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SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWERS,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

MOTION FOR PROTECTIVE ORDER
OF DEFENDANT, V AND S RAILWAY, LLC

Fritz R. Kahn
Fritz R. Kahn, P.C.
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Attorney for

V AND S RAILWAY, LLC

Dated: July 16, 2015

ENTERED
Office of Proceedings
July 16, 2015
Part of
Public Record

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

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On July 10, 2015, Complainants and Respondent filed a Joint Motion to Stay Proceedings. The Board not having rendered its decision granting the requested relief, Respondent is obliged to file the instant Motion for Protective Order, which, of course, Respondent will withdraw when and if the Board were to approve the Joint Motion to Stay Proceedings.

Defendant, V and S Railway, LLC (“V&S”), pursuant to 49 C.F.R. § 1114.21(c), respectfully moves for a protective order to shelter it from the annoyance, embarrassment and undue burden and expense occasioned by the misuse and abuse of discovery and to prevent the raising of issues inappropriate to the proceeding by the discovery requests of Complainants, Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers, Colorado Wheat Research Foundation (together “wheat interests”) and KCVN, LLC (“KCVN”), and in support thereof V&S states, as follows;

1. Attached as Exhibit 1 is a copy of a letter from Complainants' counsel to the undersigned, dated June 19, 2015, which leaves no doubt that Complainants are getting ready to file yet another Motion to Compel Discovery¹. If nothing else, Complainants allow V&S only eleven days to respond, which is hardly enough time given the breadth of the demands they make of V&S.

2. Complainants' letter illustrates how they play the discovery game, invoking applicable regulatory provisions when it suits their purpose and ignoring others when they do not. At pages 2-3 of their letter, Complainants cite decisions based on the Federal Rules of Civil Procedure rather than the regulations of the Board, and yet the Complainants failed to observe a primary rule of the Federal Rules of Civil Procedure, namely, Rule 26(a)(1). Rule 26(a)(1) declares that, when a complaint is filed, the party, without awaiting a discovery request, must provide the other party with, among other things, "(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defense, unless the use would be solely for impeachment; (ii) a copy of a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment." Complainants provided V&S with none of the required disclosure following their filing of the Complaint Alleging Violations of 49 U.S.C. § 10903 and § 11101, served October 28, 2014.

¹ The first Complainants' Motion to Compel Discovery was filed December 16, 2014.

3. Instead, out of the blue, Complainants on November 21, 2014, served Complainants' First Discovery Requests upon V&S². Complainants did not precede the filing of their discovery requirements with a request of V&S' attorney to meet, whether in person or by telephone, to discuss what information they believed they needed or desired to secure from V&S to bolster their case. They just served their discovery requests on the undersigned.

4. V&S responded completely and truthfully to Complainants' First Discovery Requests³, but their letter of June 19, 2015, has Complainants maintaining that they are not satisfied with V&S' response and that they will file yet another Motion to Compel Discovery for the obvious purpose of annoying, oppressing or imposing undue burden and expense on V&S and to raise issues inappropriate to the proceeding. One or two examples will amply illustrate Complainants' intent.

5. Complainants instituted the instant proceeding alleging that V&S had removed rail from the Western Segment of the Towner Line and that the removal of rail constituted an abandonment for which the authorization of the Board needed to be obtained pursuant to 49 U.S.C. § 10903. They further alleged that V&S had failed to perform transportation on the Western Segment in response to a reasonable request for service in violation of 49 U.S.C. 11101. Complainants' Interrogatory 6 asked for a description of "the corporate relationship between Defendant and A&K Railroad Materials, Inc. when it comes to the acquisition, operation, and disposition of common carrier lines of rail." The interrogatory has absolutely nothing whatever to do with the issues initially raised by the Complainants by their Complaint. Nevertheless, V&S

² A copy of Complainants' First Discovery Requests is attached as Exhibit 2.

³ A copy of V&S' response is attached as Exhibit 3.

responded to the interrogatory stating “Defendants’ members and Managers are Kern Schumacher and Rhonda Nicoloff. Kern Schumacher and Rhonda Nicoloff are stockholders and officers of A&K Railroad Materials, Inc.” What more could Complainants legitimately want as a response, and yet in their letter of June 19, 2015, “Complainants request that V&S provide a more complete answer to the portion of this interrogatory that seeks a description of the interrelationship between V&S and A&K when it comes to the acquisition, operation, and disposition of common carrier lines of rail.” This is illustrative of the evident annoyance of the Motion to Compel which Complainants are preparing to file with the Board and of their raising issues inappropriate to the proceeding.

6. Complainants’ first document request asked for the production of “all documents relating to, discussing, referring to, or commenting on Defendant’s purchase of the Towner Line in 2005”, and their second document request asked for the production of all documents relating to, discussing, referring to, or commenting on that Defendant utilized, and/or relied upon for establishing the valuation of the Towner Line when the Defendant purchased it in 2005.” In its response to both requests V&S said, “See STB Docket No. FD 34779, STB Docket No. FD 35664, the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.” In their June 19, 2015, letter Complainants’ counsel state that they refine Complainants’ request to not include material retrievable from the filings and decisions in the Board’s proceedings but “we have been unable to obtain relevant materials from the Colorado Legislature and the Colorado Department of Transportation.” Their assertion lacks credibility. At page 4 of his Verified Statement attached to Complainants’ Motion for Emergency and Preliminary

Injunctive relief, filed October 28, 2014, Mr. Darrell L. Hanavan, the Executive Director of the wheat interests, acknowledged having “led the lobbying effort in 1998 to gain introduction and passage of HB 1395 by the Colorado General Assembly, which appropriated \$10.4 million for the immediate acquisition of the [Towner] rail line as part of the State rail bank after the STB approved the abandonment of the rail line as part of the Union Pacific – Southern Pacific rail merger.” Moreover, in his letter to V&S’ Chairman, Mr. Kern Schumacher, dated July 28, 2014, a copy of which was attached to the Complaint, Mr. William S. Osborn, the Attorney-in-Fact for KCVN and the assistant manager of KCVN’s western operations and the authorized spokesperson on its behalf, stated, “V&S purchased this [Towner] line from the State of Colorado in 2011 [sic] for \$9,356,000.” In other words, Complainants have the very data which by the Motion to Compel Discovery which they shortly will file with the Board they will be demanding that V&S produce from its own files. It is to avoid Complainants’ imposing such an undue burden and expense on V&S that it seeks the issuance of a protective order.

7. The present proceeding is altogether different from the proceeding which the Complainants initiated by their Complaint Alleging Violations of 49 U.S.C. § 10903 and § 11101, filed October 28, 2014. Whereas then they were alleging that V&S unlawfully had abandoned the Western Segment of the Towner Line and unlawfully had not performed transportation on it in response to reasonable requests for service. KCVN now wants the Towner Line to be abandoned so that it can acquire it pursuant to an offer of financial assistance for the ostensible purpose of reactivating it and restoring common carrier service on it. In his Verified Statement attached to the Motion for Emergency and Preliminary Injunctive Relief, filed October 28, 2014, Mr. Osborne stated, “KCVN

intends to continue its efforts to acquire the [Towner] line from V&S whether it is a mutually agreeable purchase arrangement, or through the means for acquiring such lines through the statutes and regulations administered by this Board.” If it was unclear from Mr. Osborn’s Verified Statement what he meant, KCVN’s Supplement to Motion for Preliminary Injunction, filed December 23, 2014, removed that uncertainty. On page 3 of the pleading, KCVN explained, “the relevant statutes and regulations to which [Mr. Osborn] alludes include the rule and procedures governing the OFA process under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.57.”

8. V&S in fact has begun to take the preliminary steps in anticipation of filing its Notice of Exempt Abandonment. The Environmental and Historic Report were served on July 13, 2015. Notices announcing the proposed abandonment in Docket No. AB 603 (Sub-No. 4X) have appeared in The Pueblo Chieftain, the Fowler Tribune and the Kiowa County Press, newspapers of general circulation in Pueblo, Crowley and Kiowa Counties, Colorado. Letters have been sent on June 4, 2015, to the officials designated in 49 C.F.R. § 1152.50(d), with copies sent to Ms. Cynthia T. Brown, Chief of the Section of Administration of the Board’s Office of Proceedings.

