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September 24, 2025

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Office of Chief Counsel
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Via E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Docket No. FD 36854, *Union Pacific Railroad Company—Construction and Operation Exemption—In Matagorda County, Texas*

Dear Chief of Case Administration:

Enclosed for electronic filing in the above-captioned proceeding is the Petition of Union Pacific Railroad Company for Construction and Operation Exemption under 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 10901. Pursuant to 49 C.F.R. § 1002.2(f)(12)(iii), the filing fee of \$109,900.00 has been paid via pay.gov. If there are any questions, please contact me directly at (402) 544-4735 or by email at tspratt@up.com.

Sincerely,

/s/ Tanya L. Spratt
Tanya L. Spratt, Attorney for Union Pacific Railroad
Company

FILED
September 24, 2025
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
September 24, 2025
SURFACE TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36854

**UNION PACIFIC RAILROAD COMPANY
—CONSTRUCTION AND OPERATION EXEMPTION—
IN MATAGORDA COUNTY, TX**

**UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR EXEMPTION**

CHRISTINA B. CONLIN
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*Attorneys for Union Pacific
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Dated: September 24, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36854

**UNION PACIFIC RAILROAD COMPANY
—CONSTRUCTION AND OPERATION EXEMPTION—
IN MATAGORDA COUNTY, TX**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, Union Pacific Railroad Company (“Union Pacific”) hereby petitions the Surface Transportation Board (“Board” or “STB”) for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately five miles of rail line in south central Matagorda County, near Wadsworth and Bay City, Texas (the “Line”). The proposed Line will be referred to as the Wadsworth Industrial Lead.

The proposed Line would connect LyondellBasell’s existing polymer plant in Bay City, Texas (just south of Wadsworth, Texas) to Union Pacific’s Angleton Subdivision. The project will strengthen LyondellBasell’s position in the region by providing it with a second competitive rail option. The proposed Line will also provide long-term benefits to the local economy by making Matagorda County more attractive to future industrial investments along the Line.

As set forth below, an exemption from the full application requirements is warranted in this case because they are not necessary to carry out the rail transportation policy at 49 U.S.C. § 10101, the proposed construction is limited in scope, and Board regulation is not necessary to protect any shipper from an abuse of market power. Union Pacific’s proposed rail construction is consistent with numerous decisions of the Board exempting similar transactions from the prior approval requirements of 49 U.S.C. § 10901.

This Petition is supported by LyondellBasell, the City of Bay City, and Matagorda County.

BACKGROUND

A. Description and Purpose of Proposed Line and Planned Operations

Union Pacific proposes to construct and operate approximately five miles of rail line in south central Matagorda County, near Wadsworth and Bay City, Texas. The proposed Line would connect an existing LyondellBasell facility with the Angleton Subdivision of Union Pacific's network.

Union Pacific plans to connect the proposed Line to its network via existing track referred to as the Celanese Industrial Lead and the Cities Service Track. The Celanese Industrial Lead is an approximately three-mile lead track that connects to the Angleton Subdivision at approximately milepost 277 and is currently used to serve the Celanese facility. The Celanese Industrial Lead consists of: (1) track that is solely owned by Union Pacific that runs south from the Angleton Subdivision to the Celanese facility¹; and (2) track that is partly jointly owned and partly jointly used by Union Pacific and BNSF Railway Company ("BNSF") that runs east-west between the Celanese facility and a connection to BNSF's network near Farm-to-Market Road ("FM") 2668. Additionally, Union Pacific and BNSF jointly own track known as the Cities Service Track that runs north-south parallel to FM 2668 between the Celanese Industrial Lead and Gilmore Road.² As part of the project, Union Pacific plans to construct a new west wye

¹ Union Pacific is separately planning to construct trackage within the existing right-of-way of this portion of the Celanese Industrial Lead to effectuate planned service to another customer. That project is unrelated to the Wadsworth Industrial Lead project discussed herein and does not require Board authorization. *See City of Detroit v. Can. Nat'l Ry.*, 9 I.C.C.2d 1208, 1218–19 (1993); *Effingham R.R.—Petition for Declaratory Ord.—Constr. at Effingham, Ill.*, 2 S.T.B. 606, 608 (1997).

² The joint track segments are governed by joint facility agreements between Union Pacific's and BNSF's predecessors. One of those agreements contemplates the construction of the new west wye connection

connection track near the intersection of FM 2668 and FM 3057 to connect the north-south joint track with the east-west joint track. The proposed Line to be constructed would run from approximately Gilmore Road to the LyondellBasell facility in Bay City, roughly parallel to FM 2668. A map of the proposed Line is included at Exhibit A.

