

FILED

JAN 17 2006

**SURFACE
TRANSPORTATION BOARD**



BEFORE THE

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34821

215577

**NORFOLK SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
MERIDIAN SPEEDWAY LLC--
BETWEEN MERIDIAN, MS AND SHREVEPORT, LA**

VERIFIED NOTICE OF EXEMPTION

**ENTERED
Office of Proceedings**

JAN 18 2006

**Part of
Public Record**

James A. Hixon
James A. Squires
George A. Aspatore
John M. Scheib
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510
(757) 629-2657

FEE RECEIVED

JAN 17 2006

TRANSPORTATION BOARD

G. Paul Moates
Terence M. Hynes
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Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Dated: January 17, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34821

NORFOLK SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
MERIDIAN SPEEDWAY LLC--
BETWEEN MERIDIAN, MS AND SHREVEPORT, LA

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), Norfolk Southern Railway Company ("NSR") files this Verified Notice of Exemption (the "Notice") from prior approval requirements of 49 U.S.C. §§ 11323, *et seq.*, to permit NSR to acquire overhead trackage rights over the line of railroad owned by Meridian Speedway LLC ("MSLLC") between Milepost 0.0 ± at Meridian, MS and Milepost 95.26 ± at Jackson, MS, and between Milepost 95.7 ± at Jackson, MS and Milepost V-169.85 ± at Shreveport, LA, a total distance of approximately 320 miles.¹

The trackage rights are based upon a written agreement and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, they are exempt from the prior approval requirements of 49 U.S.C. § 11323.

¹ The track segment between Milepost 95.26 ± and Milepost 95.7 ± at Jackson, MS is owned by Canadian National Railway Company ("CN"). The Kansas City Southern Railway Company ("KCSR") operates over the CN-owned segment pursuant to a trackage rights agreement with CN's subsidiary, Illinois Central Railroad Company. NSR will seek to negotiate an agreement with CN to enable it to exercise trackage rights over that segment as well. In the interim, if the trackage rights that are the subject of this Verified Notice are exercised by NSR, KCSR will provide haulage service to NSR over the CN-owned segment.

NSR files this Notice in furtherance of the transaction, and submits the following information in support thereof, in accordance with the Board's regulations set forth at 49 C.F.R. §§ 1180.4(g)(1) and 1180.6:²

A. Correspondence

The persons to whom correspondence with respect to this Notice should be sent are:

G. Paul Moates
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

James A. Squires
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

B. Transaction Summary

The following is a summary of this transaction, its purpose, and its proposed timing:

NSR is a Virginia corporation whose business address and phone number are:

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-9227
(757) 629-2600

NSR is a Class I rail carrier, and a wholly-owned subsidiary of Norfolk Southern Corporation, a holding company. *Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co.*, 366 I.C.C. 173 (1982). NSR (with its subsidiaries) operates a rail system extending approximately

² Simultaneously, Kansas City Southern ("KCS"), KCSR and MSLLC are filing two other Verified Notices of Exemption. In Finance Docket No. 34822, KCS, KCSR and MSLLC are filing a Verified Notice of Exemption relating to an intra-corporate family transaction pursuant to which KCSR will transfer its line between Meridian, MS and Shreveport, LA to MSLLC, KCS will continue in control of MSLLC (which will become a carrier upon acquiring those lines) and KCSR will contract with MSLLC to operate the transferred line on MSLLC's behalf. In Finance Docket No. 34823, KCSR is filing a Verified Notice of Exemption to acquire trackage rights over the line to be transferred to MSLLC in Finance Docket No. 34822.

21,300 miles throughout 22 states in the eastern United States, the District of Columbia, and Ontario, Canada.

The rail carrier granting the trackage rights that are the subject of this Notice is Meridian Speedway LLC, a Delaware limited liability company. MSLLC's business address and phone number are:

Meridian Speedway LLC
427 West 12th Street
Kansas City, Missouri 64105
Tel: (816) 983-1370
Fax: (816) 983-1227

Under the proposed transaction, NSR will acquire overhead trackage rights over MSLLC's line between Meridian, MS and Shreveport, LA. NSR intends to consummate this transaction no sooner than January 24, 2006, or when the transactions contemplated by the Notices of Exemption in Finance Docket Nos. 34822 and 34823 are consummated, whichever is later. The trackage rights will be effective on a date specified in writing between NSR and MSLLC, which shall not occur prior to the effective date of this Notice (including compliance with any condition(s) imposed by the STB in connection with this Notice). The trackage rights covered by this Notice may be exercised by NSR only in the event of certain occurrences described in the agreement attached hereto as Exhibit 2. (Upon consummation of the transaction, MSLLC will provide haulage services solely for NSR for certain intermodal traffic, subject to specific service standards.) Upon such occurrence(s), NSR may use the trackage rights for the overhead movement between Meridian, MS and Shreveport, LA of trains handling certain categories of intermodal traffic as defined in the parties' agreement.

C. Applicant's Location

NSR operates in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New

York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. NSR also operates in the District of Columbia and the Province of Ontario, Canada.

D. Map

Pursuant to 49 CFR § 1180.6(a)(6), a map depicting the trackage rights that are the subject of this Notice, and a system map showing the lines of NSR in relation to the lines of MSLLC and KCSR, are attached hereto as Exhibit 1.

E. Agreement

A copy of the agreement under which NSR will exercise the trackage rights that are the subject of this Notice (redacting confidential business terms) is attached hereto as Exhibit 2. Concurrently with this Notice, NSR has filed a Petition for Protective Order relating to the terms of the trackage rights agreement between NSR and MSLLC, as well as an unredacted version of Exhibit 2 (filed under seal).

F. Labor Protection

Any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Co. —Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

G. Environmental and Historical Reports

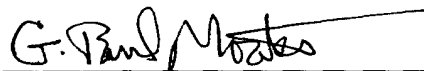
In accordance with 49 C.F.R. § 1105.6(c)(4), no environmental documentation is required in connection with the transaction that is the subject of this Notice. Likewise, in accordance with 49 C.F.R. § 1105.8(b)(3), no historical report is required in connection with the transaction that is the subject of this Notice. However, certain elements of the transactions contemplated by the Verified Notice of Exemption filed simultaneously herewith by KCS, KCSR and MSLLC in

Finance Docket No. 34822 may be subject to review by the Board's Section of Environmental Analysis ("SEA").

H. Caption Summary

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

Respectfully submitted,

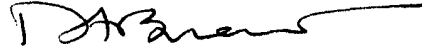


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(202) 736-8000

VERIFICATION

I, David A. Brown II, Vice-President Strategic Planning of Norfolk Southern Corporation hereby verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption. Executed on 13 day of January, 2006.



David A. Brown II
Vice-President Strategic Planning

REDACTED

**EXHIBIT C
to Transaction Agreement**

**NORFOLK SOUTHERN RAILWAY COMPANY – MERIDIAN SPEEDWAY LLC
JOINT USE AGREEMENT**

THIS AGREEMENT (the “NSR Joint Use Agreement” or “Agreement”) is entered into as of this ____ day of _____, 200__, by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (“NSR”), KANSAS CITY SOUTHERN (“KCS”) AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, (“KCSR”), and MERIDIAN SPEEDWAY LLC, a Delaware limited liability company (“MSLLC”). NSR, MSLLC, and KCSR are referred to individually herein as a “Party” and collectively as the “Parties”.