9. The Board by its Decision, served May 7, 2015, directed the parties on or before June 9, 2015, to confer under § 1111.10(a) regarding discovery, if necessary, and other procedural matters. The parties conferred by telephone on the 9th, with Mr. Terry Whiteside representing the wheat interests, Thomas W. Wicox, Esq. represent KCVR and the undersigned representing V&S. That would have been the time for Mr. Wilcox to indicate what additional information KCVN would like to secure from V&S in connection with its proposed abandonment of the Towner Line and the reaction of V&S

to KCVN's seeking to acquire the Towner Line by way of an offer of official assistance rather than by direct purchase. Mr. Wilcox, for example, might have inquired why the proposed abandonment of the Towner Line on the east is from Milepost 747.5 near Towner rather than from Milepost 746.6 at Towner. He might have inquired why on the west the proposed abandonment is from Milepost 869.4 near NA Junction whereas the Western Segment discontinuance was from Milepost 868.5 near NA Junction. The undersigned could have answered the questions and provided Mr. Wilcox with additional information pertaining to the proposed abandonment had Mr. Wilcox sought it. Mr. Wilcox, however, refrained from any discussion of discovery except to say that he and Mr. Whiteside would be sending the undersigned a letter renewing their contention that Complainants' First Discovery Request had not been met to their satisfaction by V&S' response.

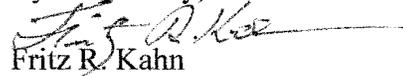
10. With the character of the proceeding having changed so completely, it is evident that the Motion to Compel Discovery which Complainants are preparing to file with the Board will be for the sole purpose of annoying, oppressing or imposing undue burden and expense on V&S and to raise issues inappropriate to the present proceeding.

WHEREFORE, V and S Railway, LLC respectfully moves the Board to enter an order restraining Complainants from using further discovery to annoy, oppress or impose undue burden and expense on it and to prevent the raising of issues inappropriate to the proceeding initiated by Complainants.

Respectfully submitted,

V AND S RAILWAY, LLC

By its attorney,



Fritz R. Kahn

Fritz R. Kahn, P.C.

1919 M Street, NW (7th fl.)

Washington, DC 20036

Tel.: (202) 263-4152

Email: xiccgc@gmail.com

Dated: July 16, 2015

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Motion for Protective Conditions on the wheat interests by mailing a copy by prepaid first-class mail to their representative, Mr. Terry Whiteside, and on KCVN, LLC by e-mailing a copy to its attorney, Thomas W. Wilcox at twilcox@gkglaw.com.

Dated at Washington, DC, this 16th day of July, 2015.



Fritz R. Kahn

EXHIBIT 1

GKG LAW

a professional corporation

THE FOUNDRY BUILDING

1055 THOMAS JEFFERSON STREET NW SUITE 500 WASHINGTON, DC 20007
TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

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WRITER'S DIRECT E-MAIL ADDRESS
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5248

June 19, 2015

VIA EMAIL AND U.S. MAIL

Fritz Kahn, Esq.
Fritz Kahn, P.C.
1919 M Street NW (7th Floor)
Washington, DC 20036

Re: Docket No. NOR 42140—Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers, Colorado Wheat Research Foundation, and KCVN, LLC vs. V&S Railway, LLC

Dear Fritz:

As promised during the conference call between counsel for the parties on June 9, 2015, this letter refines the categories and types of documents Complainants seek in response to their First Discovery Requests. We agreed to provide you with this letter before renewing all or part of our Motion to Compel Discovery, which was filed in this case on December 16, 2014. We ask that you respond to this letter on or before June 30, 2015.

Interrogatories

1. Interrogatory 6

Complainants request that V&S provide a more complete answer to the portion of this interrogatory that seeks a description of the interrelationship between V&S and A&K when it comes to the acquisition, operation, and disposition of common carrier lines of rail.

GKG Law, P.C.

Mr. Fritz R. Kahn

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2. Interrogatory 9

Complainants have refined this interrogatory to ask Defendant to supply the date, or time period when it and/or its affiliate A&K first began discussions about selling the Rail Track Materials of the Western Segment.

3. Interrogatory 11

This interrogatory asks for a detailed description of all actions that have been taken by V&S and its affiliate A&K Railroad Materials, Inc. "associated with the removal of any Rail Track Materials from any segment of the Towner Line." It also asks for a complete listing of All Rail Track Materials that have been removed by the Towner Line by V&S and or A&K since 2005. Your response was that "No rail has been removed. Some tie plates and spikes have been removed." Please advise whether V&S will provide more details on the actions of V&S and A&K associated with the sale and removal of Rail Track Materials, which includes the broader topic of actions each has taken since 2005 associated with their plans to sell and remove the track. These include the timing of the decision to sell and remove it, and the arrangements to sell and remove it. This information is highly relevant to the issues in the case, which include ascertaining V&S's intentions concerning the line both before and after it informed the Board in 2012 that V&S intended to abandon the line "in the near future."

Document Requests

1. V&S's Referral of Complainants to Publicly Available Information

In response to Document Requests Nos. 1, 2, 3, 4, 5.b, 5.c, 10.a and 16, V&S responded by referring Complainants to certain public sources of information, such as Board dockets and "publicly available documents of the Colorado Legislature and Colorado Department of Transportation."

First, Complainants refine their requests to not include filings and decisions from the docket of the Surface Transportation Board. However, we have been unable to obtain relevant materials from the Colorado Legislature and the Colorado Department of Transportation. To the extent these materials are kept in V&S's files in the ordinary course and available through a reasonable search, we request that V&S produce them in response to these requests.

Second, we reiterate that these requests, and the general definition of "Document," clearly cover a much broader scope of responsive material than what V&S has provided to date. Discoverable material includes relevant documents that are kept by V&S in the ordinary course of business, including but not limited to emails, memoranda, letters, reports, notes, meeting minutes, and other materials, including all drafts and final versions of that material.

Generally, a responding party must furnish responsive information to discovery requests "as is available through reasonable efforts." *See, e.g., Oatman v. Sec. of Treasury of U.S.*, 893

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F.Supp. 937, 939 (D.Idaho May 30, 1995). Further, if the information sought is contained in the responding party's files and records, he or she is under a duty to search the records to provide the answers. See, e.g., *U.S. ex rel. England v. Los Angeles County*, 235 F.R.D. 675, 680 (E.D. Calif. 2006) (citing *Govas v. Chalmers*, 965 F.2d 298, 302 (7th Cir.1992)). Moreover, unless the task of producing an answer or documents is unusual, undue, or extraordinary, the general rule requires the party answering or producing the documents to bear that burden. See, e.g., *Continental Ill. National Bank and Trust Co. of Chicago v. Caton*, 136 F.R.D. 682, 690 (D.Kan.1991); *Bills v. Kennecott Corp.* 108 F.R.D. 459, 462 (D.Utah 1985). The basic rules of discovery require V&S to conduct a search of its files for responsive material included within the definition of Document, and produce them. Please confirm either that V&S will conduct such a search for responsive documents, or that V&S continues to refuse to perform such a search for the reasons set out in your previously filed motion for protective conditions.

Third, Complainants will refine their First Discovery Requests to delete Requests No. 1 and 2. As for the other Requests set forth above:

Request 3: This request seeks internal Documents contained in the files of V&S that discuss why it purchased the Towner Line in 2005 and what its intentions were regarding operations over that line.

Request 4: This request seeks internal Documents contained in the files of V&S that discuss when and why it decided to seek discontinuance authority for the Western Segment.

Requests 5.b and 5.c: These requests seek internal Documents contained in the files of V&S that discuss when and why it decided to seek abandonment authority for the "Eastern" and "Middle" segments.

2. Request 5.a

This request asks for "documents relating to, discussing, referring to, or commenting on Defendant's plans, and actions taken, to abandon . . . the Western Segment." V&S's initial response to this document request is that "there are none." This response is not consistent with the facts surrounding the Western Segment and V&S's filings at the Board concerning it, wherein V&S told the Board in 2012 that it would abandon the line in "the near future." Documents in V&S's files that discuss, refer to, or relate to this statement, including V&S's reasons for abandoning the line, the timing of the abandonment and other information related to V&S's stated intention are clearly relevant to the issues encompassed by the complaint in this proceeding, and are therefore discoverable. These documents include emails, memoranda, written correspondence, economic analyses, and similar materials.

3. Requests 6.a, 6.b and 6.c

Request 6 asks for "all documents comprising, relating to, responding to, discussing, or referring to any requests by a rail shipper for rail service from Defendant over any portion of the

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Towner Line from December 1, 2005 to date. . . .” Request 6.a asks for all requests for rates and service terms; Request 6.b asks for all internal discussions of Defendant about how to respond to such requests; and Request 6.c asks for summaries of commodities and volumes transported by Defendant over the Towner Line as a result of such requests. Complainants agree to refine this request and limit the information sought to the information request by 6.b, which is information and documents from V&S's files that refer or relate to any internal discussions within V&S about how to respond to any requests by rail shippers for rates and service terms. Complainants note that the scope of this request is not limited to responses to specific requests, but also includes any general policies or protocol adopted by V&S concerning how it would respond to potential requests for rates and service terms.