The LyondellBasell Matagorda Plant is an integral part of the local economy, a leading producer of polymers and a leader in polyethylene technologies used to produce a variety of products consumers utilize every day such as housewares, building materials, automotive parts and packaging for food and personal care products. LyondellBasell's Matagorda facility is one of their largest high density polyethylene facilities in the United States. The plant employs over 200 local employees. It is currently served by BNSF. The new rail connection to Union Pacific's network will strengthen LyondellBasell's position in the region by providing the facility with competitive rail access through the addition of a second carrier, thereby enhancing LyondellBasell's operations and lowering its transportation costs.

The proposed Line will also provide long-term support to the local economy by making Matagorda County more attractive to future industrial investments along the Line. The Line will increase capacity and infrastructure in the region. The City of Bay City and Matagorda County support Union Pacific's construction of the proposed Line because of the economic benefits that will flow both to LyondellBasell and the region as a whole.

track described in this paragraph. Union Pacific has had preliminary discussions with BNSF regarding the proposed project.

Another benefit to the proposed Line is that it will reduce traffic disruptions in downtown Bay City, through which current rail traffic is routed and where crew changes and some switching operations occur.³

Union Pacific expects to operate two trains per day over the proposed Line, one train in each direction, seven days per week.

B. Environmental Review

Union Pacific has met with the Board's Office of Environmental Analysis ("OEA") regarding the environmental and planning considerations for the proposed line, which is not expected to have a significant environmental impact. By letter dated April 25, 2025, Union Pacific asked OEA to grant a waiver pursuant to 49 C.F.R. § 1105.10(c) of the requirement under 49 C.F.R. § 1105.10(a) that an applicant meet and provide "written notice of its forthcoming proposal at least six (6) months prior to filing its application."⁴ OEA granted Union Pacific's waiver request by letter dated May 2, 2025.⁵ Union Pacific has also contracted and received approval for a third-party contractor, Parametrix, to provide assistance with the environmental documentation.⁶ The STB, Union Pacific, and Parametrix have also executed a Memorandum of

³ See *Bay City Council Approves Rail Project Connecting LyondellBasell to Union Pacific Network*, CITIZEN PORTAL (Mar. 25, 2025), <https://citizenportal.ai/articles/2776174/Bay-City/Matagorda-County/Texas/Bay-City-Council-approves-rail-project-connecting-LyondellBasell-to-Union-Pacific-Network>; Allen D. Fisher, *Bay City Forms Task Force To Deal With Train Traffic*, THE BAY CITY TRIBUNE (July 16, 2018), https://baycitytribune.com/community/article_1792fa72-8907-11e8-a4d1-df8f20046f48.html.

⁴ Union Pacific Letter to OEA (dated Apr. 25, 2025), EI-33921.

⁵ OEA Letter to Union Pacific (dated May 2, 2025), EO-4017, attached at Exhibit B.

⁶ OEA Letter to Union Pacific (dated July 14, 2025), EO 4051, attached at Exhibit B.

Understanding (“MOU”) to ensure that construction of the Line complies with the requirements of the National Environmental Policy Act.⁷

ARGUMENT

Construction and operation of a new common carrier rail line require Board approval under 49 U.S.C. § 10901(a)(1) and (2). However, § 10901(c) directs the Board to authorize construction and operation of a rail line “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” Thus, as the Board has stated, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.” *Alaska R.R.—Constr. & Operating Exemption—Rail Line Extension to Port MacKenzie, Alaska*, Docket No. FD 35095, at 5 (STB served Nov. 21, 2011), *aff’d sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013); *see also Lone Star R.R.—Track Constr. & Operation Exemption—In Howard Cnty., Tex.*, Docket No. FD 35874, at 3 (STB served Mar. 3, 2016).

Under 49 U.S.C. § 10502(a), the Board “shall,” to the maximum extent consistent with the statute, exempt a proposed rail construction and operation from regulation under § 10901 if it finds that (1) such regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

As explained herein, the Board should grant the requested exemption because the proposed Line construction and operation meet the § 10502(a) exemption criteria.

⁷ Memorandum of Understanding Among Surface Transportation Board, Union Pacific, and Parametrix (dated Aug. 4, 2025).

A. Board Regulation Is Not Necessary to Carry Out the Rail Transportation Policy at § 10101.

Regulation of the proposed Line construction and operation is not necessary to carry out the rail transportation policy at § 10101. Rather, granting an exemption will promote several provisions of the rail transportation policy and will not run counter to any of those goals.