RECITALS:

WHEREAS, on December 1, 2005, KCS, KCSR, The Alabama Great Southern Railroad Company and Norfolk Southern Corporation (“NSC”) entered into a transaction agreement (the “Transaction Agreement”) that, among other things, provided for the creation of MSLLC, the transfer from KCSR to MSLLC of the Subject Trackage as defined herein, the construction, at MSLLC’s cost, of certain infrastructure improvement projects, and the grant by MSLLC to Norfolk Southern Railway Company and KCSR of certain rights over the entirety of the Subject Trackage; and

WHEREAS, pursuant to the Transaction Agreement, MSLLC has agreed to grant NSR certain trackage and haulage rights for NSR to transport NS Traffic over the Subject Trackage; and

WHEREAS, pursuant to the Transaction Agreement, MSLLC has agreed to grant KCSR local and overhead trackage rights as necessary for KCSR to continue to conduct railroad operations over the Subject Trackage and to fulfill its common carrier obligations with respect to all traffic except for the right to transport NS Traffic and Third Party Traffic over the Subject Trackage (“KCS Trackage Rights”); and

WHEREAS, the Transaction Agreement anticipates that, pursuant to an Operating Agreement, MSLLC will hire KCSR to perform as the designated operator (“Designated Operator”) for all railroad operations on behalf of MSLLC, including MSLLC railway operations required pursuant to the KCSR Joint Use Agreement and the NSR Joint Use Agreement, and

WHEREAS, the route traversed by traffic moving pursuant to this Joint Use Agreement includes approximately four-tenths of a mile section of track in Jackson, Mississippi that is controlled by Canadian National (as successor to Illinois Central Gulf Railroad Company) (the “Jackson Trackage Rights Section”) pursuant to that certain trackage rights agreement (the “MSR Trackage Rights Agreement”), as supplemented and amended from time to time, dated March 26, 1986, between Midsouth Rail Corporation and Illinois Central Gulf Railroad Company; and

WHEREAS, pursuant to the Transaction Agreement, KCSR shall provide haulage (“KCSR Haulage”) for NSR over the Jackson Trackage Rights Section until either the MSR

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Trackage Rights Agreement is assigned to MSLLC or MSLLC constructs a "flyover" bridge to carry MSLLC's tracks over the tracks and real property of Canadian National Railway Company at Jackson, MS which establishes a continuous line of rail between Shreveport and Meridian (the "Jackson Flyover"); and

WHEREAS, the Parties intend that the MSR Trackage Rights Agreement will be assigned to MSLLC and the Parties desire to set forth the terms and conditions upon which MSLLC shall provide haulage services to KCSR and NSR over the Jackson Trackage Rights Section in the event of such assignment; and

WHEREAS, pursuant to an agreement of even date herewith between KCSR and MSLLC (the "Master KCSR-MSLLC Interchange Agreement"), MSLLC and KCSR have documented, among other things, the method for the physical interchange of traffic between KCSR and MSLLC at points on the Subject Trackage; and

WHEREAS, the Transaction Agreement anticipates that, pursuant to a haulage agreement, KCSR will provide haulage for NSR for certain traffic between Shreveport, LA, on the one hand, and an interchange point with BNSF Railway Company ("BNSF") in the Dallas, TX area, on the other hand (the "Western Haulage Agreement"); and

WHEREAS, the rights granted in this NSR Joint Use Agreement are intended to be connective with: (a) the Union Pacific Railroad Company (or its subsidiaries and its successors) at Shreveport; and (b) KCSR (or its subsidiaries and its successors) at Shreveport, either (i) moving traffic to a BNSF connection in the Dallas area or Shreveport; or (ii) hauling traffic for NSR under the Western Haulage Agreement; and

WHEREAS, pursuant to the Transaction Agreement, that certain Interchange Agreement between KCSR and NSR dated as of June 4, 1986, as supplemented as of January 24, 2003 (the "Meridian Interchange Agreement") has been assigned to MSLLC; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which MSLLC has agreed to grant NSR certain trackage and haulage rights for NSR to transport NS Traffic over the Subject Trackage;

NOW, THEREFORE, the Parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

(a) Interpretation Generally.

(i) Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

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(ii) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation", and the words "herein", "hereof" and "hereunder" refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(b) Capitalized Terms.

All capitalized terms shall have the defined meaning set forth below:

"Abandonment Notice Period" shall have the meaning given to that term in Section 7(m)(iii).

"Abandonment Segment" shall have the meaning given to that term in Section 7(m)(i).

"Additional Compensation" shall have the meaning given to that term in Appendix B, Section 1.A(2)(b).

"Agreement" shall have the meaning given to that term in the introductory paragraph.

"AAR" shall have the meaning given to that term in Section 6(e).

"BNSF" shall have the meaning given to that term in the Recitals.

"Cars" means each loaded or empty railroad freight car (including platform and well rail cars) or similar equipment.

"Clearance File" shall have the meaning given to that term in Section 6(f).

"Cost Factor" shall have the meaning given to that term in Section 1.D.2 of Appendix B – Commercial Appendix.

"CTC" shall have the meaning given to that term in Section 6(a)(iv).

"Dallas Intermodal Terminal Traffic" means all domestic intermodal containers or trailers with an origin and destination in the United States, with a lift or drop at KCSR's Dallas Intermodal terminal, that moves over the Subject Trackage and over KCSR's tracks between Shreveport and the terminal, and that originates or terminates at or east of Meridian, and that originates or terminates at or west of the Dallas / Ft. Worth, TX. Standard Metropolitan Statistical Area (SMSA) as published by the Office of Management and Budget (OMB).

"Dallas Terminal Marketing Agreement" shall mean that certain Dallas Terminal Marketing Agreement dated the date hereof by and between NSR and KCSR.

"Designated Operator" shall have the meaning given to that term in the Recitals.

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“Effective Date” shall have the meaning given to that term in Section 7(f)(i).

“Election Notice” shall have the meaning given to that term in Section 2(a)(ii).

“End Points” shall mean: (1) Meridian, MS, M.P. 0.0; and (2) Shreveport, LA, M.P. V-169.85.

“EOTs” shall have the meaning given to that term in Section 2(b)(ii).

“Equipment” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

“Exercise Notice” shall have the meaning given to that term in Section 7(l)(iii).

“FMV” shall have the meaning given to that term in Section 7(l)(iii).

“Foreign Railroad” shall mean a railroad that is not a party to this Agreement.

“Foreign Railroad Interchange Agreement” shall have the meaning given to that term in Section 3(b).

“Imbalanced Market” shall have the meaning given to that term in Section 3(b)(ii) of Appendix B – Commercial Appendix.

“Imbalance Threshold” shall have the meaning given to that term in Section 4 of Appendix B – Commercial Appendix.

“Jackson Flyover” shall have the meaning given to that term in the Recitals.

“Jackson Trackage Rights Section” shall have the meaning given to that term in the Recitals.

“JOC” shall have the meaning given to that term in Section 6(a)(ii).

“KCS” shall have the meaning given to that term in the Recitals.

“KCSR” shall have the meaning given to that term in the introductory paragraph.

“KCSR Haulage” shall have the meaning given to that term in the Recitals.