4. Request 7

Request 7 asks for “all documents relating to, discussing, referring to, or commenting on the letter of counsel of Kiowa County, Colorado to Defendant, sent on August 22, 2014” In response to this request, V&S indicated the existence of an email exchange between counsel for Kiowa County and V&S's STB counsel and briefly described the contents of the exchange. This response was deficient since V&S did not produce copies of the email exchange in response to this discovery requests. Other documents are clearly responsive to this request, such as internal emails between V&S employees, memoranda discussing the letter, any draft letters in response, etc. Please advise whether V&S will provide the referenced email exchange in hardcopy, electronic or any other format, and any other non-privileged documents from the files of V&S that are responsive to this request.

5. Request 8

Request 8 asks for all documents relating to actual sale of the Rail Track Material of the Towner Line to A&K Railroad Material, Inc., or any other purchaser. In response to this request, V&S provided a single document: Track Materials Sales Agreement. However, other documents responsive to this particular request include but are not limited to all drafts of the agreement, emails, memoranda, letters, reports, notes, meeting minutes and other materials relating to, discussing, referring to, or commenting on the potential or actual sale of the track material. Please advise whether V&S will conduct a reasonable search of its files and produce documents responsive to this request.

6. Request 9

Request 9 asks for all documents relating to, discussing, referring to, or commenting on dismantling and removing of any Rail Track Material of the Towner Line. V&S's response to this document request is that “there are none.” The response is not consistent with the facts as according to V&S's own admission that some tie plates and spikes were removed from the track. All documents retained by V&S in its regular course of business that discuss, refer to or relate to the decision to sell and dismantle the line, as well as all documents that refer or relate to the steps that V&S and/or A&K took to actually dismantle the line and sell it are clearly relevant to this

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proceeding, responsive to this request and therefore discoverable. Please advise whether V&S will produce documents responsive to this request.

7. Requests 10.a and 10 b.

These requests seek information from V&S that shed light on why V&S did not seek discontinuance authority for the .9 miles between MP 868.5 to MP 869.4, and was apparently not going to seek abandonment authority for the two miles of the Towner Line between MP 749.5 and MP 747.5. Please advise whether V&S will produce non-privileged documents in response to this request.

8. Request 11

Request 11 asks for all documents relating to, discussing, referring to, or commenting on any valuation prepared for the Towner Line and its Rail Track Material, including any valuation of the underlying land and track assets. In response to this request, V&S referred to the appraisal of R.L. Banks & Associates, Inc. However, other documents, communications and correspondence in the files of V&S—including those between R.L Banks & Associates, Inc. and V&S/A&K or any other materials relating to or commenting on the appraisal—are likewise relevant and responsive and should be provided to Complainants. This request also covers any documents in V&S's files referring to other valuations prepared for the Towner Line. These include the 1998 and 2004 valuations prepared for the Colorado Department of Transportation.

9. Request 13

Please produce all non-privileged documents responsive to this request that are available from a reasonable search of V&S's files, including e-mails.

10. Requests 12, 14.a, 14.b, 14.c, 14.d 15.a and 15.b

Document Request Nos. 12, 14.a, 14.b, 14.c, 14.d, 15.a and 15.b, all pertain to the sale of track material from the Towner Line by A&K Railroad Materials, Inc. to a number of entities, collectively called "OmniTRAX parties." In response to those document requests, V&S provided a single document: Sale and Purchase of Railroad Track Materials Letter Agreement between A&K Railroad Materials, Inc. and OmniTRAX parties. The requests, however, ask for a much broader range of responsive material. Specifically—as noted—discoverable materials include all materials, correspondence, meeting minutes, reports, notes relating to, discussing, referring to or commenting on contract between OmniTRAX parties and A&K Railroad Materials, including documents that demonstrate acquisition of ownership of, or a sufficient interest in, the "tracks and associated equipment" of the Western Segment from Defendant, correspondence between Defendant, A&K Railroad Materials and OmniTRAX parties, all drafts of the agreement between A&K Railroad Materials and OmniTRAX parties and other relevant documents as specified in the document requests discussed in this paragraph. In that regard, please provide all the requested documents immediately.

GKG Law, P.C.

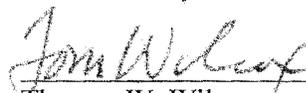
Mr. Fritz R. Kahn

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Please feel free to contact either of the undersigned if you have any questions about the contents of this letter. We look forward to your response.

Very truly yours,



Thomas W. Wilcox
Attorney for KCVN, LLC



Terry Whiteside
*Representative of Colorado Wheat
Administrative Committee, Colorado
Association of Wheat Growers, and Colorado
Wheat Research Foundation*

cc: William S. Osborn, Esq.

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

COLORADO WHEAT)
ADMINISTRATIVE COMMITTEE,)
COLORADO ASSOCIATION OF)
WHEAT GROWERS, COLORADO)
WHEAT RESEARCH FOUNDATION)
4026 South Timberline Road, Suite 120)
Fort Collins, CO 80525)

And)

KCVN, LLC)
515 Congress Avenue, Suite 2450)
Austin, Texas 78701)

vs.)

Docket No. NOR 42140

V & S RAILWAY, LLC)
1505 South Redwood Road)
Salt Lake City, Utah 84104)

COMPLAINANTS' FIRST DISCOVERY REQUESTS

Complainants Colorado Wheat Administrative Committee (“CWAC”), Colorado Association of Wheat Growers (“CAWG”) Colorado Wheat Research Foundation (“CWFR”) and KCVN, LLC (“KCVN”) (together “Complainants”) hereby serve their First Discovery Requests upon Defendant V & S Railway, LLC (“V & S”) pursuant to 49 C.F.R. Part 1114. Responses and responsive documents, as well as any objections, must be delivered by December 11, 2014 to counsel for KCVN, LLC, Thomas W. Wilcox and Svetlana V. Lyubchenko, GKG Law, P.C., 1054 31st Street, N.W., Suite 200, Washington, DC 20007, and also to Mr. Terry Whiteside,

Whiteside & Associates, 3203 Third Avenue North, Suite 301, Billings, Montana, 59101, representative of CWAC, CAWG, and CWFR.

INSTRUCTIONS

1. The Requests for Admissions, Written Interrogatories and Document Requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of Defendant and its affiliates, subsidiaries and counsel.

2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.

3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.

5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all documents that might otherwise be construed to be outside the scope of the Request.

6. If Defendant believes that any request or definition or instruction applicable thereto is ambiguous, it should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Request.

7. If any document covered by a Request is withheld for whatever reason, including any privilege, Defendant shall furnish a written document identifying all withheld documents in the following manner:

- a. the specific Request to which the document is responsive;
- b. the date of the document;
- c. the name of each author or preparer;
- d. the name of each person who received the document and the name of such person's employer at the time the person received the document;
- e. a brief description of the subject matter of the document and any withheld attachments or appendices;
- f. the specific factual and legal basis for withholding; and
- g. the number of pages withheld.

8. Each document produced shall be an authentic original document or a true duplicate of an authentic original document.

9. These Requests cover the period from December 1, 2005 to the date you serve your response, unless otherwise indicated.

10. All Requests are continuing and amended or supplemental responses shall be provided if and when responsive new information and documents are discovered by Defendant.

11. Identify all persons who provided information for each response.

DEFINITIONS

“Acquisition Petition” means the filing made by Defendant in STB Docket No. FD 35664 on August 15, 2012, seeking the Board’s authorization to purchase the Towner Line and to have approval of the purchase made retroactive to December 29, 2005.

“Document” means all writings in any form whatsoever, including but not limited to letters, electronic mail, memoranda, reports, agendas, hand-written materials and meeting notes. The term “documents” also includes all drafts of all writings in any form whatsoever.

“Eastern segment” means the 38-mile segment of the Towner Line between MP 749.5 and MP 787.5.

“Identity” or “Identify” means to state the name, employer, and title of the subject of the request.

“Middle segment” means the 20.8-mile segment of the Towner Line between MP 808.3 and MP 787.5.

“Possession, custody or control” means any document or other information that is within the possession or control of a defendant or any of its employees, agents, or affiliates or subsidiaries and their employees.

“Rail Track Material” means railroad track, ties, spikes, tie plates and other materials typically utilized to construct a freight railroad line of rail, either together or individually.

“Refer or relate” means to have any direct or implied reference or relationship to any subject matters to which such phrase is applied.

“Towner Line” means the Class III railway located in eastern Colorado and running through Kiowa, Otero and Crowley Counties, extending approximately 121.9 miles between milepost 747.5 near Towner on its eastern terminus, and milepost 869.4 near NA Junction, an interchange with BNSF Railway, on its Western terminus.

“You or your” means Defendant or any of its affiliates and consultants. The terms “you,” “your,” and any other nouns or pronouns shall be gender inclusive.

“Western segment” means the 60.2 miles of the Towner Line between MP 868.5 and MP 808.3 near Haswell, Colorado.