Granting the exemption is consistent with the goals at § 10101(4) and (5), to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes to meet the needs of the public, and to foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes. The proposed Line would connect an existing facility with Union Pacific's network to provide that customer with alternative rail access via a second carrier, thus enhancing competition. *See, e.g., Tex. Ry. Exch. LLC—Constr. & Operation Exemption—Galveston Cnty., Tex.*, Docket No. FD 36186, at 4 (Jan. 17, 2020) (exempting construction of line to existing facility as it would “allow more effective competition”); *Ameren Energy Generating Co.—Constr. & Operation Exemption—In Coffeen & Walshville, Ill.*, Docket No. FD 34435, at 3–4 (STB served Feb. 17, 2006) (exempting construction of a rail line to existing facility that would provide direct access to additional rail carriers and thereby “enable shippers to realize the benefits of increased railroad competition”); *San Jacinto Rail Ltd.—Constr. Exemption—And the Burlington N. & Santa Fe Ry.—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris, Cnty., Tex.*, Docket No. FD 34079 (STB served Aug. 28, 2002) (conditionally exempting construction of a line that would provide “an alternative rail service option to shippers in the Bayport Loop and by increasing competition”)⁸; *Midwest*

⁸ The Board issued final authorization for the project following completion of the environmental review. *See San Jacinto Rail Ltd.—Constr. Exemption—And the Burlington N. & Santa Fe Ry.—Operation*

Generation, LLC—Exemption from 49 U.S.C. 10901—For Constr. In Will Cnty., Ill., Docket No. FD 34060, at 2, 5–6 (STB served Mar. 21, 2002) (exempting construction of line to existing facility which would permit new competitive rail service).

Also, consistent with the goals at § 10101(2) and (7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. An exemption here will promote these policies by minimizing the time and administrative expense associated with the construction and commencement of operations, which are intended to promote rail competition by offering a shipper rail access via a second carrier and help promote economic development and growth in the region. *See Tex. Ry. Exch. LLC*, Docket No. FD 36186, at 4; *Midwest Generation, LLC*, Docket No. FD 34060, at 2, 5–6. An exemption is also consistent with the goals at § 10101(15), to provide for the expeditious handling and resolution of proceedings.

In summary, formal approval under § 10901 is not necessary to carry out the goals of the rail transportation policy.

B. The Transaction Is Limited In Scope and Regulation Is Not Needed to Protect Shippers from an Abuse of Market Power.

Although the second test for an exemption is stated in the alternative—either the transaction must be of limited scope, or the Board must find that regulation is not needed to protect shippers from an abuse of market power—Union Pacific’s proposed construction satisfies both elements.

First, the proposed construction is limited in scope. The Line to be constructed and operated is only approximately five miles in length. The agency has routinely granted

Exemption—Build-Out to the Bayport Loop Near Houston, Harris, Cnty., Tex., Docket No. FD 34079 (STB served May 9, 2003).

construction exemptions for rail lines of similar length or longer. *See, e.g., Savage Tooele R.R.—Constr. & Operation Exemption—Line of R.R. in Tooele Cnty., Utah*, Docket No. FD 36616, at 1 (STB served Apr. 1, 2024) (exemption construction of approximately 11 miles of rail line); *Ken Tenn Reg'l Rail Partners, Inc.—Constr. & Operation Exemption—In Fulton Cnty., Ky. & Obion Cnty., Tenn.*, Docket No. FD 36328, at 1 (STB served Dec. 1, 2020) (conditionally exempting construction of 12.17 miles of rail line); *Itasca Cnty. Reg'l Rail Auth.—Pet. for Exemption—Constr. of a Line of R.R. in Itasca Cnty., Minn.*, Docket No. FD 34992, at 1 (STB served Sept. 8, 2008) (exempting construction of a 9-mile rail line); *Sw. Gulf R.R.—Constr. & Operation Exemption—Medina Cnty., Tex.*, Docket No. FD 34284, at 1 (STB served Dec. 18, 2008) (exempting construction of approximately 7-mile line of railroad).

Second, regulation is not needed to protect shippers from an abuse of market power. The proposed Line will benefit LyondellBasell, which supports construction of the Line. The proposed Line will provide an additional rail option for LyondellBasell as well as providing rail access to future shippers that locate along the Line. The proposed Line will therefore enhance transportation services and competition in the region. *See Tex. Ry. Exch. LLC*, Docket No. FD 36186, at 4; *Midwest Generation, LLC*, Docket No. FD 34060, at 2, 5–6.

CONCLUSION

Union Pacific respectfully requests that this exemption petition be granted.

