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May 14, 2021
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May 14, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 32760, Union Pacific Corporation—Control & Merger—Southern Pacific Rail Corporation

Dear Ms. Brown:

This letter is intended to notify the Surface Transportation Board (“Board” or “STB”) that BNSF Railway Company (“BNSF”) served Union Pacific Railroad Company (“UP”) today with the letter attached here as Exhibit 1 seeking arbitration under the parties’ Houston-Brownsville, Texas haulage agreement.¹ UP provides haulage services to BNSF under the agreement in order to implement an important competition-preserving condition imposed by the Board in connection with its approval of the merger of UP and Southern Pacific Rail Corporation (“SP”) in the above-referenced docket.²

¹ The haulage agreement is attached here as Exhibit 2, and relevant excerpts thereof are attached here as Exhibit 3.

² See *Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp (Decision No. 44)*, 1 S.T.B. 233, 406-10 (1996) (noting that the BNSF/UP settlement agreement, imposed as a merger condition, allowed BNSF to move traffic between Houston and Brownsville in order to preserve competition to and from the Brownsville area and Mexico that would have otherwise been lost by the consolidation of UP and SP). The March 1, 2002 Restated and Amended Settlement Agreement is attached here as Exhibit 4. In connection with the settlement agreement, UP agreed to grant BNSF trackage rights on certain lines in South Texas, including “UP’s line between Houston (Algoa) and Brownsville, TX.” RASA § 4(a), Ex. 4 at 14-15. In lieu of BNSF conducting “actual trackage rights operations” on this line, UP agreed “to handle BNSF’s business on a haulage basis.” RASA § 4(f), Ex. 4 at 19. Moreover, UP agreed to “accept, handle, switch and deliver traffic moving under haulage

For nearly 25 years, UP has hauled BNSF traffic under the Houston-Brownsville haulage agreement. Currently, BNSF delivers and receives its Houston interchange and its Houston-Brownsville haulage cars at UP's Englewood Yard, by longstanding agreement of UP and BNSF local operating personnel. UP hauls BNSF traffic on the line five-to-seven days a week – the same frequency that UP moves its own traffic on the line.

As set forth in more detail in BNSF's letter seeking arbitration, UP has threatened to unilaterally implement certain operating changes, in violation of the haulage agreement and the UP/SP merger conditions. In an email from UP's General Manager, Andrey Drozdov, sent on March 30, 2021, and attached here as Exhibit 5, UP indicated that it planned to (1) reduce the frequency of haulage service from five-to-seven days a week to two days a week, (2) require BNSF to supply locomotives and end-of-train devices for all BNSF haulage traffic, (3) change the interchange location for the haulage traffic, and (4) require pre-blocking of both northbound and southbound cars.

Through subsequent correspondence between UP and BNSF, attached here as Exhibit 6, BNSF outlined how the proposed changes violate the terms of the Haulage Agreement and the RASA, which require BNSF to receive haulage services on a nondiscriminatory basis. Ex. 6 at 3 & 4 (April 8, 2021 and April 9, 2021 emails).

Notwithstanding these violations by UP, BNSF has agreed to pre-block the cars interchanged daily to UP for the southbound haulage service. BNSF continues to object to (1) the changes in delivery/receipt location, (2) the proposed requirement that third parties (KCSM and Port of Brownsville/BRG) pre-block their cars for northbound traffic, (3) the proposal that BNSF supply locomotives for all haulage service, and (4) the reduction in frequency of service. Ex. 6 at 2 (April 20, 2021 email).

On April 29, 2021, BNSF and UP agreed to an unconditioned two-week extension that left in place the current operating practices while the parties discussed the UP demands. Ex. 6 at 8 (May 6, 2021 email). BNSF understands that, starting tomorrow, May 15, 2021, UP will impose the haulage operating changes that UP originally proposed. *Id.*

UP's unilateral decision to reduce BNSF's service to two days per week would unfairly disadvantage BNSF's customers and would flout the Board's order for UP

without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account." *Id.*

to provide BNSF with non-discriminatory haulage services on this line.³ BNSF estimates that the service reduction will have the potential to disadvantage BNSF's customers by generally three-to-four days' delay in transit time in each direction as compared to UP traffic moving over the same line. Moreover, the UP decision will have upstream impacts to the BNSF network because BNSF will be required to hold volumes at distant locations in order to accommodate UP's arbitrary service plan. BNSF is concerned that UP is imposing one-sided operational changes on BNSF in order to lower the costs of UP's Houston operations at the expense of the rights to competitive BNSF service that shippers secured from the Board in connection with the UP/SP merger.

The Haulage Agreement contains a dispute resolution provision that requires the parties to settle any questions or controversies by arbitration. Haulage Agreement § 13, Ex. 2 at 11-12. On May 6, 2021, BNSF served UP with an arbitration demand under the Haulage Agreement. The Haulage Agreement provides that, "[u]ntil the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Haulage Agreement shall continue in the manner and form existing prior to the rise of such question." Haulage Agreement § 13(D), Ex. 2 at 12.