REQUESTS FOR ADMISSION

1. Please admit that by the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been having discussions with third parties about selling the Rail Track Material making up the Towner Line.

2. Please admit that between the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014 and the end of August, at the earliest, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been engaged in activities to prepare the rail line for dismantlement, including but not limited to, removing spikes and/or tie plates and other activities from the rail track making up the Towner Line.

WRITTEN INTERROGATORIES

1. Please identify all persons who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of any portion of the Towner Line.

2. Please provide the names of any third party consultant that Defendant has retained to conduct any valuation of the Towner Line, the underlying land and the Rail Track Material making up the Towner Line.

3. Please identify all persons who have been in contact with Defendant regarding purchasing the Rail Track Material of the Towner Line, whether or not such persons contracted with Defendant to purchase the Rail Track Material.

4. Please identify all persons who have contacted Defendant with requests for transportation over the Towner Line in the past three years, including all persons who requested quotes for such transportation.

5. Please identify all persons employed by Defendant and/or its affiliates who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of the Towner Line.

6. Please describe the corporate relationship between Defendant and A&K Railroad Material, Inc., and the interrelationship between Defendant and A&K Railroad Material, Inc. when it comes to the acquisition, operation, and disposition of common carrier lines of rail.

7. Please provide the total amount of Defendant's maintenance expenditures in 2011, 2012, 2013, and 2014 to date, for each segment of the Towner Line, specifically, the Western Segment, the Eastern Segment, the Middle Segment, and the portions of the track on either end that were not included in either the Western or Eastern Segments.

8. Please provide a description of all actions Defendant took to formally abandon the Western Segment after August 15, 2012, when Defendant informed the STB in the Acquisition Petition that it expected to seek authority to abandon the Western Segment "in the near future."

9. Please provide the date on which Defendant first discussed selling the Rail Track Material of the Western Segment to any potential purchaser.

10. Please provide a listing of all acquisitions of common carrier lines of rail by A&K Railroad Material, Inc. Defendant, and any other affiliate of A&K Railroad Material, Inc. over

the past 10 years, and indicate (1) how many of the acquired lines of rail are currently operated in common carrier service, either by Defendant or another railroad operator; (2) how many of the lines were abandoned by Defendant or an affiliate pursuant to 49 U.S.C. §10903 and the applicable regulations; (3) whether any of the Rail Track Material of the acquired lines of rail were sold and removed subsequent to the acquisition and, if sold and removed, and how much of the assets identified were re-used and how much of the assets were sold for scrap or otherwise disposed of.

11. Please provide a detailed description of all actions that have been taken by Defendant and its affiliate A&K Railroad Material, Inc. associated with the removal of any Rail Track Materials from any segment of the Towner Line, and a complete listing of all Rail Track Materials that have been removed from the Towner Line by Defendant and/or its affiliates since the Towner Line was purchased by Defendant in December, 2005.

DOCUMENT REQUESTS

1. Please produce all documents relating to, discussing, referring to, or commenting on Defendant's purchase of the Towner Line in 2005.

2. Please produce all documents relating to, discussing, referring to, or commenting on that Defendant utilized, and/or relied upon for establishing the valuation of the Towner Line when the Defendant purchased it in 2005.

3. Please provide all documents relating to, discussing, referring to, or commenting on the Acquisition Petition, both before and after it was filed.

4. Please provide all documents relating to, discussing, referring to, or commenting on the decision to seek discontinuance authority from the STB for the Western Segment.

5. Please provide all documents relating to, discussing, referring to, or commenting on Defendant's plans, and actions taken, to abandon:

- a. The Western segment;
- b. The Eastern segment; and
- c. The Middle segment.

6. Please provide all documents comprising, relating to, responding to, discussing, or referring to any requests by a rail shipper for rail service from Defendant over any portion of the Towner Line between December 1, 2005 to date, including any and all communications from prospective, current and former shippers, quotes of transportation rates and any and all discussions relating to providing rail transportation service over the Towner Line. Such information to include, but not be limited to:

- a. All requests for rates and service terms
- b. All internal discussions of Defendant about how to response to such requests;
- c. Summaries of commodities and volumes transported by Defendant over the Towner Line as a result of such requests.

7. Please provide all documents relating to, discussing, referring to, or commenting on the letter of counsel of Kiowa County, Colorado to Defendant, sent on August 22, 2014, requesting that Defendant cease and desist the removal of Rail Track Material from the Towner Line.

8. Please provide all documents relating to, discussing, referring to, or commenting on the potential or actual sale of the Rail Track Material of the Towner Line to A&K Railroad Material, Inc. or any other purchaser.

9. Please provide all documents relating to, discussing, referring to, or commenting on dismantling and removing of any Rail Track Material of the Towner Line.

10. Please provide all documents relating to, discussing, referring to, or commenting on:

- a. 0.9 miles of the Towner Line from MP 868.5 to MP 869.4; and
- b. 2 miles of the Towner Line between MP 749.5 and the eastern terminus at MP 747.5.

11. Please provide all documents relating to, discussing, referring to, or commenting on any valuation prepared for the Towner Line and its Rail Track Material, including any valuation of the underlying land and track assets.

12. Please provide all documents relating to, discussing, referring to, or commenting on the "contractual obligation of July 16, 2014" between A&K Railroad Material, Inc. and OmniTRAX, Inc., referenced on page 5 of Defendants Reply filed in this proceeding on October 30, 2014, including but not limited to, all correspondence between A&K Railroad Material, Inc. and OmniTRAX, Inc. pertaining to the "contractual obligation," and a copy of the final document evidencing the obligation.

13. Please provide all documents relating to, discussing, referring to, or commenting on KCVN's July 28, 2014 offer to purchase the Towner Line, including but not limited to all documents that discuss Defendant's possible responses to that offer, and its final response.

14. Please provide all documents referring or relating to the August 11, 2014 agreement between A&K Railroad Material, Inc. and Great Western Railway, Inc. referenced at page 5 of Defendants Motion to Dissolve Temporary Restraining Order, filed in Civil Action No. 1:14-cv-02450-CBS in the U.S. District Court for the District of Colorado; including but not limited to the following:

- a. All drafts of the agreement and the final executed agreement;
- b. All documents that demonstrate how and when A&K Railroad Material, Inc. acquired ownership of, or a sufficient interest in, the "tracks and asso-

ciated equipment" of the Western Segment from Defendant such that A&K Railroad Material, Inc. could enter into a contract with a third party for their sale;

- c. All correspondence between Defendant and Great Western Railway, Inc., concerning the August 11, 2014 contract;
- d. All correspondence between A&K Railroad Material, Inc. and Great Western Railway, Inc., concerning the August 11, 2014 contract.

15. Please provide all documents, including but not limited to all email and other correspondence, between Defendant and Great Western Railway; and between A&K Railroad Material, Inc. and Great Western Railway discussing, referring to, or relating to:

- a. any segment of the Towner Line, and
- b. Defendant's plans concerning ownership and operation of any segment of the Towner Line

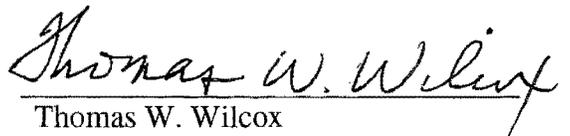
16. Please provide all documents supporting the answers provided to Written Interrogatories 1-11.

Respectfully submitted,



Terry Whiteside, Registered Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59101

(406) 245-5132
Email: twhiteside@wtp.net



Thomas W. Wilcox
Svetlana V. Lyubchenko
GKG Law, P.C.
1054 31st Street, N.W., Suite 200
Washington, DC 20007

(202) 342-5248
Email: twilcox@gkglaw.com

Attorneys for KCVN

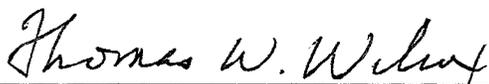
CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of November, 2014, I have served a copy of the foregoing Complainants' First Discovery Requests on counsel for Defendant by first class mail to:

Gregory E. Goldberg
Sean M. Hanlon
Holland & Hart LLP
Post Office Box 8749
Denver, CO 80201-8749
Tel. (303) 295-8270

and by email and hand-delivery to:

Fritz Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152



Thomas W. Wilcox

EXHIBIT 3

LAW OFFICES
FRITZ R. KAHN, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152 Fax: (202) 331-8330 E-mail: xiccgc@gmail.com

December 31, 2014

Mr. Terry Whiteside
3203 Third Avenue North (#301)
Billings, MT 59101

Thomas W. Wilcox, Esq.
GKG Law, P.C.
1054 31st St., NW (#200)
Washington, DC 20007

Re: Docket No. NOR 42140

Terry, Tom:

Enclosed is the response of V and S Railway, LLC to the Complainants' First Discovery Requests.

