Willamette River Bridge (“Bridge”) as BNSF’s agent to access BNSF’s trackage rights between East Portland, Oregon and Labish, Oregon (“Joint Trackage”); and

WHEREAS, UP is willing to allow PNWR to operate as BNSF’s agent over the Willamette River Bridge to access the Joint Trackage under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

1. As of the Effective Date, as herein defined in Section 6. of this Second Supplemental Agreement, the parties agree that PNWR shall have the right to serve as BNSF’s agent over the Bridge for the sole purpose of accessing or exiting the Joint Trackage, with all

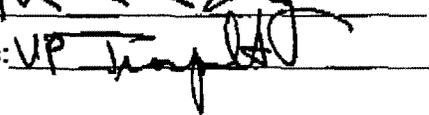
rights and obligations accorded BNSF per the Agreement. BNSF shall notify UP in writing of the date that PNWR shall commence operations as BNSF's agent over the Joint Trackage and the Bridge ("PNWR Commencement Date"). BNSF shall notify UP in writing of the date that PNWR shall cease operations as BNSF's agent over the Joint Trackage and the Bridge and at such time BNSF shall be entitled to resume all operations over the Bridge on its own behalf.

2. BNSF will continue to have access to the Bridge and utilize the Joint Trackage to handle interchange and run through traffic between BNSF and UP and between BNSF and PNWR.
3. BNSF will continue to be responsible for and pay directly to UP all compensation payable to UP under the terms of the Agreement.
4. Other than for employees of UP, BNSF shall indemnify and hold harmless UP from any and all labor claims to the extent said labor claims are as a result of PNWR's exercise of the rights granted herein.
5. For purposes of allocating liability and indemnity as provided for in the Agreement, PNWR shall be considered to be BNSF, and BNSF shall hold UP harmless from any and all liability of PNWR in the exercise of rights granted pursuant to the terms of this Second Supplement.
6. Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), this Agreement shall be effective as of the date STB approval is granted ("Effective Date"), and shall remain in effect for a period of ten (10) years from the Execution Date ("Initial Term"). After the Initial Term, this Second Supplemental Agreement shall remain in effect on a year to year basis until terminated by either party serving twelve (12) months written notice to the other party of its intent to terminate this Second Supplemental Agreement. Liabilities created under this Second Supplemental Agreement shall survive the termination.

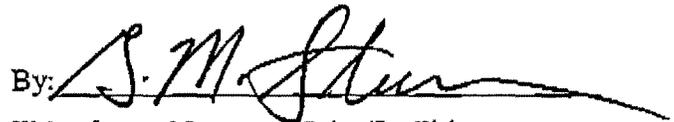
6. Other than as specifically modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Supplemental Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

By: 
Title: VP 

UNION PACIFIC RAILROAD COMPANY

By: 
Title: General Manager Joint Facilities