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"KCSR Trackage Rights" shall have the meaning given to that term in the Recitals.

"Liquidated Damages" shall have the meaning given to that term in Section 2(b)(i) of Appendix B – Commercial Appendix.

"Management Committee" shall mean the Management Committee of MSLLC as provided in the LLC Agreement.

"Master KCS-MSLLC Interchange Agreement" shall have the meaning given to that term in the Recitals.

"Meridian Interchange Agreement" shall have the meaning given to that term in the Recitals.

"Monthly Statement" shall have the meaning given to that term in Section 7(b)(i).

"MSLLC" shall have the meaning given to that term in the introductory paragraph.

"MSR Trackage Rights Agreement" shall have the meaning given to that term in the Recitals.

"NS Traffic" shall mean all intermodal traffic that: (i) originates or terminates in the United States west of Dallas/Ft. Worth (including intermodal traffic originating by steamship line at a port along the west coast of the United States) and enters or exits the Subject Trackage at Shreveport; and (ii) originates or terminates in the United States at or east of Meridian and enters or exits the Subject Trackage at Meridian; and (iii) does not consist of traffic originating or terminating at any station on the KCSR system which includes the Texas Mexican Railway Company, (including any station where KCSR, or the Texas Mexican Railway Company have trackage rights or access via reciprocal switch), as it exists on the date of the Transaction Agreement.

"NSC" shall have the meaning given to that term in the Recitals.

"NSR" shall have the meaning given to that term in the introductory paragraph.

"NSR Cars" shall mean Cars and Equipment in the revenue and/or car hire account of NSR.

"NSR Haulage Cars" shall mean NSR Cars being transported pursuant to NSR Haulage Rights.

"NSR Haulage Rights" shall have the meaning given to that term in Section 2(b).

"NSR Joint Use Agreement" shall have the meaning given to that term in the introductory paragraph.

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"NSR Master Locomotive Run Through Agreement" shall have the meaning given to that term in Section 2(b)(iii).

"NSR Trackage Rights" shall have the meaning given to that term in Section 2(a).

"NSR Trackage and Haulage Rights" shall mean the rights granted in Sections 2(a) and 2(b).

"Operating Agreement" shall have the meaning given to that term in the Recitals.

"Parties" shall have the meaning given to that term in the introductory paragraph.

"Party" shall have the meaning given to that term in the introductory paragraph.

"Permitted Asset Transfer" shall have the meaning given to that term in the LLC Agreement.

"Qualifying Trains" shall have the meaning given to that term in Appendix B.

"Revenue Factor" shall have the meaning given to that term in Section 1.D.1. of Appendix B – Commercial Appendix.

"RPU" shall have the meaning given to that term in Section 1.E(i)(b) of Appendix B – Commercial Appendix.

"Service Reports" shall have the meaning given to that term in Section 2(a)(ii).

"Shortfall Damages" shall have the meaning given to that term in Section 3(a) of Appendix B – Commercial Appendix.

"STB" shall mean the Surface Transportation Board or any successor entity thereto.

"Subject Trackage" shall mean the certain lines of railroad generally running between Meridian, MS and Shreveport, LA as defined in the Transaction Agreement, together with the Jackson Flyover, as hereinafter defined, when constructed, and a bridge over the Mississippi River at Vicksburg.

"Third Party Traffic" shall mean freight rail service provided for a Foreign Railroad under a haulage or trackage rights agreement between MSLLC and the Foreign Railroad.

"Transaction Agreement" shall have the meaning given to that term in the Recitals.

"Triggering Event Notice" shall have the meaning given to that term in Section 2(a)(ii).

"UP" shall mean the Union Pacific Railroad Company or any of its subsidiaries.

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“Use Invoice” shall have the meaning given to that term in Section 7(b)(i).

“Waiver Notice” shall have the meaning given to that term in Section 7(m)(v).

“Weighted Cost Adjustment Factor” shall have the meaning given to that term in Section 1.D. of Appendix B – Commercial Appendix.

“Western Haulage Agreement” shall have the meaning given to that term in the Recitals.

(c) Successor Laws.

A reference to any particular statute or regulation shall include a reference to any successor statute or regulation.

SECTION 2. OPERATING RIGHTS

(a) Trackage Rights.

(i) Pursuant to the Transaction Agreement and subject to the terms set forth in this Agreement, MSLLC hereby grants NSR trackage rights for the sole purpose of transporting NS Traffic over the Subject Trackage, excluding the Jackson Trackage Rights Section, and of fulfilling its common carrier obligations with respect to NS Traffic (collectively, “NSR Trackage Rights”). These rights include, but are not limited to, the right to operate its trains, locomotives, cars, and Equipment with its own crews over the entirety of the Subject Trackage, excluding the Jackson Trackage Rights Section. NSR’s use of the NSR Trackage Rights shall be subject to the limitations and restrictions set forth in this Section 2(a).

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(ii) NSR shall not exercise its trackage rights unless and until: (A) a Major Service Standard Failure, as defined in Appendix B to this Agreement, has occurred; or (B) a Permitted Asset Transfer as defined in the LLC Agreement has occurred. MSLLC shall provide NSR with monthly reports, quarterly reports and annual reports ("Service Reports") that will provide data to NSR sufficient to permit it to determine whether a Major Service Standard Failure has occurred. MSLLC shall provide NSR written notice ("Triggering Event Notice") of the happening of a Permitted Asset Transfer. NSR shall have sixty (60) days from the receipt of the Service Report that demonstrates that a Major Service Standard Failure has occurred, and sixty (60) days from the receipt of a Triggering Event Notice, as the case may be, to provide MSLLC written notice, a copy to KCSR, making an election to exercise its trackage rights ("Election Notice"), which such Election Notice will specify the date for beginning use of the trackage rights, such date may be up to six (6) months after the delivery of the Election Notice. Failure to exercise its rights under this subsection at any one time shall not prejudice NSR's rights to exercise its rights at any subsequent time.

(iii) NSR locomotives and crews operating over the Subject Trackage shall be equipped to communicate with MSLLC on radio frequencies normally used by MSLLC in directing train movements on the Subject Trackage.

(iv) NSR's operations over the Subject Trackage shall at all times be subject to the direction and control of the Designated Operator and comply in all respects with the safety rules, operating rules and other regulations of the Designated Operator.

(v) NSR shall make such arrangements with MSLLC as may be required to have all of its employees who shall operate its trains, locomotives, cars and Equipment over the Subject Trackage qualified for operation thereover. MSLLC shall provide reasonable cooperation and assistance in the qualification of NSR operating (train and engine) crews for service over the Subject Trackage upon request. NSR supervisory personnel who have been qualified to operate over the Subject Trackage may qualify other NSR employees for operation of trains over the Subject Trackage.

(vi) MSLLC shall allow NSR to, at NSR's sole cost, establish, locate and construct personnel facilities for changing crews on NSR trains that are moving pursuant to this Section 2(a), but shall not impose a lease fee for the property upon which such personnel facilities are located. The design and location of any such facility shall be pre-approved by MSLLC, said approval not to be unreasonably withheld or delayed.

(vii) The compensation for the trackage rights shall be typical in the industry for overhead intermodal trackage rights and consistent with STB decisional principles for the determination of the same.

(b) Grant of Haulage Rights.