Respectfully submitted,

/s/

CHRISTINA B. CONLIN
JAMES B. BOLES
TANYA L. SPRATT
Union Pacific Railroad Company

1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

*Attorneys for Union Pacific
Railroad Company*

Dated: September 24, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

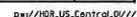
Docket No. FD 36854

**UNION PACIFIC RAILROAD COMPANY
—CONSTRUCTION AND OPERATION EXEMPTION—
IN MATAGORDA COUNTY, TX**

PETITION FOR EXEMPTION

EXHIBIT A

MAP



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36854

**UNION PACIFIC RAILROAD COMPANY
—CONSTRUCTION AND OPERATION EXEMPTION—
IN MATAGORDA COUNTY, TX**

PETITION FOR EXEMPTION

EXHIBIT B

OEA Correspondence



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

May 2, 2025

Tanya Spratt
Union Pacific Railroad
1400 Douglas Street, 15th Floor
Omaha, NE 68179

By email at tspratt@up.com

Re: Docket No. FD 36854, Union Pacific Railroad Company—Construction and Operation Exemption—In Matagorda County, Texas; Waiver of Six-Month Prefiling Notice Requirement

Dear Ms. Spratt:

Pursuant to 49 C.F.R. § 1105.10(c)(2), the Surface Transportation Board's Office of Environmental Analysis (OEA) is granting your April 25, 2025 request for waiver of the six-month prefiling notice generally required for rail construction projects under 49 C.F.R. § 1105.10(a)(1).

On April 8, 2025, via videoconference, OEA met with representatives from Union Pacific Railroad Company (UP). At the meeting, UP explained that it intends to seek authority from the Surface Transportation Board (Board) to construct and operate approximately 5 miles of new rail line near Wadsworth, Texas (the Line) to provide service to LyondellBasell Industries' (LYB) Matagorda Polymers Plant and other potential shippers. During the meeting, UP explained that the Line would also include a proposed new western wye at a joint UP and BSNF Railroad (BNSF) line known as the Celanese Industrial Lead near the intersection of Farm-to-Market Road (FM) 3057 and FM 2668. According to UP, rail traffic would consist of two trains per day (one train traveling in each direction), seven days per week.

At the April 8, 2025 meeting, OEA provided a general overview of the Board's environmental review process, OEA's role in the process, and the use of third-party consultants. OEA believes that UP is sufficiently aware of OEA's environmental review process to grant the six-month waiver request.

If you have any questions, please contact Karen Stevens of my staff at 202-245-0304 or by email at Karen.Stevens@stb.gov.

Sincerely,

Danielle Gosselin
Director
Office of Environmental Analysis



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

July 14, 2025

Tanya Spratt
Union Pacific Railroad
1400 Douglas Street, 15th Floor
Omaha, NE 68179

By email at tspratt@up.com

Re: Docket No. FD 36854, Union Pacific Railroad Company—Construction and Operation Exemption—In Matagorda County, Texas; Approval of Third-Party Contractor

Dear Ms. Spratt:

Pursuant to 49 C.F.R. § 1105.10(d), the Surface Transportation Board's Office of Environmental Analysis (OEA) is approving Parametrix as the independent third-party contractor for the above-referenced proceeding. Parametrix will assist OEA in preparing the appropriate environmental documentation for Union Pacific Railroad Company's proposed construction and operation of a new rail line in Matagorda County, Texas.

Attached please find a disclosure statement that we ask you first to forward to Parametrix to complete and return to OEA. As previously discussed, Parametrix will work as an independent third-party contractor under OEA's sole direction and supervision. Also attached, please find a Memorandum of Understanding (MOU), which should be signed and then forwarded to Parametrix for signature and returned to OEA after the executed disclosure statement. The purpose of the MOU is to outline the responsibilities of all the parties involved and to establish the conditions and procedures each party must follow during the environmental review.

Thank you for your cooperation. If you have any questions, please contact Karen Stevens of my staff at 202-245-0304 or by email at Karen.Stevens@stb.gov.

Sincerely,

Danielle Gosselin
Director
Office of Environmental Analysis

Enclosures

SURFACE TRANSPORTATION BOARD

DISCLOSURE STATEMENT

On behalf of Parametrix, I certify that Parametrix has
(name of contractor) (name of contractor)

no financial or other interests in the outcome of the prospective petition of the

Union Pacific Railroad Company to construct a rail line in Matagorda County, Texas.
(name of petitioner) (location of proposed rail line)

Signature: _____

Printed Name: _____

Title: _____

Date _____

**MEMORANDUM OF UNDERSTANDING
AMONG
SURFACE TRANSPORTATION BOARD, UNION PACIFIC RAILROAD COMPANY
and PARAMETRIX**

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE
ENVIRONMENTAL DOCUMENTS RELATING TO THE PROPOSED
CONSTRUCTION AND OPERATION BY UNION PACIFIC RAILROAD COMPANY
OF A NEW RAIL LINE IN MATAGORDA COUNTY, TEXAS