I apologize, Tom, that I was unable to email a copy to you, but there were some last minute changes that I needed to make, and it would have taken too long to run the response through the PDF machine.

Best wishes for a happy and healthy 2015.

Sincerely yours,

Fritz R/ Kahn

REQUESTS FOR ADMISSION

1. Please admit that by the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been having discussions with third parties about selling the Rail Track Material making up the Towner Line. **Admitted.**

2. Please admit that between the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014 and the end of August, at the earliest, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been engaged in activities to prepare the rail line for dismantlement, including but not limited to, removing spikes and/or tie plates and other activities from the rail track making up the Towner Line. **Deny that any rail was removed; admit some tie plates and spikes were removed.**

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WRITTEN INTERROGATORIES

1. Please identify all persons who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of any portion of the Towner Line. **Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Doug Davis.**

2. Please provide the names of any third party consultant that Defendant has retained to conduct any valuation of the Towner Line, the underlying land and the Rail Track Material making up the Towner Line. **R. L. Banks & Associates, Inc.**

3. Please identify all persons who have been in contact with Defendant regarding purchasing the Rail Track Material of the Towner Line, whether or not such persons contracted with Defendant to purchase the Rail Track Material. **No one.**

4. Please identify all persons who have contacted Defendant with requests for transportation over the Towner Line in the past three years, including all persons who requested quotes for such transportation. **No one.**

5. Please identify all persons employed by Defendant and/or its affiliates who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of the Towner Line. **Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Doug Davis.**

6. Please describe the corporate relationship between Defendant and A&K Railroad Material, Inc., and the interrelationship between Defendant and A&K Railroad Material, Inc. when it comes to the acquisition, operation, and disposition of common carrier lines of rail. **Defendants' members and managers are Kern Schumacher and Rhonda Nicoloff. Kern Schumacher and Rhonda Nicoloff are stockholders and officers of A&K Railroad Materials, Inc.**

7. Please provide the total amount of Defendant's maintenance expenditures in 2011, 2012, 2013, and 2014 to date, for each segment of the Towner Line, specifically, the Western Segment, the Eastern Segment, the Middle Segment, and the portions of the track on either end that were not included in either the Western or Eastern Segments. **None.**

8. Please provide a description of all actions Defendant took to formally abandon the Western Segment after August 15, 2012, when Defendant informed the STB in the Acquisition Petition that it expected to seek authority to abandon the Western Segment "in the near future." **None.**

9. Please provide the date on which Defendant first discussed selling the Rail Track Material of the Western Segment to any potential purchaser. **None.**

10. Please provide a listing of all acquisitions of common carrier lines of rail by A&K Railroad Material, Inc. Defendant, and any other affiliate of A&K Railroad Material, Inc. over the past 10 years, and indicate (1) how many of the acquired lines of rail are currently operated in common carrier service, either by Defendant or another railroad operator; (2) how many of the lines were abandoned by Defendant or an affiliate pursuant to 49 U.S.C. §10903 and the applicable regulations; (3) whether any of the Rail Track Material of the acquired lines of rail were sold and removed subsequent to the acquisition and, if sold and removed, and how much of the assets identified were re-used and how much of the assets were sold for scrap or otherwise disposed of. A line of The Hutchinson and Northern Railway Company, Gloster Southern Railroad Company, a line of the Union Pacific Railroad Company renamed Lassen Valley Railroad, a line of the Colorado Department of Transportation, lines of the Illinois Central Railroad Company renamed the Grenada Railway, LLC and the Natchez Railway, LLC. The line of The line of the Hutchinson and Northern Railway Company has been sold. The Lassen Valley Railroad has been abandoned. Service has been discontinued on the Gloster Southern Railroad Company and on the Western Segment of the line acquired from the Colorado Department of Transportation. The remainder of the properties are active rail carriers prepared to respond to reasonable requests of service. Records of the salvaged track materials and their disposition are not maintained by the name of the rail carrier.

11. Please provide a detailed description of all actions that have been taken by Defendant and its affiliate A&K Railroad Material, Inc. associated with the removal of any Rail Track Materials from any segment of the Towner Line, and a complete listing of all Rail Track Materi-

7. Please provide all documents relating to, discussing, referring to, or commenting on the letter of counsel of Kiowa County, Colorado to Defendant, sent on August 22, 2014, requesting that Defendant cease and desist the removal of Rail Track Material from the Towner Line. In an exchange of emails between counsel for Kiowa County and V&S' STB counsel which preceded the letter, V&S' STB counsel expressed his disagreement with the assertion of counsel for Kiowa County that the alleged removal of rails and track materials constitutes an abandonment in violation of 49 U.S.C. 10903 unless authorized by the Board.

8. Please provide all documents relating to, discussing, referring to, or commenting on the potential or actual sale of the Rail Track Material of the Towner Line to A&K Railroad Material, Inc. or any other purchaser. See Attachment A.

9. Please provide all documents relating to, discussing, referring to, or commenting on dismantling and removing of any Rail Track Material of the Towner Line. There are none.

10. Please provide all documents relating to, discussing, referring to, or commenting on:

- a. 0.9 miles of the Towner Line from MP 868.5 to MP 869.4; and See the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.
- b. 2 miles of the Towner Line between MP 749.5 and the eastern terminus at MP 747.5. Privileged oral communication between V&S' attorneys and management of V&S.

11. Please provide all documents relating to, discussing, referring to, or commenting on any valuation prepared for the Towner Line and its Rail Track Material, including any valuation of the underlying land and track assets. **The appraisal of R. L. Banks & Associates, Inc.**

12. Please provide all documents relating to, discussing, referring to, or commenting on the "contractual obligation of July 16, 2014" between A&K Railroad Material, Inc. and OmniTRAX, Inc., referenced on page 5 of Defendants Reply filed in this proceeding on October 30, 2014, including but not limited to, all correspondence between A&K Railroad Material, Inc. and OmniTRAX, Inc. pertaining to the "contractual obligation," and a copy of the final document evidencing the obligation. **See Attachment B.**

13. Please provide all documents relating to, discussing, referring to, or commenting on KCVN's July 28, 2014 offer to purchase the Towner Line, including but not limited to all documents that discuss Defendant's possible responses to that offer, and its final response. **Privileged oral communication between V&S' attorneys and management of V&S.**

14. Please provide all documents referring or relating to the August 11, 2014 agreement between A&K Railroad Material, Inc. and Great Western Railway, Inc. referenced at page 5 of Defendants Motion to Dissolve Temporary Restraining Order, filed in Civil Action No. 1:14-cv-02450-CBS in the U.S. District Court for the District of Colorado; including but not limited to the following:

- a. All drafts of the agreement and the final executed agreement; **See Attachment B.**
- b. All documents that demonstrate how and when A&K Railroad Material, Inc. acquired ownership of, or a sufficient interest in, the "tracks and associated equipment" of the Western Segment from Defendant such that A&K Railroad Material, Inc. could enter into a contract with a third party for their sale; **See Attachment B.**
- c. All correspondence between Defendant and Great Western Railway, Inc., concerning the August 11, 2014 contract; **See Attachment B.**

- d. All correspondence between A&K Railroad Material, Inc. and Great Western Railway, Inc., concerning the August 11, 2014 contract. See Attachment B.
15. Please provide all documents, including but not limited to all email and other correspondence, between Defendant and Great Western Railway; and between A&K Railroad Material, Inc. and Great Western Railway discussing, referring to, or relating to:
 - a. any segment of the Towner Line, and See Attachment B.
 - b. Defendant's plans concerning ownership and operation of any segment of the Towner Line. See Attachment B.
16. Please provide all documents supporting the answers provided to Written Interrogatories 1-11. In response to Written Interrogatory 10, see STB Docket No. FD 34875; STB Docket No. FD 35162; STB Docket No. AB 1051X; STB Docket No. FD 35306; STB Docket No. AB 1074X; STB Docket No. FD 34779; STB Docket No. FD 35664; STB Docket No. AB 603 (Sub-No. 3X); STB Docket No. AB 603 (Sub-No. 4X); the publicly available records of the Colorado Legislature and Colorado Department of Transportation; STB Docket No. FD 35247; STB Docket No. FD 35248.

The persons who responded to one or another of the Requests for Admission, Written Interrogatories and Document Requests were Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Aaron Parsons and Doug Davis.

ATTACHMENT A

TRACK MATERIALS SALES AGREEMENT

This Track Materials Sales Agreement ("Agreement") is made and entered into as of August 1, 2014 ("Effective Date"), by and between V&S Railway, LLC, a Nevada limited liability company ("Seller") and A&K Railroad Materials Inc., a California corporation ("Buyer").