Pursuant to the Transaction Agreement and consistent with the terms of this Agreement, MSLLC hereby grants NSR haulage rights for the sole purpose of transporting NS Traffic over the Subject Trackage, including the Jackson Trackage Rights Section (collectively, "NSR

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Haulage Rights"). NSR's use of its Haulage Rights shall be subject to the limitations and restrictions set forth in this Section 2.

(i) NSR Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of NSR while moving over the Subject Trackage via the NSR Haulage Rights. MSLLC shall not be entitled to any line haul revenue for the handling of NSR Haulage Cars, nor shall MSLLC participate in the routing of, nor appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of NSR Haulage Cars.

(ii) MSLLC's obligation to provide NSR Haulage Rights hereunder shall permanently cease in the event that NSR initiates its NSR Trackage Rights operations pursuant to Section 2(d)(vi) of this Agreement.

(iii) The Parties will execute an agreement (the "NSR Master Locomotive Run Through Agreement") consistent with, and with terms materially identical to, the Supplemental Agreement dated May 11, 2000, to the Master Locomotive Run Through Agreement of November 29, 1994, provided, however, that MSLLC shall not be responsible for providing any equipment (locomotives, cars, end of train units ("EOTs"), etc.), or fuel for the trains providing the NSR Haulage Rights. Locomotives on trains providing the NSR Haulage Rights shall be governed by the NSR Master Locomotive Run Through Agreement.

(c) Use Of The Subject Trackage.

(i) NSR's use of Subject Trackage pursuant to Section 2(a) or Section 2(b) shall be in common with MSLLC and KCSR, and other than as explicitly set forth herein, MSLLC's and KCSR's right to use the Subject Trackage shall not be diminished by this Agreement.

(ii) NSR may operate trains pursuant to Section 2(a) or Section 2(b) in either direction over the Subject Trackage.

(iii) Except as may be elsewhere provided for herein, NSR may use its NSR Trackage and Haulage Rights for NS Traffic to interchange with UP at Shreveport, LA, and with KCSR at Shreveport, LA, for (i) hauling traffic for NSR under the Western Haulage Agreement; (ii) connectivity with a possible BNSF Shreveport Agreement, as defined in the Western Haulage Agreement; or (iii) moving Dallas Intermodal Terminal Traffic provided the Dallas Option, as each term is defined in the Dallas Terminal Marketing Agreement, is exercised.

(d) Restrictions on Use.

(i) NSR may use its NSR Trackage and Haulage Rights solely for the purposes of the movement of: (A) NS Traffic; and (B) moving Dallas Intermodal Terminal Traffic provided the Dallas Option, as each term is defined in the Dallas Terminal Marketing Agreement, is exercised.

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(ii) The NSR Trackage and Haulage Rights shall be for the purpose of NSR using the Subject Trackage to operate its trains in overhead movements only and shall not include the right of ingress and egress to any tracks, switches, turnouts, or other track classifications that connect to any point along the Subject Trackage except the End Points.

(iii) Except as otherwise permitted in this Agreement, NSR's Trackage and Haulage Rights shall not include the right to enter or exit the Subject Trackage other than at the End Points, or at either end of the Jackson Trackage Rights Section.

(iv) Except as may otherwise be permitted by this Agreement, NSR shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or Equipment, or the making or breaking up of trains, except as necessary for the handling of locomotives or cars bad ordered en route; provided, that NSR shall use such auxiliary Subject Trackage as may be designated by the Designated Operator for such purposes.

(v) NSR may not, pursuant to this Agreement, grant haulage rights, trackage rights, or other operating rights of any nature on or over the Subject Trackage to any other party.

SECTION 3. INTERCHANGE

From time to time MSLLC and NSR shall consult as to the various interchange locations for the delivery and receipt of traffic being physically transferred between NSR and MSLLC. Unless otherwise mutually agreed, interchange operations shall be governed as follows:

(a) Interchange For NSR Haulage Cars

(i) MSLLC shall deliver eastbound NSR Haulage Cars to NSR at Meridian, MS, on such track(s) as shall be designated from time to time by local operating personnel or other designated representative in charge of such tracks at Meridian pursuant to the Meridian Interchange Agreement.

(ii) MSLLC shall deliver westbound NSR Haulage Cars to KCSR and UP and, if KCSR enters into a BNSF Shreveport Agreement as defined in the Western Haulage Agreement, with BNSF for continued westbound movement, at or near M.P. V-169.85 in Shreveport, LA on such track(s) as shall be designated from time to time by KCSR's dispatcher or other designated representative in charge of such tracks at Shreveport pursuant to the KCSR Master Interchange Agreement.

(iii) Nothing herein shall be interpreted as prohibiting the Designated Operator from transporting NSR Haulage Cars in a continuous movement operating over both the haulage routes covered by: (i) this Agreement and (ii) the Western Haulage Agreement.

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(b) Interchange With A Foreign Railroad

Interchange operations between NSR and a Foreign Railroad shall be governed by the terms of the relevant interchange agreement between NSR and said Foreign Railroad ("Foreign Railroad Interchange Agreement"), which may not be inconsistent with this Agreement.

SECTION 4. PERMITTED SERVICE

(a) NS Traffic

NSR shall have the exclusive right to transport NS Traffic over the Subject Trackage.

(b) MSLLC's Retained Rights

(i) MSLLC may perform haulage services for, or provide trackage or operating rights to, KCSR or a Foreign Railroad provided the traffic moved for said carrier remains in that other carrier's revenue waybill account.

(ii) Notwithstanding the foregoing Section 4(b)(i), for NS Traffic only, MSLLC may not perform haulage services for any carrier other than NSR or grant trackage rights or operating rights to KCSR or any Foreign Railroad on the Subject Trackage for NS Traffic, absent the express written consent of NSR, which may be withheld in NSR's sole discretion.

(iii) MSLLC shall not permit trains moving NSR Haulage Cars to contain any traffic in the revenue waybill account of any carrier other than NSR.

(c) Rebilling.

It is the intent of the Parties that rebilling of traffic is not a permissible method of avoiding any direct traffic limitation, including those set forth in Section 4(a), or imposition of charges for services set forth herein.

SECTION 5. INFRASTRUCTURE

(a) Maintenance.

(i) MSLLC shall be solely responsible for the maintenance, repair, and renewal of the Subject Trackage. MSLLC shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but MSLLC does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. MSLLC shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use commercially reasonable efforts to avoid such interruptions.

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(ii) Existing connections or facilities shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under applicable agreements.

(iii) Notwithstanding anything to the contrary herein, MSLLC shall maintain the main line of the Subject Trackage to a minimum of FRA Class 3 standards, capable of handling cars of 286,000 lbs.

SECTION 6. MANAGEMENT AND OPERATIONS

(a) Dispatching

(i) The Designated Operator shall have exclusive control over the management and dispatching of the Subject Trackage. Dispatching of the Subject Trackage shall be conducted in a manner as to afford each of the Parties, and any other present or future user of the Subject Trackage (or any portion thereof) the most economical and efficient movement of its traffic over the Subject Trackage consistent with the demands and needs of other authorized users.