I. Introduction and Purpose

- A. Union Pacific Railroad Company (UP) intends to file a petition in Docket No. FD 36854 seeking authorization from the Surface Transportation Board (Board) to construct and operate approximately 5 miles of new rail line in Matagorda County, Texas.
- B. When making its decision on the petition, the Board will consider the potential environmental impacts of constructing and operating the rail line and any rail-related alternatives. The Board will be the lead agency and prepare the environmental documentation required for the project, either an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required by the National Environmental Policy Act (NEPA). Pursuant to 49 C.F.R. §§ 1105.4(j) and 1105.10(d), the Board, through its Office of Environmental Analysis (OEA), has selected and UP has agreed to engage, at UP's expense, Parametrix (Contractor) as the independent third-party contractor for this proposal. The Contractor shall assist OEA in conducting the environmental review and preparing the environmental documentation¹ related to the Petitioner's proposal. The Contractor's scope of work, approach, and activities shall be under the sole supervision, direction, and control of OEA.
- C. This Memorandum of Understanding (MOU) summarizes the relationship among the Contractor, the Petitioner, and OEA, as set forth in applicable regulations and Board policy, regarding the conditions and procedures each party must follow in preparing all environmental documentation. The MOU does not supersede or amend, and is made expressly subject to, the requirements of NEPA, and, to the extent applicable, related environmental laws, and 49 C.F.R. Part 1105.

¹ The terms "environmental documentation" and "environmental document(s)" embrace draft, supplemental, and final EAs, EISs, and any other reports, studies, surveys, or related documents.

- D. UP, the Contractor, and OEA agree to work within the framework of this MOU to develop an efficient method to complete the environmental review for the proposed project. OEA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. OEA shall direct, evaluate, oversee, and approve the environmental review process.

II. Document Process

OEA will prepare, on behalf of the Board, the draft environmental document (EA or EIS) for agency and public review. OEA will independently draft any recommended mitigation measures, based on its review of potential environmental impacts of the project for the Board to consider imposing in its final decision should the Board decide to grant the petition.

III. Agreement between UP and the Contractor

- A. Any contract between UP and the Contractor, and any subcontracts, shall be consistent with the provisions of the MOU.
- B. The terms of the MOU shall override any contradictory or conflicting terms regarding the scope and performance of any work to be conducted under any contract entered into between UP and the Contractor; provided, however, that the foregoing shall not limit the rights of UP and the Contractor to contract on terms which require the work to be performed cost-effectively.
- C. The contract between the Contractor and UP shall specifically provide, and the Contractor shall represent, that (1) the Contractor and any subcontractors do not and shall not have any financial or economic interest in the project that is the subject of the petition or in UP or any entity or person directly or otherwise affiliated with UP except for payment for services rendered in connection with the preparation of all required environmental documentation, and except for services rendered pursuant to other agreements not prohibited by the MOU, and (2) there is no agreement between UP, or any other person or entity and the Contractor regarding future employment that is contingent upon the Contractor's performance under this contract. The Contractor shall concurrently execute a disclosure statement and submit it to both OEA and UP, before beginning any work under OEA's direction. It is understood that the Contractor and any subcontractors have not been employed to conduct any environmental analysis

related to the petition for UP, or for any other person or entity, and, therefore, can be retained as independent third-party contractor(s).

D. Restrictions on other work:

- (1) Prior to commencement of work, the Contractor shall identify a core team of personnel who will be the only personnel performing the requirements in the Work Plan described in Section VII;
- (2) No employee of the Contractor or employee of any subcontractor, who is a part of the Contractor's core team committed to the environmental review process for the petition, shall engage in (a) other work for UP or any entity or person directly or otherwise affiliated with UP during this proceeding or (b) any work, relating to the petition, for any party to this proceeding at any time;
- (3) Except as provided in subsection (1), no other employee of the Contractor or other employee of any subcontractor shall, unless OEA is provided prior notice of and approves such work, engage in other work for UP or any entity or person directly or otherwise affiliated with UP during this proceeding; and
- (4) No employee of the Contractor or other employee of any subcontractor shall engage in any work for any entity, other than UP, relating to the petition before the Board.

E. UP shall bear the costs incurred by the Contractor, and by any subcontractor engaged by the Contractor to help in preparing the required environmental documentation to implement NEPA and related environmental laws. The Contractor and any subcontractors shall work under the direction of OEA and shall be subject to the provisions of Section III.C and Section III.D. UP agrees to hold harmless and indemnify the United States of America and the Board with respect to any and all claims, demands, causes of action, and the like, which may arise in performing the work under the contract between the Contractor and UP.