RECITALS

- A. Seller owns a 122-mile railroad line located between NA Junction, CO and Towner, CO ("Towner Line").
- B. Seller desires to sell, and Buyer desires purchase, on the terms and conditions of this Agreement, certain railroad track materials described in Exhibit A which are situated between MP 808.3 and MP 868.5 on the Towner Line ("Track Materials").
- C. The purchase price for the Track Materials will include a credit for the Buyer to furnish all the necessary materials, superintendence, labor, tools, equipment and transportation to take up and remove the Track Materials, among other track materials, located between MP 808.3 and MP 868.5 on the Towner Line (collectively, "Take-Up Services").

NOW THEREFORE, the parties agree to the following terms and conditions:

1. Conveyance of Track Materials

Seller hereby conveys to Buyer, on the Effective Date, all of Seller's right, title and interest in the Track Materials. This document shall constitute a bill of sale.

2. Take-Up Services

The Take-Up Services shall be performed in a competent and diligent manner and shall conform to applicable standards of skill and care and any mutually agreed written specifications.

3. Purchase Price

- a. Seller shall sell and Buyer shall purchase the Track Materials for [REDACTED], less the credit for the Take-Up Services specified in Section 3(b) below, totaling [REDACTED], the receipt and sufficiency of which are hereby acknowledged by Seller.

- b. The price for the Take-Up Services shall be ██████████, which will be paid by way of a credit against the purchase price for the Track Materials as provided in Section 3(a) above.

4. Representations and Warranties

- a. Seller hereby represents and warrants to Buyer the following facts as of the Effective Date:

1. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Nevada;
2. Seller has the corporate power and authority to enter into this Agreement and carry out Seller's obligations under this Agreement;
3. The execution and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of the Seller, and no further corporate proceedings of Seller are required;
4. Seller represents that there are no liens or encumbrances against the Track Materials; and
5. No representation or warranty by Seller in this Agreement contains any untrue or materially misleading statement of a material fact, nor omits any material fact that is necessary to make any representation or warranty materially misleading.

- b. Buyer hereby represents and warrants to Buyer the following facts as of the Effective Date:

1. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of California;
2. Buyer has the corporate power and authority to enter into this Agreement and carry out Buyer's obligations under this Agreement;
3. The execution and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of the Buyer, and no further corporate proceedings of Buyer are required;
4. Buyer has carefully inspected the Track Materials and accepts the same in their present condition; and
5. No representation or warranty by Buyer in this agreement contains any untrue or materially misleading statement of a material fact, nor omits any material fact that is

necessary to make any representation or warranty not materially misleading.

5. Entire Agreement

This Agreement constitutes the entire agreement between Seller and Buyer relating to this transaction, and any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein.

6. Notices

All notices and other communications under this agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, return receipt requested, or by overnight delivery service, postage prepaid, or, if sent by national overnight service when received by the carrier service in a prepaid mailer, addressed as follows:

Seller: V&S RAILWAY, LLC
PO BOX 30076
SALT LAKE CITY, UT 84126
ATTN: Doug Davis

Buyer: A&K RAILROAD MATERIALS, INC.
PO BOX 30076
SALT LAKE CITY, UT 84130-0076
ATTN: Rhonda Nicoloff

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of the Effective Date.

V&S RAILWAY, LLC

By: Doug Davis
Title: General Counsel

A&K RAILROAD MATERIALS, INC.

By: Rhonda Nicoloff
Title: President

Exhibit A
Track Materials

1. 5385 Ton Relay 136 RE continuous welded rail in average 1600' strings. This quantity is based on three (3) trains.
2. 76,106 Each Relay 6" base 8x14 Double Shoulder Tie Plates.

ATTACHMENT B



A&K Railroad Materials, Inc.

P.O. Box 30076 Salt Lake City, Utah 84130-0076 : P 801.974.5484 F 801.973.7393 www.akrailroad.com

August 11, 2014

David Carman
Director of Procurement and Asset Planning
OmniTRAX Inc.
252 Clayton Street, Fourth Floor
Denver, Colorado 80206

Re: Sale and Purchase of Railroad Track Materials

Dear David:

This letter agreement ("Agreement"), when executed by authorized representatives of A&K Railroad Materials, Inc. ("A&K"), Nebraska, Kansas & Colorado Railway, LLC ("NKCR") and Great Western Railway of Colorado, LLC ("GWR") will confirm the agreement of A&K to sell and GWR to purchase the railroad track materials described in Exhibit A ("A&K Materials") for the prices specified therein, including a credit for:

- i. NKCR's sale to A&K of the track materials specified in Exhibit B ("NKCR Materials") removed from NKCR's railroad line between MP 47.25 near Reager, KS and MP 78.10 near Oberlin, KS ("Oberlin Line") and its railroad line between MP 17.00 near Long Island, KS and MP 29.85 near Almena, KS ("Almena Line"); and
- ii. GWR's sale to A&K of the track materials specified in Exhibit C ("GWR Materials") removed from GWR's railroad line between MP 86.3 near Windsor, CO and MP 98.8 near Greely, CO ("Windsor Line").

The terms and conditions of the Agreement are as follows:

1. Capacity of OmniTRAX Parties. NKCR and GWR (collectively, "OmniTRAX Parties") will each have direct rights and obligations under this Agreement. Without limitation to the foregoing, neither OmniTRAX Party will have any obligation to perform on behalf of the other OmniTRAX Party under this Agreement.
2. Precedence. If there is any conflict, inconsistency or ambiguity between this Agreement, on the one hand, and any terms and conditions contained or referenced in or attached to any purchase order, sales order, quotation, invoice, order acknowledgement, confirmation, acceptance, bill of lading or other instrument, on the other hand, this Agreement will prevail and govern to the extent of such conflict, inconsistency or ambiguity.

3. Price. Subject to the credits specified in Section 13, A&K shall sell and GWR shall purchase the A&K Materials for the prices specified in Exhibit A, exclusive of taxes as provided in Section 4. The payment schedule is set out in Section 14.
4. Taxes. The purchase price for the A&K Materials is exclusive of any sales, use or consumption taxes or similar government taxes payable on the sale of the A&K Materials, all of which shall be for the account of GWR, who shall promptly pay the amount of such taxes to A&K upon demand.
5. Loading, Delivery and Unloading.
 - (a) At A&K's sole cost and expense (except as provided below in Sections 5(c) and 5(d)), A&K will load the A&K Materials at their place of origin, and will deliver the A&K Materials to GWR and unload them in three (3) trains, beginning at GWR's Interchange Station at Loveland, CO.
 - (b) The first train of the A&K Materials will be loaded after August 18, 2014 and before September 10, 2014 with the same train to be used for all three deliveries.
 - (c) A&K will use commercially reasonable good faith efforts to unload each train of the A&K Materials within three (3) days after delivery. However, if, due to circumstances beyond the reasonable control or fault of A&K, unloading of the A&K Materials lasts longer than three (3) days, an unloading charge of \$3,500.00 per additional day will apply.
 - (d) At GWR's sole cost and expense, GWR will provide (i) locomotive(s) for each train of the A&K Materials, (ii) a sufficient crew (including a supervisor) to coordinate and direct the unloading of each train of the A&K Materials, (iv) ground personnel to remove bars, and (v) a hi-rail vehicle.
6. Risk of Loss and Title to A&K Materials.
 - (a) All risk of loss of or damage to the A&K Materials shall pass to GWR upon the delivery of the A&K Materials to GWR, and A&K shall not be responsible for any loss of or damage to the A&K Materials thereafter.
 - (b) Title to the A&K Materials shall not pass to GWR, and A&K shall have a security interest in the A&K Materials, until payment for the A&K Materials is made in full pursuant to Section 14.
7. Inspection and Condition of A&K Materials.
 - (a) GWR acknowledges that (i) prior to the execution and delivery of this Agreement, GWR has been given the opportunity to inspect the A&K materials at their place of origin, (ii) GWR has found the A&K materials to

be in satisfactory condition and suitable for its purposes, and (iii) the A&K Materials are of a size, design, capacity selected by GWR.