(ii) Although the Designated Operator will be the dispatcher, the Joint Operating Committee ("JOC"), subject to the direction of the Management Committee, will develop and implement appropriate dispatching protocols and adjust those protocols from time to time as necessary to carry out this Agreement. In dispatching the Subject Trackage, the Designated Operator shall follow any protocols developed by the JOC, provided, that in the event of a conflict between the dispatching protocols and the need to economically and efficiently move the traffic over the Subject Trackage, the dispatcher shall be empowered to employ best practices to efficiently move all trains consistent with the principles of this Agreement.

(iii) NSR shall have the right to station an NSR employee or agent in the dispatch center operated by MSLLC or its Designated Operator in the event that it initiates its trackage rights pursuant to Section 2(a)(ii) herein. Said person shall be present solely as an observer, and shall have no authority to control the movement of trains or otherwise interfere with or adjust the operation of trains, Cars or Equipment operating on the Subject Trackage.

(iv) MSLLC shall cause its Designated Operator to provide NSR with read-only access to the Designated Operator's central traffic control ("CTC") screens for the Subject Trackage in the offices of NSR designated by NSR. As KCSR is MSLLC's Designated Operator, KCSR shall be responsible for the cost of modifying its system to the extent necessary to provide NSR access to its CTC screens, and NSR shall be responsible for the cost of the communications link with NSR and the costs to use such link incurred in NSR's offices.

(v) Notwithstanding anything in this Agreement to the contrary, all overhead trains of both KCSR and NSR will have dispatching priority over local trains.

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(b) Capacity Rights

Notwithstanding any other provisions of this Agreement, the Parties acknowledge that there may be capacity constraints from time to time for traffic covered under this Agreement. Whenever capacity of the Subject Trackage is insufficient to handle the total traffic demands of KCSR and NSR, the following capacity allocation rules shall apply:

(i) Prior to the start of the calendar year following the earlier of (a) completion of the spending of the Capital Proceeds as defined in the Transaction Agreement; or (b) the fourth anniversary of the Closing as defined in the Transaction Agreement, KCSR and NSR will each have a minimum of five (5) daily overhead train starts over the Subject Trackage. For purposes of determining capacity rights, NSR's daily overhead train starts will include NS Traffic and Dallas Intermodal Terminal Traffic.

(ii) As incremental overhead train starts become available, NSR shall receive the first of every three (3) new daily overhead train starts, and NSR acknowledges that KCSR shall be allocated the second and third of every three (3) new daily overhead train starts. Following the start of the calendar year following the earlier of (a) completion of the spending of the Capital Proceeds as defined in the Transaction Agreement; or (b) the fourth anniversary of the Closing as defined in the Transaction Agreement, NSR will have a minimum of thirteen (13) daily overhead train starts. If through this allocation process NSR does not have at least thirteen (13) daily overhead train starts, then KCSR agrees to relinquish such daily overhead train starts as needed to provide NSR with thirteen (13) daily overhead train starts. Of the thirteen (13) total daily overhead train starts, a minimum of eight (8) may be utilized for traffic interchanged with parties other than the Union Pacific Railroad Company in Shreveport.

(iii) NSR acknowledges that, after providing for NSR's minimum guarantee of thirteen (13) daily overhead train starts, KCSR shall receive all additional incremental daily overhead train starts until KCSR has a total of twenty-one (21) daily overhead train starts. Thereafter, NSR shall be allocated the first of every three (3) additional new incremental daily overhead train starts, and NSR acknowledges that the second and third of every three (3) new daily overhead train starts shall be allocated to KCSR.

(iv) If the Foreign Railroad fails to supply all necessary capital required to accommodate its new train start, the first new daily overhead train start of any Foreign Railroad admitted to the Subject Trackage by MSLLC shall be considered to be a KCSR train start for the purpose of the allocation of daily overhead trains starts of under these capacity allocation provisions. If the Foreign Railroad supplies all necessary capital required to accommodate its new train start, the Foreign Railroad's train start shall count against neither KCSR's nor NSR's train start allocation.

(v) The maximum length of NSR trains (including locomotives and other motive power units) operating pursuant to this Agreement, whether pursuant to Section

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2(a) or Section 2(b), shall be the greater of: (a) 7,500 feet or (b) the maximum train length as may be permitted from time to time for any other train regularly operated over the Subject Trackage. Upon substantial completion of the capital projects list found in Appendix C - Capital Improvement Projects to the KCSR-MSLLC Operating Agreement, the maximum length shall be increased to no less than 8,500 feet.

(c) Volume And Service Guarantees

(i) NSR commits to the Volume Guarantees set forth in Appendix B – Commercial Appendix, Section 5.

(ii) MSLLC commits to the Service Standards set forth in Appendix B – Commercial Appendix, Section 2.

(d) Defective Or Overloaded Cars

MSLLC may arrange for repairs to and adjustments to, or transfers of lading from bad ordered, defective or overloaded NSR Haulage Cars, as in MSLLC's judgment may be necessary to move such cars safely. NSR shall reimburse MSLLC for the cost of such work at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads ("AAR").

(e) Use Of A Clearance File

NSR shall have the right to operate all dimensional loads and excess clearance railcars for handling over the Subject Trackage, subject to a clearance file (the "Clearance File") applicable to traffic of NSR, KCSR, and MSLLC maintained by MSLLC. MSLLC shall promptly inform NSR of any changes made to the Clearance File.

(f) Modification of NSR Train Schedules.

NSR shall provide the Designated Operator reasonable notice of the schedules for regularly scheduled NSR trains operating over the Subject Trackage, as well as any proposed modifications, and shall coordinate train operations with the Designated Operator and its dispatcher.

(g) Compensation.

NSR shall compensate MSLLC for the use of the Subject Trackage in accordance with Appendix B – Compensation for NS Traffic.

(h) Mileage and Car Hire.

All mileage and car hire charges accruing on NSR Cars on the Subject Trackage shall be assumed by NSR and reported and paid by it directly.

SECTION 7. GENERALLY APPLICABLE PROVISIONS

(a) Compliance with Applicable Law and Rules.

(i) Each Party hereto shall comply with all applicable and lawful federal, state and local laws, rules, regulations and orders promulgated by any government or governmental agency that relate to the operations contemplated hereunder. If any fine, penalty, cost, or charge is imposed or assessed on or against either Party hereto by reason of the other Party's non-compliance with any such laws, rules, regulations or orders, liability will be allocated in accordance with the Unified Liability Agreement.

(ii) Without affecting the generality of the foregoing Section 7(a)(i), the Parties shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other lawful federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and Equipment while such trains, locomotives, cars, and Equipment are being operated over the Subject Trackage. Liability for a violation of this section shall be determined in accordance with Unified Liability Agreement.

(iii) NSR's trains shall not include locomotives, cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as contained in the Clearance File maintained by MSLLC, and no train shall contain locomotives, cars or Equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Designated Operator's operating rules and regulations, without the prior consent of MSLLC. The JOC shall make proper accommodation for exceptions, should that be reasonable, necessary, and practicable. All NSR trains shall be operated by locomotives with horsepower sufficient to permit operation at posted speeds.

(iv) If any employee of NSR shall neglect, refuse, or fail to abide by MSLLC's rules, instructions and restrictions governing the operation on or along MSLLC's property, such employee shall, upon written request of MSLLC, be prohibited by NSR from working on MSLLC's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of NSR, then upon such notice presented in writing, NSR shall promptly hold an investigation in which all parties concerned shall participate, with each party bearing the expense for its officers', counsel's, witnesses' and employees' participation. Notice of such investigations to NSR's employees shall be given by NSR's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between NSR and its employees. If the result of such investigation warrants, such employee shall, upon written request by MSLLC, be withdrawn by NSR from service on MSLLC's property and NSR shall release and indemnify MSLLC from and against any and all claims and expenses because of such withdrawal.