F. Any contract between the Contractor and UP shall specifically limit any remedies available to the Contractor and subcontractors upon termination of the contract to affirmatively relieve the United States of America, the Board, and any officer, agent, or employee, from any liability from terminating the contract.

IV. Contractor Responsibilities

- A. The Contractor may engage subcontractors to perform work related to environmental review of the petition, subject to the provisions of Section III.C and Section III.D. All work performed by the Contractor, or any subcontractors, shall be under the sole direction, control, supervision, and final approval of OEA. The Contractor and subcontractors, if any, will act as the agent(s) of the Board, not UP, in performing its/their duties.
- B. The Contractor shall provide:
 - (1) Appropriate expertise in the areas of environmental concern (including, but not limited to, air quality, wetlands, biological resources, geotechnical resources, hydrology, land use, safety, noise, social and economic, and cultural/historic resources);
 - (2) A good working knowledge of environmental laws, applicable laws and regulations (including environmental regulations) administered or promulgated by the Board, NEPA, other applicable federal regulations, state laws and regulations, and applicable local ordinances and regulations;
 - (3) The capacity to perform environmental impact analysis and prepare appropriate environmental documentation;
 - (4) Thorough, readable, technically sound, and informative environmental documents, as well as related charts, maps, diagrams, etc.;
 - (5) Representatives to attend and/or facilitate meetings with federal, state, regional, and local agencies, other interested parties, and UP for exchanging and obtaining information, explaining the notice and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation;
 - (6) Expertise in data management; and
 - (7) Assistance to OEA in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to OEA's needs for the environmental review of the notice under NEPA.

- C. The Contractor shall maintain and provide OEA upon request:
- (1) Adequate record-keeping and reporting systems to assure preservation of all data gathered, including, for example, surveys, studies, peer-reviewed reports;
 - (2) Logs summarizing all telephone calls, meetings, document reviews, and other substantive communications with OEA, UP, local governments, governmental agencies, citizens' groups, and any other interested parties; and
 - (3) Lists of all agencies, other railroads, citizens' groups, organizations, and individuals (including their respective addresses and telephone numbers) contacted in preparing the environmental documentation.
- D. The Contractor shall perform the work in a timely, responsive, satisfactory, and cost-effective manner, pursuant to a work schedule developed with OEA in coordination with UP and approved by OEA.
- E. The Contractor shall assist OEA in coordinating the exchange of all relevant environmental information and technical data/studies related to the notice and all required environmental documentation among OEA staff, UP's staff and representatives, the Contractor, and any subcontractors.
- F. The Contractor will submit directly to OEA any and all work the Contractor performs in preparing all required environmental documentation, studies, surveys, etc. The Contractor, and any subcontractors, shall not disclose the results of their work or release any of the underlying work papers, drafts, or other materials prepared under the contract to anyone, including UP, without OEA's express authorization. In no case shall UP be provided the opportunity to modify or edit the Contractor's work prior to submission to OEA, without OEA's express authorization.
- G. The Contractor shall follow the directions and instructions of OEA and incorporate them into the environmental document(s) in a timely and responsive manner. The Contractor shall submit preliminary and final drafts of any documents to OEA for final review and approval.

- H. The Contractor shall provide OEA access to and the right to review all procedures and underlying data used in the Contractor's development and preparation of all environmental documents. This includes, but is not limited to, field reports/surveys, technical studies and analyses, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in draft, supplemental, or final environmental documents submitted to OEA.
- I. The Contractor, and any subcontractors, shall cooperate fully with OEA in organizing, participating in, and conducting any public workshops, informational meetings, and other meetings, as OEA determines are necessary, to foster public understanding of and/or participation in the environmental review process, and to assess potential environmental impacts and develop mitigation measures related to the petition.
- J. The Contractor will assist OEA in reviewing comments received during the environmental review process, will draft a summary of rail-related comments, and will coordinate analysis of these comments with OEA.
- K. The Contractor shall assist OEA in preparing the required environmental documentation, environmental recommendations, selection of alternatives, and development of mitigation measures.
- L. The Contractor's Project Manager, other technical experts, as appropriate, shall be available to attend all meetings, briefings, consultations, and site visits as OEA deems necessary. The Project Manager shall devote as much time to environmental review of the petition as is necessary to assure the Contractor's performance of its responsibilities under this MOU. This work commitment will extend for the entire time necessary to complete the environmental review for the petition.
- M. Except as specifically authorized by OEA, the Contractor and any of its subcontractors shall refer all media/press inquiries directly to OEA.
- N. As needed, the Contractor will provide technical expertise and administrative support to OEA during preparation of the Board's decision and in addressing any environmental issues arising in the Board's consideration of this proceeding. In the event of any appeal from a Board decision in this proceeding, the parties hereto shall at that time determine the need for and terms of the Contractor's services in connection with judicial review of that decision.