- (b) Rail will average 1/8" topwear and 1/8" average curvewear. Rail is subject to inspection and approval by GWR prior to loading. If, prior to loading, GWR believes that a section of rail fails to meet the standard specified in this Section 7(b), GWR shall promptly notify A&K, in which case GWR's sole remedy and A&K's sole obligation for such non-conformance shall be limited to A&K, at its sole cost and expense, removing the non-conforming rail and replacing it with rail that meets the standard specified in this Section 7(b).
 - (c) GWR accepts the A&K Materials Assets in their "As Is, Where Is" condition, without warranties of any kind other than the express warranty set forth below in Section 8 hereof, express or implied (including, but not limited to any warranty of merchantability or fitness for a particular purpose), and with all faults (including, but not limited to, both latent and patent defects).
 - (d) GWR assumes sole responsibility to meet all governmental safety and environmental laws and standards in using the A&K Materials.
8. Warranty as to A&K Materials. A&K warrants to GWR that A&K has good and marketable title to the A&K Materials, free and clear of all liens, claims, rights, charges, options, rights of third parties, encumbrances, security interests or other restrictions or limitations of any nature (collectively, "Liens"), and that A&K has the right to transfer title to the A&K Materials to GWR, free and clear of all Liens. A&K makes no warranty, express or implied, as to the A&K Materials other than as expressly provided in this Section 8.
9. Removal and Loading of GWR Materials. GWR will, at its sole cost and expense, remove the GWR Materials from the Windsor Line, place them along the side of the right-of-way, with joint bars removed from rail and within a reasonable time thereafter, notify A&K that the GWR Materials are available for pick-up and loading by A&K. A&K will, at its sole cost and expense, load the GWR Materials for transport by A&K and/or its designated carrier.
10. Removal and Loading of NKCR Materials. NKCR will notify A&K when the NKCR Materials are available for removal from the Oberlin Line and the Almena Line, respectively. Upon receipt of such notice(s), A&K will, at its sole cost and expense, remove the NKCR Materials from their respective Lines and load them for transport by A&K and/or its designated carrier. A&K will remove the NKCR Materials in a good and workmanlike manner.
11. License to Access the Lines. GWR grants a license to A&K to allow A&K ingress and egress to the Windsor Line, NKCR grants a license to A&K to allow A&K ingress and egress to the Oberlin Line and Almena Line, as applicable, including reasonable track time, for the purposes of (i) delivering and unloading the A&K

Materials, (ii) sorting, storing, loading and transporting the Materials, and (iii) removing, sorting, storing, loading and transporting the Materials.

12. Risk of Loss and Title to GWR Materials and NKCR Materials. Risk of loss and title to the GWR Materials and the NKCR Materials will transfer to A&K upon the transfer of the care, custody and control of the same to A&K for loading and transport by A&K and/or its designated carrier. GWR shall convey the GWR Materials and NKCR shall convey the NKCR Materials to A&K free and clear of any Liens.
13. Credit for Sale of NKCR Materials and GWR Materials. The purchase price for the NKCR Materials and the GWR Materials shall be in the form of credits against the purchase price for the A&K Materials (collectively, the "Credits"), as follows:
 - (a) GWR Materials removed from the Windsor Line -- \$274,400.00.
 - (b) NKCR Materials removed from the Oberlin Line -- \$1,546,000.00.
 - (c) NKCR Materials removed from the Almena Line -- \$1,217,000.00.
14. Payment Schedule for A&K Materials. GWR shall make payments for the A&K Materials, with the Credits being applied first, as follows:
 - (a) Ten percent (10%) of the Credits, the receipt of which are hereby acknowledged, upon the execution of this Agreement.
 - (b) Twenty percent (20%) of the Credits upon A&K loading the first train of the A&K Materials at their place of origin.
 - (c) Thirty percent (30%) of the Credits upon A&K completing the delivery and unloading of all three trains of the A&K Materials.
 - (d) Thirty percent (30%) of the Credits upon the earlier to occur of (i) GWR completing the installation of the A&K Materials, or (ii) one hundred twenty (120) days after A&K has completed the delivery and unloading of all three trains of the A&K Materials.
 - (e) Ten percent (10%) of the Credits upon A&K completing the loading of the GWR Materials.
 - (f) The balance of the purchase price for the A&K Materials upon the abandonment of the Oberlin Line and the Almena Line in accordance with Section 15.

15. Abandonments of the Oberlin and Almena Lines.

- (a) With reasonable promptness following the execution of this Agreement, NKCR anticipates that it will file with and seek the approval of the Surface Transportation Board ("STB") for the abandonments of the Oberlin Line and the Almena Line and thereafter to convey to A&K the NKCR Materials by no later than May 15, 2015 ("Completion Date").
- (b) Should the abandonments of the Oberlin and Almena Lines not be approved by the STB by May 1, 2015, then A&K will have the option, at its sole discretion by written notice to GWR, to extend the Completion Date or to require GWR to pay the balance of the purchase price for the A&K Materials as provided in Section 14(f), plus interest at 3% per annum from the date of delivery of the A&K Materials. For the avoidance of doubt, if A&K extends the Completion Date and NKCR conveys the NKCR Materials to A&K post-abandonment of the Oberlin and Almena Lines, no interest will be charged.

16. Section 1031 Tax-Deferred Exchange. GWR agrees to cooperate with A&K in processing this transaction through a Section 1031 tax-deferred exchange and to execute such documents as reasonably may be required to affect the tax-deferred exchange. A&K shall indemnify, defend and hold harmless GWR, its owners, parents and affiliates fully against all reasonable and necessary costs, expenses, and liabilities which GWR, its owners, parents and affiliates may directly incur as a result of cooperating with A&K on such a tax-deferred exchange.

17. Exclusion of Consequential Loss. No party will be liable to any other party under this Agreement for any special, incidental, indirect, consequential, exemplary or punitive damages or losses, loss of profits or revenues, loss of opportunities, loss of goodwill or loss of capital.

18. Indemnification. Subject to Section 17 hereof, each of A&K and the OmniTRAX Parties agrees to indemnify and hold harmless the each other and their respective parent and affiliates, and its/their officers, directors, employees and agents, from and against any claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys' fees) caused by the indemnifying party's breach of its obligations under this Agreement. The indemnifying party shall have no obligation to indemnify pursuant to this Section 18 if and to the extent that the relevant claim or liability is caused by the indemnified party or a third party not affiliated with the indemnifying party; provided, however, this provision shall not relieve indemnifying party of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws.

19. Termination. Either A&K or any OmniTRAX Party may terminate this Agreement by written notice to the other party in the event of a material breach by

the other party that is not cured within thirty (30) days after written notice thereof has been given. Any termination hereunder shall be without prejudice to any claims for damages or other rights of the parties.

20. Governing Law and Forum. This Agreement is governed by the laws of the State of Utah, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or State courts in the state of Utah and the courts of appeal from them for determining any dispute concerning this Agreement.

21. Miscellaneous.

- (a) Neither A&K nor any OmniTRAX Party shall assign or transfer this Agreement, without the other party's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.
- (b) This Agreement (including Exhibits A, B and C hereto) constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein.
- (c) No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both parties.
- (d) A party's waiver of any breach, or failure to enforce any of the terms and conditions hereof, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

20. Counterpart Execution. The parties' respective authorized representatives have executed duplicate copies of this Agreement as of the date first above written.

[Signatures appear on next page]

A&K Railroad Materials, Inc.

By: *Gyboras W. Nicoloff*

Title: President

Nebraska, Kansas & Colorado Railway, LLC

By: *[Signature]*

Title: CFO

Great Western Railway of Colorado, LLC

By: *[Signature]*

Title: CFO

Exhibit A

A&K Materials and Prices

1. 5385 Ton Relay 136 RE continuous welded rail in average 1600' strings at \$855.00 NT. This quantity is based on three (3) trains.
2. 76,106 Each Relay 6" base 8x14 Double Shoulder Tie Plates at [REDACTED] each.

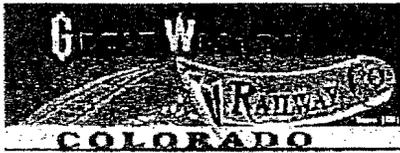
TOTAL: \$5,509,144.55

12/15/2011 10:00:00 AM

All rail, ties, ties plates, joint bars, anchors, turnouts, switches and OTM on the Oberlin Line.