(b) Invoices and Payment of Bills.

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(i) On or before the 15th day of each calendar month during the term of this Agreement, KCSR shall prepare on behalf of MSLLC a monthly statement setting forth the number of NSR Cars operated over the Subject Trackage during the month (the "Monthly Statement") and an invoice (the "Use Invoice"). The Monthly Statement shall be in electronic format, and shall contain a detailed list of the NSR Cars that moved during the subject month, which list shall include, for each Car, information relating to such cars that MSLLC may reasonably request in connection with accounting for the use of the services and rights provided hereunder. The Monthly Statement and the Use Invoice shall be delivered to NSR and NSR shall make payment to MSLLC within thirty (30) days after the date of receipt of such Use Invoice.

(ii) Any dispute regarding the amount of a Monthly Statement or Use Invoice shall be reconciled between the Parties pursuant to Section 7(i), and any adjustment resulting from such reconciliation shall be reflected in a subsequent Use Invoice. If NSR disputes any portion of a Use Invoice, it shall nevertheless pay such Use Invoice in full subject to adjustment upon resolution of the dispute; provided, however, that (i) no exception to any charge in a Use Invoice shall be honored, recognized or considered if filed after the expiration of three (3) years from the date of the Use Invoice, and (ii) no invoice shall be rendered more than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefor is established. Any claim for the adjustment of a Monthly Statement or Use Invoice shall be deemed to be waived if not made in writing within three (3) years after the date of the relevant Monthly Statement for statement adjustments and the date of the relevant Use Invoice for invoice adjustments.

(iii) MSLLC and NSR shall each have the right, at its own expense, to audit the records of any other Party pertaining to the use of the Subject Trackage under this Agreement, and any Monthly Statement, Use Invoice or other invoice issued by MSLLC or KCSR, respectively, pursuant to this Agreement, provided such audit is initiated at any time within three (3) years of the date of the relevant Use Invoice or other invoice (as applicable) relating to this Agreement. All such audits shall be conducted at reasonable intervals, locations, and times. All such audits shall be prosecuted with reasonable due diligence. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 7(b)(iii) with respect to which the Parties are in concurrence shall be reflected in a subsequent Use Invoice.

(iv) Invoices rendered pursuant to the provisions of this Agreement, other than Use Invoices, shall include direct labor and material costs, together with the surcharges, overhead percentages, and Equipment rentals as specified by MSLLC at the time any work is performed by MSLLC for NSR, or shall include actual costs and expenses, upon mutual agreement of the Parties.

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(c) Liability.

As between the Parties hereto, responsibility for any loss or destruction of, or damage to, any property whatsoever, and any injury to or death of any person or persons whomever (including employees of NSR or MSLLC) or other matters covered by the Uniform Liability Agreement, resulting from, arising out of, incidental to or occurring in connection with this Agreement shall be allocated as is set forth in the Unified Liability Agreement.

(d) Rerailing, Wrecking, Bad Orders and Repairs.

(i) Whenever one or more cars and/or locomotives in the account of NSR requires rerailing, wrecking service or wrecking train service, MSLLC shall arrange for the provision of such service, including the repair and restoration of roadbed, the Subject Trackage and structures. MSLLC shall promptly inform NSR of its intent to proceed with wrecking service or wrecking train service, and shall permit a NSR representative to be present on the scene, to work in concert with the employees of its Designated Operator to manage such wrecking service or wrecking train service. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom shall be apportioned in accordance with the provisions of Section 7(c) hereof. All locomotives, cars, Equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by NSR at the time of such wreck, shall be promptly delivered to it.

(ii) If any cars or locomotives of NSR are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those cars or locomotives shall, after being repaired, be picked up by MSLLC, or if agreed upon by the parties, MSLLC will transport them to a mutually acceptable location to be picked up by NSR. MSLLC may, upon request of NSR and at the expense of NSR, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the AAR, furnish required labor and material to perform light repairs required to make such bad ordered Cars or locomotives safe and lawful for movement, and billing for this work shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the AAR.

(e) Force Majeure.

The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including flood, earthquake, hurricane, tornado, or other such severe weather or climatic condition, riot, accident, wreck, derailment, washout, explosion, Acts of God, act of terrorism and public enemy, war, blockage, insurrection, vandalism or sabotage, fire, strike, lockout or labor dispute, embargoes or AAR service orders, or governmental laws, orders or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse

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for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all commercially reasonable measures to restore performance of its obligations in a timely manner.

(f) Term and Termination.

(i) This Agreement shall become effective following the latest date of: (a) the date first written above; (b) receipt of any required regulatory approvals or exemptions; and (c) the expiration of any time periods required by the issuance of labor notices by NSR and/or MSLLC, should such labor notices be required ("Effective Date"). The Parties shall determine the Effective Date through an exchange of written correspondence.

(ii) This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement.

(iii) Termination of this Agreement shall not relieve or release any Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof, nor shall it terminate any underlying right, or contingent right, of movement pursuant to the trackage rights grant.

(g) Successors and Assigns.

(i) This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. Third party beneficiary status shall inure to the benefit of KCSR and each of its successors and permitted assigns.

(ii) Except as otherwise specifically provided hereinafter, neither Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Party, which consent may be withheld at the discretion of such other Party.

(iii) In the event of a sale of substantially all of the assets or business of NSR, or the merger or consolidation of NSR into or with a firm or corporation not controlled by NSR, NSR may, without the prior consent of MSLLC, assign this Agreement to such firm or corporation acquiring substantially all of the assets or business of NSR, or merging or consolidating with NSR; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of NSR under this Agreement that existed prior to such assignment.

(iv) In the event of a sale of substantially all of the assets or business of MSLLC, or the merger or consolidation of MSLLC, MSLLC may, without the prior consent of NSR, assign this Agreement to such firm or corporation acquiring

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substantially all of the assets or business of MSLLC, or merging or consolidating with MSLLC; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of MSLLC under this Agreement that existed prior to such assignment.

(h) Notice.

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

(i) If to KCSR:

Chief Operating Officer
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

with a copy to:

Senior Vice President and General Counsel
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

(ii) If to MSLLC:

Chief Operating Officer
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

Executive Vice President Operations
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

with a copy to:

Senior Vice President and General Counsel
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121-9335

Senior Director – Joint Facilities
Norfolk Southern Corporation

REDACTED

1200 Peachtree Street, N.E., Box 158
Atlanta, Georgia 30309

If to NSR:

Executive Vice President Operations
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

with a copy to:

Senior Director – Joint Facilities
Norfolk Southern Corporation
1200 Peachtree Street, N.E., Box 158
Atlanta, Georgia 30309

Either Party may provide notice of changes in the above addressees to the other Party by personal service or certified mail.

(i) Arbitration.