- O. The Contractor shall retain all project-related environmental and historic documents, including supporting documentation, emails, project files, reports and drafts for at least 3 years beyond issuance of the final decision by the Board or at least 3 years beyond the close of any Board imposed oversight period, whichever is longest. Documentation for Memorandum of Agreements (MOA) or Programmatic Agreements (PA) under the National Historic Preservation Act shall be maintained for 3 years after the stipulations of the MOA or PA have been satisfied.
- P. The Contractor shall submit invoices to UP on a monthly basis and shall concurrently provide a copy of each invoice to OEA. An invoice shall be considered unpaid if UP fails to pay the invoice within 60 days of receipt. In the event of two consecutive unpaid invoices, the Contractor shall notify OEA as soon as practicable. If the Contractor determines that it will stop work associated with the environmental review process because of two or more consecutive unpaid invoices, the Contractor will notify OEA and UP within three business days of making that determination.

V. Petitioner Responsibilities

- A. UP shall retain the Contractor to assist OEA in preparing all required environmental documentation and services, as that assistance and its costs are defined by a contract to be negotiated and executed by UP and the Contractor, and in the Work Plan described in Section VII.
- B. UP, including its staff and representatives, shall provide to OEA and the Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of UP to advise OEA of any request received from OEA of the Contractor that UP believes either is not germane to matters appropriately reviewed in the environmental review process, is contrary to applicable statutes and regulations, would impose an extraordinary burden on UP, or is subject to the right of UP to maintain confidentiality as to proprietary, privileged, or other information which is not otherwise subject to disclosure. If UP so advises OEA, OEA shall determine whether the request is appropriate and shall so advise UP and the Contractor of its determination. OEA shall, to the extent possible, maintain the confidentiality of any information if so requested by UP.

- C. UP shall cooperate fully with OEA in organizing and participating in any public workshops, hearings, and meetings, as OEA determines are necessary to (1) foster public understanding and/or participation in the environmental review process, and (2) assess potential environmental impacts and mitigation measures related to the notice.
- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the environmental documents, UP shall be responsible for the Contractor's administrative and clerical costs, as well as the costs of graphics, maps, layouts, mailing, and printing, as those costs are defined by a contract to be negotiated and executed by UP and the Contractor. UP shall, however, have the option of directing that the printing of the environmental documentation be performed by a private entity, rather than OEA. UP shall be solely responsible for the cost of preparing and providing to OEA the appropriate number of copies of all required environmental documentation.
- E. UP shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the notice to the Board, the Operating Plan, and the environmental aspects and effects of the proposed rail construction and operation.

VI. Board/OEA Responsibilities

- A. The Board is responsible for ensuring compliance with the requirements of NEPA and other applicable environmental statutes and regulations by preparing appropriate environmental documentation.
- B. OEA shall:
 - (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of the Contractor, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the proceeding and the work is within the scope of NEPA requirements. For example, OEA shall ensure that the Contractor considers existing data and environmental analyses available from UP, OEA, and other sources, and that the Contractor does not duplicate work already done, unless OEA determines that the existing data are not adequate for use in preparing the environmental documentation;

- (2) Designate appropriate staff to review and approve all work as it is developed and completed;
 - (3) Ensure that its representatives attend meetings, as needed, with federal, state, regional, and local agencies, and other interested parties, as well as any public hearings or meetings, to exchange information, explain the petition and related environmental concerns and impacts, obtain technical input, and receive comments in preparing all required environmental documentation; and
 - (4) Coordinate, with the Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by UP and Contractor.
- C. OEA will periodically review the work of the Contractor to ensure that the Board's responsibilities under NEPA and related environmental laws and regulations are being satisfied. As each portion of any draft or final document is completed, OEA staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.
- D. OEA will monitor the Contractor to ensure that the Contractor is making adequate progress toward meeting specific time frames established in the Work Plan described in Section VII. If OEA determines these commitments are not being met, it will notify UP of its findings. It will be the responsibility of OEA to recommend any necessary corrective action to be taken under this MOU.
- E. In all instances involving questions concerning the content or relevance of any material (including all data, analyses, charts, and conclusions) prepared by the Contractor, OEA shall make the final determination on including, deleting, or revising any such material in the environmental documents.
- F. To coordinate the preparation of all required environmental documentation, and to verify notice-related data, OEA may hold joint meetings with UP and Contractor. As necessary, OEA may exclude UP from participation. OEA may also consult directly with appropriate federal, state, and local officials, and other interested parties.
- G. OEA, with the assistance of the Contractor, will be responsible for organizing and conducting any public workshops or meetings that may be necessary in preparing environmental documents during the environmental review process.