**Exhibit B
NKCR Materials**

2025 RELEASE UNDER E.O. 14176



Great Western Railway of Colorado, LLC
 950 Taylor Avenue
 LOVELAND CO 80538
 UNITED STATES OF AMERICA

Page 1 of 1
 07/11/2014
 10:18:02

PURCHASE ORDER

Billing Address Great Western Railway of PO Box 460669 Glendale CO 80246 USA
Supplier Address ARK RAILROAD MATERIALS PO BOX 30076 SALT LAKE CITY UT 84130 UNITED STATES OF AMERICA Phone 80197454840000
Shipping Address Great Western Railway of Colorado, LLC 950 Taylor Avenue LOVELAND CO 80538 UNITED STATES OF AMERICA

Information	
Document Number	4500117742
Date	07/11/2014
Vendor No.	106022
Currency	USD
Payment Terms	
Buyer	Robert Guinan
Phone	303 398-4538
Fax	866 831-1186
Email	rguinan@omnitrax.com
Delivery/Promise Date	08/01/2014
Inco Terms	FOB
Description	Free on board
Inco Terms (Part 2)	Origin

Item	Material/Description	Quantity	UM	Net Price	Net Amount
10	200983 TIE PLATES 6" BASE	69,565.00	EA	9.50	660,867.50
20	201557 136#RE relay rail-CWR	5,385.00	TON	855.00	4,604,175.00
Net Value					5,265,042.50
Tax					152,686.24
Total Amount					\$ 5,417,728.74



Great Western Railway of Colorado, LLC
 Taylor Avenue
 Loveland CO 80538
 UNITED STATES OF AMERICA

PURCHASE ORDER

Billing Address GREAT WEST RAILWAY OF CO PO Box 460669 Glendale CO 80246 USA
Supplier Address A&K RAILROAD MATERIALS PO BOX 30076 SALT LAKE CITY UT 84130 UNITED STATES OF AMERICA Phone 80197454840000
Shipping Address Great Western Railway of Colorado, LLC 950 Taylor Avenue LOVELAND CO 80538 UNITED STATES OF AMERICA

Information	
Document Number	4500117742
Date	07/11/2014
Vendor No.	106022
Currency	USD
Payment Terms	
Buyer	Robert Guinan
Phone	303 398-4538
Fax	866 831-1186
Email	rguinan@omnitrax.com
Delivery/Promise Date	08/01/2014
Inco Terms	FOB
Description	Free on board
Inco Terms (Part 2)	Origin

Item	Material/Description	Quantity	UM	Net Price	Net Amount
				Total Amount	\$ 5,442,841.71

By accepting this Purchase Order, Seller agrees that this Purchase Order shall be subject to the provisions of the Purchase Order Terms and Conditions of Purchase executed by Seller.

By: _____ Date: _____

Quotation



Quotation No: QS-14-08532-5
Date Quoted: 7/16/2014
Your Reference:
Customer Acct No: 002574

Phone: (800)527-5278 Fax: (913)631-1279 Email: bwyatt@akrailroad.com

Buyer: OMNI-TRAX, INC.
PO Box 460669
Glendale, CO 80248 0669
US

Ship To: OMNI-TRAX, INC.
950 TAYLOR AVE.

Loveland, CO 80539

Requested By: ROBERT GUINAN
E-mail: rguinan@omnitrax.com

Phone: 303-398-4538
Fax: 888-631-1188

Cell Phone:

We thank you for your inquiry and are pleased to quote as follows:

Quantity	Unit	DESCRIPTION	Unit Price	Price	Ship Via
5,385.60	NT	RAIL RELAY 138 RE #1 GRADE AVERAGE WELDED RAIL	855.00	4,604,888.00	Rail Train

(ALTERNATE PRICING: \$19.38/LF, \$31,044.12/1600)

PAYMENT/CREDIT TERMS FOR RAIL:

-Credit for Sale of NKCR Materials and GWR Materials. The purchase price for the NKCR Materials and the GWR Materials shall be in the form of credits against the purchase price for the A&K Materials (collectively, the "Credits"), as follows:

- (a)GWR Materials removed from the Windsor Line -- \$274,400.00.
- (b)NKCR Materials removed from the Oberlin Line -- \$1,546,000.00.
- (c)NKCR Materials removed from the Almena Line -- \$1,217,000.00.

Refer to contract that outlines the details of the transfer of NKC abandonments.

-Payment Schedule for A&K Materials. OmniTRAX shall make payments for the A&K Materials, with the Credits being applied first, as follows:

- (a)Ten percent (10%) of the Credits, the receipt of which are hereby acknowledged, upon the execution of this Agreement. - \$156,728.80
- (b)Twenty percent (20%) of the Credits upon A&K loading the first train of the A&K Materials at their place of origin. - \$313,457.60
- (c)Thirty percent (30%) of the Credits upon A&K completing the delivery and unloading of all three trains of the A&K Materials. - \$470,186.40
- (d)Thirty percent (30%) of the Credits upon the earlier to occur of (i) OmniTRAX completing the installation of the A&K Materials, or (ii) one hundred twenty (120) days after A&K has completed the delivery and unloading of all three trains of the A&K Materials. - \$470,186.40
- (e)Ten percent (10%) of the Credits upon A&K completing the loading of the GWR Materials. - \$156,728.80

69,565.00	EA	PLATES RELAY 8 DS 8X14 8 HOLE 5/8 1:40	9.50	660,867.50	GON
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~~Sales tax not included in quote. At time of order, sales tax will be charged in accordance with state and local tax laws.~~

Prices in material/transportation shall be subject to change without notice

CONDITIONS: All material quoted is to the conditions on the reverse side or attached sheet. All material quoted is subject to prior sale. Due to drastic variances in fuel prices we reserve the right to re-quote & adjust freight rates at time of shipment as necessary.

TERMS	Special Terms - see Memo
SHIPMENT	All in stock unless noted
F.O.B.	Destination Loveland CO 80539

QUOTED BY _____
Beth Wyatt
Vice President Central Region

The opportunity of quoting is appreciated and we hope that we may be favored with your order
Visit our Website at www.AKrailroad.com

Quotation

Page 2 of 3



Quotation No: QS-14-08532-5
Date Quoted: 7/18/2014
Your Reference:
Customer Acct No: 002574

Phone: (800)527-5276 Fax: (913)631-1279 Email: bwyatt@akrailroad.com

Buyer: OMNI-TRAX, INC.*
PO Box 460689
Glendale, CO 80246 0689
US

Ship To: OMNI-TRAX, INC.*
950 TAYLOR AVE.

Loveland, CO 80539

Requested By: ROBERT GUINAN
E-mail: rguinan@omnitrax.com

Phone: 303-398-4538
Fax: 866-831-1188

Cell Phone:

We thank you for your inquiry and are pleased to quote as follows:

Quantity	Unit	DESCRIPTION	Unit Price	Price	Ship Via
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PAYMENT TERMS FOR PLATES IS NET 30

Sales Balance	Total Discount	Freight Charges	Sales Tax	Total	
5,285,555.50	0.00	0.00	0.00	5,285,555.50	USD

Sales tax not included in quote. At time of order, sales tax will be charged in accordance with state and local tax laws.

Prices in material/transportation shall be subject to change without notice

CONDITIONS: All material quoted is to the conditions on the reverse side or attached sheet. All material quoted is subject to prior sale. Due to drastic variances in fuel prices we reserve the right to re-quote & adjust freight rates at time of shipment as necessary.

TERMS Special Terms - see Memo
SHIPMENT All in stock unless noted
F.O.B. Destination Loveland CO 80539

QUOTED BY _____
Beth Wyatt
Vice President Central Region

The opportunity of quoting is appreciated and we hope that we may be favored with your order
Visit our Website at www.AKrailroad.com

PRICES— All prices herein quoted or proposed, shall be adjusted to the Seller's prices in effect at the time of shipment.

TAXES — Any taxes which the Seller may be required to pay or collect, under any existing or future law, upon or herein with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the material covered hereby, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to the Seller upon demand.

PAYMENT - Buyer agrees to pay the Net Amount set forth on the face of this Agreement.

If transportation charges from point of origin of the shipment to a designated point are included in the prices herein named or heretofore quoted—

- (a) any changes in such transportation charge shall be for the account of the Buyer;
- (b) except as otherwise stated in the Seller's quotation, the Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefore, unless such charges are included in the applicable tariff freight rate from shipping point to the designated point.

RISK OF LOSS — Buyer assumes risk of loss or damage upon delivery of the material by the carrier.

INSPECTION — The Buyer may inspect, or provide for inspection, at the place of origin. Such inspection shall be so conducted as not to interfere unreasonably with the suppliers operations, and consequent approval or rejection shall be made, before shipment of the material. Notwithstanding the foregoing, if upon receipt of such material by the Buyer, the same shall appear not to conform to the contract between the Buyer and the Seller, the Buyer shall immediately notify the Seller of such condition and afford the Seller a reasonable opportunity to inspect the material. No material shall be returned without the Seller's consent.

PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES — Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, all materials shall be produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning; dimensions, weight, straightness, section, composition and , mechanical properties, normal variations in surface, internal conditions, and quality; deviations from tolerances and variations consistent with practical testing and inspection methods; and regular mill practices concerning over and under shipments.

All materials sold in units measured by weight will be invoiced on theoretical weight unless otherwise stated on the reverse side.

Seller shall not be liable for delays due to strikes, fires, floods, accidents, delays in transportation, shortages of cars, governmental regulations or any other cause beyond our control.

Shortages of 1,000 pounds or more in gross or tare weight must be reported immediately. In the event this contract is not completed on or before agreed expiration date, the contract will remain in full force and effect until completed, unless specifically cancelled in writing.

CREDIT APPROVAL — Shipments, deliveries and performance of work shall at all times be subject to the approval of the Seller's Credit Division. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Division.

TERMS OF PAYMENT — Subject to the provisions of CREDIT approval, above, terms of payment are as shown on the reverse side hereof and shall be effective from date of invoice.