(i) Any dispute arising between the Parties with respect to an alleged breach of this Agreement shall be referred to the JOC for resolution and if the JOC is unable to resolve the dispute, it will be referred to the Management Committee, provided however, that any Member (as defined in the LLC Agreement) may submit the dispute for binding arbitration by a panel of three independent arbitrators before the American Arbitration Association under the Commercial Arbitration Rules, who shall render a written decision on the controversy. The written decision of the arbitrators, reached upon a majority vote, shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expenses of the three arbitrators, if any, shall be borne by NSR and MSLLC, with each paying 50 percent of such compensation, costs, and expenses. The arbitrators shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrators, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the written decision of the arbitrators.

(ii) As a third party beneficiary, KCSR may initiate and prosecute arbitration pursuant to Section 7(i)(i) on behalf of MSLLC. MSLLC shall cooperate with KCSR in the preparation for, and the initiation and prosecution of, such arbitration, at KCSR's expense.

REDACTED

(j) Confidentiality.

(i) Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or in connection with an audit by the Internal Revenue Service or other tax authority, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the term of this Agreement (including any extensions thereof), and for a period of three (3) years after termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than members, officers, employees, independent auditors, and attorneys, without the prior written approval of the other Party.

(ii) Notwithstanding the foregoing Section 7(j)(i), the Parties acknowledge and agree that in any STB proceeding, the Parties may be required to submit this Agreement into the record. The Parties will seek a protective order to protect the payment provisions of this Agreement. Following issuance of a protective order, a copy (with certain confidential provisions redacted) may be entered into the public STB record and a highly confidential unredacted copy of this Agreement may be entered into the STB record subject to the provisions of the applicable protective order.

(k) Claims.

The Parties shall agree between themselves on the fairest, practical, and efficient arrangements for handling and administering freight loss and damage Claims. Such arrangements, and the allocation of responsibility for such Claims, shall be subject to the provisions of the Unified Liability Agreement.

(l) Abandonment.

(i) MSLLC shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon or discontinue service on the Subject Trackage or any portion thereof (the "Abandonment Segment") during the term of this Agreement. MSLLC shall provide NSR no less than ninety (90) days prior notice of its intention to seek to abandon or discontinue service over any Abandonment Segment.

(ii) If MSLLC elects to abandon or discontinue service over the Subject Trackage (or any portion thereof) pursuant to Section 7(l)(i), this Agreement shall continue to apply in all respects to any remaining portion of the Subject Trackage not abandoned or subject to discontinuance by MSLLC.

(iii) MSLLC shall, not less than 60 days prior to any submission to the Surface Transportation Board (or successor agency having jurisdiction over said abandonment or discontinuance) of an application or exemption for authority to abandon or discontinue service over an Abandonment Segment(s), first offer NSR the first right to purchase such Abandonment Segment(s) for fair market value ("FMV") of such Abandonment

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Segment(s), and on such other terms and conditions as are customary with respect to line sales, which such notice shall specifically identify this Section 7(l) and the time periods for action hereunder. NSR shall have forty-five (45) days ("Abandonment Notice Period") within which to advise MSLLC that it will exercise its right to purchase ("Exercise Notice"). If the Parties are unable to agree upon the FMV of the Abandonment Segment(s) that NSR wishes to purchase, either Party may refer the issue to arbitration pursuant to Section 7(i), which arbitration shall determine all other issues relating to terms and conditions for the sale not then (at the time of the initiation of the arbitration) agreed to by the Parties. Such arbitration shall be conducted on an expedited basis, with selection of the arbitrators within thirty (30) days of the initiation of arbitration, all submissions to be made by the Parties within ninety (60) days of the initiation of arbitration, and a written decision to be rendered within thirty (30) days following the final submissions of the Parties.

(iv) The Parties shall consummate the sale contemplated by this Section 7(l) within forty-five (45) days of the latest of: (a) the rendering of a written arbitration decision, should issues related to the sale proceed to arbitration; (b) the execution of a purchase and sale agreement, should the Parties execute the same; and (c) the grant of authority, or exemption from the need to obtain a grant of authority, from any regulatory body having jurisdiction over the same.

(v) If NSR elects not to purchase the Abandonment Segment, it shall so advise MSLLC within the same forty-five (45) day Abandonment Notice Period by delivering to MSLLC a notice of waiver of right to purchase said segment ("Waiver Notice"). Failure of NSR to provide MSLLC with either an Exercise Notice or a Waiver Notice within the aforesaid forty-five (45) day period shall constitute a Waiver Notice.

(vi) In the event of a Waiver Notice and KCSR does not purchase the Abandonment Segment pursuant to its rights in the KCSR Joint Use Agreement, MSLLC shall promptly file such application, petition or exemption notice as may then be required to obtain regulatory authority or exemption for the Abandonment Segment and for the discontinuance of KCSR's and NSR's (if any) trackage rights over the Abandonment Segment.

(m) MSLLC Liability.

For the purposes of this Agreement, MSLLC shall be liable for the actions and omissions of its Designated Operator for the performance of its duties as such as if such actions or omissions were those of MSLLC.

(n) Miscellaneous Provisions.

(i) This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto.

REDACTED

(ii) This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties.

(iii) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by all Parties.

(iv) The division of this Agreement into articles, sections, and subsections and the insertion of headings and references are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to articles, sections or subsections are to articles, sections or subsections of this Agreement.

(v) This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

(vi) No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

(vii) If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

(viii) Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between MSLLC and NSR.

(ix) This Agreement shall be governed and interpreted in accordance with the laws of the State of Delaware, without regard to application of the choice of law principles thereof.

REDACTED

(x) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

REDACTED

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

WITNESS:

MERIDIAN SPEEDWAY LLC

As to MSLLC

By: _____

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

As to NSR

By: _____

WITNESS:

KANSAS CITY SOUTHERN

As to KCS

By: _____

WITNESS:

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

As to KCSR

By: _____

REDACTED

INDEX TO APPENDICES

APPENDIX B. COMMERCIAL APPENDIX FOR NS TRAFFIC

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APPENDIX B – COMMERCIAL APPENDIX

Section 1. Section 1. Pricing

A. NS Traffic – Initial Pricing:

(1) Interchange With KCSR

NSR shall pay to MSLLC the following as compensation for providing NSR with NSR Haulage Rights over the Subject Trackage to an interchange with KCSR at M.P. V-169.85 for subsequent interchange to/from BNSF.

[]	[]
[]	[]
[]	[]
[]	[]

(2) Other Interchange Compensation

(a) NSR shall pay to MSLLC the following as compensation for providing NSR with NSR Haulage Rights over the Subject Trackage to an interchange with UP at M.P. V-169.85:

[]	[]
[]	[]
[]	[]
[]	[]

(b) NSR shall also pay to MSLLC [] as “Additional Compensation”.

B. Empties – Initial Pricing:

(1) NSR shall pay to MSLLC [] on an empty railcar moving in NSR Haulage Service between Meridian (M.P. 0.0) and Shreveport (M.P. V- 169.85) upon the following conditions:

(a) Empty cars ride on a haulage train consisting of [] []. Empty cars will not be limited in number as long as the maximum train length allowable at that time is not exceeded. All empty cars will ride as one block at the end of the haulage train.

(b) The loaded cars meet or exceed []. In the event NSR fails to maintain [], then the Parties agree

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to meet at MSLLC's request to establish rates to compensate MSLLC adequately for the excess empty wells and platforms.