- H. OEA, with the assistance of the Contractor, will receive all relevant comments submitted during the environmental review process and comment period. At the close of any public review and comment period, OEA, in consultation with the Contractor, shall identify the issues and comments that will require a response from the Board. OEA may direct these comments to UP and to the Contractor, as appropriate, to be included in the final environmental document. OEA may modify these responses as appropriate.
- I. OEA, with the assistance of the Contractor, shall prepare final recommendations for the Board.
- J. OEA shall retain responsibility for deciding the environmentally preferable alternative, and any mitigation measures to be included in the final environmental document.

VII. Work Plan

- A. The Contractor, in consultation with OEA and UP, shall submit a draft Work Plan to OEA for preparing the required environmental documentation within 10 business days after all parties have signed this MOU. The draft Work Plan shall contain at least the following elements:
 - (1) A description of all work to be performed (including preparing and sending any consultation letters; participating in public and agency meetings; outlining and drafting environmental documents; reviewing, analyzing, and summarizing public comments, conducting analyses, etc.);
 - (2) The projected schedule for completing the various tasks described;
 - (3) Identification of the Contractor's staff members who will be responsible for preparing, analyzing, and reviewing the work; and
 - (4) An outline of the environmental analysis.
- B. Following receipt of the draft Work Plan, OEA, in consultation with the Contractor and UP, shall finalize the Work Plan in a timely manner.
- C. After consultation with the Contractor and UP, OEA may amend the Work Plan from time to time as the environmental review of the notice may necessitate. The

parties hereto shall consult at least once every two weeks to confirm that the work is being performed in the most efficient and cost-effective manner and to consider possible measures to improve the efficiency and cost-effectiveness of the work.

VIII. Disputes

Disputes between the parties may arise regarding the environmental review process, including approach, methods, analysis, conclusions, and performance of the obligations of the parties to this MOU. The parties agree to seek resolution of disputes among the individuals or parties directly involved. In addition, the parties may seek independent facilitation or mediation to assist in resolving disputes if resolution is not achieved.

IX. Nonperformance and Termination

- A. UP or the Contractor shall notify OEA of any concerns either party might have with respect to the other party's performance under the contract between the Petitioner and Contractor or this MOU. All parties will attempt to resolve, in good faith, any disputes or disagreements.
- B. If OEA determines that either the Contractor or UP is not adequately performing its responsibilities and duties in accordance with this MOU, OEA will discuss its concerns with the Contractor and UP. If OEA's concerns cannot be satisfactorily resolved, OEA will notify UP that OEA is removing the Contractor for cause, or direct UP to comply with the MOU. Upon removal of the Contractor, OEA shall endeavor to replace the Contractor with another qualified contractor as soon as practicable.
- C. Both UP and the Contractor shall immediately notify OEA of any attempt by either party to modify or terminate the contract between UP and the Contractor. Termination of the contract shall be subject to OEA's prior approval, after consultation with UP and the Contractor. Upon approving termination of the contract, OEA shall endeavor to replace the Contractor with another qualified contractor as soon as practicable. Notwithstanding the foregoing, UP may terminate the contract without OEA's approval if it withdraws notice of intent or petition.

X. Modification

This MOU may be modified only by written amendment executed by OEA, UP, and the Contractor.

MEMORANDUM OF UNDERSTANDING AMONG SURFACE TRANSPORTATION
BOARD, UNION PACIFIC RAILROAD COMPANY, and PARAMETRIX

Signature page 1 of 3

SURFACE TRANSPORTATION BOARD

(Signature)

By: Danielle Gosselin

Title: Director

Date: _____

MEMORANDUM OF UNDERSTANDING AMONG SURFACE TRANSPORTATION
BOARD, UNION PACIFIC RAILROAD COMPANY, and PARAMETRIX

Signature page 2 of 3

UNION PACIFIC RAILROAD COMPANY

(Signature)

By: _____

Title: _____

Date: _____

MEMORANDUM OF UNDERSTANDING AMONG SURFACE TRANSPORTATION
BOARD, UNION PACIFIC RAILROAD COMPANY, and PARAMETRIX

Signature page 3 of 3

PARAMETRIX

(Signature)

By: _____

Title: _____

Date: _____