(c) A "slot" is defined as any available rail car space that can minimally hold a 40' TOFC/COFC unit. There are (i) two slots per well of a single or multi-well stack car; or (ii) one slot per hitch on a single flat car or multi-platform conventional spine car. The following table serves as an example of pricing scenarios for empty rail car moves. There may be other pricing scenarios.

Empty Car Description	Number of Slots	Price per Car
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

C. Adjustments to Pricing:

[

]

(1) [

]:

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Section 2. Service Standards.

- A. The Service Standards contained in this Section 2 shall become effective beginning with the start of the calendar year following the earlier of (i)

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completion of the spending of the Capital Proceeds as defined in the Transaction Agreement; or (ii) the fourth anniversary of the Closing of the Transaction.

- B. For the purpose of this Section, Qualifying Trains are defined as: (i) trains carrying NSR Cars moving across the Subject Trackage between Meridian (MP 0.0) and Shreveport (MP V- 169.85), and Meridian (MP 0.0) and Metro Junction (MP D - 110.2) or other mutually-designated interchange locations in the Dallas, TX area; or (ii) KCSR trains moving traffic subject to the Dallas Terminal Marketing Agreement. In addition, Qualifying Trains must meet the following criteria to be included in the computation for Service Standards:

(1) The train must not have been delayed en route between the End Points directly as a result of:

- (a) a crossing accident;
- (b) the failure of locomotives in NSR's account on the train, unless said failure is intentionally caused by the acts of the crews, in the case of trains moving NSR Cars,
- (c) trains carrying NSR Cars that undergo a 1,000 mile inspection between the End Points;
- (d) concentrated FRA audits;
- (e) a scheduled maintenance of way window where MSLLC or KCSR have given NSR at least [] advance notice, and, despite the good faith efforts of the Designated Operator, NSR and KCSR under the direction of the JOC to resolve potential conflicts in scheduling, said train delays could not be avoided;
- (f) the failure of NSR to provide locomotive consists that meet the HPT requirements set forth from time to time by the JOC that apply equally to all carriers operating similar traffic on the Subject Trackage;
- (g) or Force Majeure; or

(2) The train must not have begun its transit over the Subject Trackage on any of the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

C. At the time Service Standards become effective, the following transit times for Qualifying Trains will apply:

- (1) The transit time for a Qualifying Train moving NSR Cars between the End Points will be [] from the time the train is actually available to

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MSLLC, provided that the actual availability of such train is within [] on either side of its scheduled arrival time, and further provided that if said Qualifying Train is actually available to MSLLC more than [] before the scheduled arrival time, the transit time will be [] from the starting edge of the window (two hours before the scheduled arrival time), and provided further that if said Qualifying Train is not actually available to MSLLC until more than [] after the scheduled arrival time, then the transit time will be [].

(2) The transit time for a Qualifying Train moving traffic subject to the Dallas Terminal Marketing Agreement between the End Points will be [] from the time the train reaches the first End Point.

(3) The transit time for a Qualifying Train moving between Metro Junction (MP D – 110.2), or other mutually-designated interchange location in the Dallas, TX area, and Meridian (MP 0.0) that is actually available within [] on either side of its scheduled arrival time will be [] from the time actually available to MSLLC, KCSR or BNSF, as the case may be, provided however, if said Qualifying Train is actually available to MSLLC, KCSR or BNSF, as the case may be, more than [] before the scheduled arrival time, the transit time will be [] from the starting edge of the window (two hours before the scheduled arrival time), and provided further that if said Qualifying Train is not actually available to MSLLC until more than [] after the scheduled arrival time, then the transit time will be [].

(4) In the event that a train requires fueling en route over MSLLC, then a [] allowance shall be added to the relevant service standard.

(5) For the purpose of computing the Service Standard transit times, the origin time shall be the time that the Qualifying Train is actually available to the receiving carrier at the origin End Point (or, in the case of a run through train, when the train moves over the origin End Point) and the destination time shall be the time that the Qualifying Train is actually available to the receiving carrier at the destination End Point (or, in the case of a run through train, when the train moves over the destination End Point), unless the train is refused in interchange by the receiving carrier (other than KCSR), in which case the destination time will be the arrival time at the location on the delivering carrier where the train will be held awaiting acceptance for the interchange from the receiving carrier.

D. The Service Standard Transit Times provided for herein will not be amended or modified as a result of a change in control of KCSR.

Section 3. Liquidated Damages

A. Payment of liquidated damage by MSLLC to NSR will be triggered by the following conditions:

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(1) [].

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B. The dollar amounts set forth in Section 3.A shall remain constant until the calendar year following the initiation of service standards as provided in Section 2.A above. In each subsequent calendar year, the dollar amounts set forth in Section 3.A shall be subject to escalation by the Weighted Adjustment Factor.

Section 4. Major Service Standard Failure

A. A Major Service Standard Failure occurs when [

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Section 5. Volume Guarantees.

The Volume Guarantees described in this section shall not apply until the first full calendar year following the year in which the service standards described in Section 2 are in effect. If NSR receives[] train starts by the third anniversary of the Closing (as defined in the Transaction Agreement), and []trains starts by the fourth anniversary of the Closing (as defined in the Transaction Agreement), an additional year will be added to the contemplated initiation of the Volume Guarantees.

(1) NSR commits that [

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(2) The Volume Guarantee shall be reduced if [

]. The percentage of such a decline will result in an equivalent percentage reduction to the Volume Guarantee for that calendar year.

(3) The Volume Guarantee shall be reduced by []for any calendar year in which [

], and reduced by []as well

[

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(4) The Volume Guarantee shall cease to be in effect [] and shall not become effective again until[

].

(5) The Volume Guarantee shall cease to be in effect [].

(6) The Volume Guarantee for any particular calendar year shall be reduced by [

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(7) In the event NSR fails to meet the Volume Guarantee in any calendar year,
[]:

(a) [

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Section 6. Imbalance Fees.

A. Imbalance Threshold

NSR will pay MSLLC[

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B. Shortfall

For each train below the Imbalance Threshold, [

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Section 7. Miscellaneous Provisions.

A. Either Party shall have the right to conduct an audit, by a third party acceptable to the other Party, with respect to any of the provisions of this Agreement, provided that the third party's report to the Party requesting the audit shall be limited to whether or not the Agreement has been complied with, and the extent of the inaccuracy, if any. However, the Party whose records are being audited shall receive a full report from the auditor concerning the findings from such audit.

B. Payments of any Shortfall Damage or the Imbalance Fee pursuant to this Agreement shall be made no later than[
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Exhibit 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 34821

Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway, LLC.

Meridian Speedway LLC (“MSLLC”) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (“NSR”) to permit NSR to operate over a line of railroad owned and operated by MSLLC between Milepost 0.0 ± at Meridian, MS and Milepost 95.26 ± at Jackson, MS, and between Milepost 95.7 ± at Jackson, MS and Milepost V-169.85 ± at Shreveport, LA, a total distance of approximately 320 miles.

The trackage rights will be effective on a date mutually agreed in writing between NSR and MSLLC, which shall not occur until the effective date of this Notice (including compliance with any condition(s) imposed by the STB in connection with this Notice). The trackage rights covered by this Notice may be exercised by NSR only in the event of certain occurrences described in the parties’ agreement.

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

Dated:

By the Board

Vernon A. Williams,
Secretary