To be clear, BNSF does not request that the Board take any action at this time. Consistent with the Board's prior direction in this proceeding, BNSF has sought to arbitrate this dispute with UP before formally bringing the matter to the Board to resolve.⁴ BNSF expects UP to honor its obligation to maintain the status quo of haulage operations during the pendency of the arbitration. However, given UP's intransigence and unilateral demands for operating changes effective immediately, BNSF may need to return to the Board to seek expedited relief.⁵ Moreover, if the Board would prefer BNSF to bring the merits of this dispute directly to the Board for resolution, given that a critical UP/SP merger condition is implicated, BNSF is willing to do so.

³ See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1184 (2001) ("UP cannot unilaterally take action that impairs BNSF's ability to provide service on a trackage rights line.").

⁴ See, e.g., *Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp (Decision No. 81)*, 3 S.T.B. 737, 742 (1998) ("any further disputes between BNSF and UP arising under their settlement agreement should be arbitrated under the provisions of that agreement before bringing the matter to us to resolve").

⁵ See *UP/SP (General Oversight) Decision No. 21*, 5 S.T.B. at 1177-78 (stating that the Board retains continuing authority under 49 U.S.C. § 11327 "to address any merger-related concerns arising of the [the Board's] conditions.").

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter W. Denton', written over a horizontal line.

Peter W. Denton

Attorney for BNSF Railway Company

Enclosures

cc: Adrian L. Steel, Jr., Mayer Brown LLP
All parties of record

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 1

BNSF Arbitration Demand



SARAH W. BAILIFF
*Assistant Vice President
Contracts and Joint Facilities*

BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, Texas 76161-0034
P.O. Box 961034
Email: Sarah.Bailiff@bnsf.com
Phone: (817) 352-2354

May 14, 2021

By Overnight Courier and E-mail

Union Pacific Railroad Company
Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, NE 68179

Union Pacific Railroad Company
General Director Joint Facilities
1416 Dodge Street
Omaha, NE 68179

**Re: BNSF Arbitration Demand Pursuant to Haulage Agreement Between
Houston, Texas and Brownsville, Texas dated June 1, 1996 (as amended)**

Gentlemen:

BNSF Railway ("BNSF") hereby provides notice to Union Pacific Railroad Company ("UP," and together with BNSF "the Parties") that it demands arbitration pursuant to the Haulage Agreement Between Houston, Texas and Brownsville, Texas dated June 1, 1996, as amended ("Haulage Agreement"), Section 13, to address UP's breaches of the Haulage Agreement.

BNSF seeks arbitration to compel UP to honor the terms of the Haulage Agreement. The questions to be submitted for arbitration arise from UP's March 30, 2021 correspondence detailing intended operating changes by UP which are contrary to, and in violation of, the Haulage Agreement. The questions for arbitration include:

- Whether UP's proposed changes to the frequency and terms of haulage services violate the requirement that all operating decisions be made on a nondiscriminatory basis;
- Whether UP may unilaterally alter the delivery/receipt location for rail cars to be moved pursuant to the Haulage Agreement;

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- Whether UP may demand that BNSF provide locomotive power for all haulage services; and
- Whether the blocking requirements provided for under the Haulage Agreement apply to third-parties.

BNSF reserves the right to amend this notice as required and to serve a detailed Statement of Claim.

Pursuant to the terms of Haulage Agreement, the Parties now have twenty days to agree upon a single arbitrator. Haulage Agreement, Section 13(B). To the extent that UP intends to explore the possibility of a single arbitrator, BNSF will meet and confer on that possibility. If the Parties do not agree on a single arbitrator, BNSF will appoint an arbitrator.

The terms of the Haulage Agreement require UP to continue its performance under the Haulage Agreement "in the manner and form existing prior" to March 30, 2021. Haulage Agreement, Section 13(D). UP must continue such service until an arbitral award is issued. *Id.*

Please contact me if you wish to discuss this matter.

Sincerely,



Sarah Bailiff

cc: Tyler White, Sr. General Attorney
Steven K. Davidson, Steptoe & Johnson
Molly Bruder Fox, Steptoe & Johnson

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 2

Haulage Agreement and First Supplement

**HAULAGE AGREEMENT
BETWEEN
HOUSTON, TEXAS AND BROWNSVILLE, TEXAS**

THIS HAULAGE AGREEMENT, made and entered into this 1st day of June, 1996, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as "MPRR" or "Owner"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User").

WITNESSETH:

WHEREAS, Owner owns lines of railroad which extend (i) from Houston (Settegast Yard), Texas in the vicinity of Owner's Milepost 2.4 (Owner's Palestine Subdivision) to Brownsville, Texas in the vicinity of Owner's Milepost 0.59 (Owner's Brownsville Subdivision), and (ii) on Owner's Brownsville Port Lead at Brownsville, Texas in the vicinity of Owner's Milepost 0.00 (Brownsville Subdivision Milepost 1.29) to the end of Owner's ownership of the Brownsville Port Lead in the vicinity of Owner's Milepost 7.92 at Port of Brownsville, Texas, a total distance of approximately 375.7 miles and 7.92 miles, respectively ("Haulage Corridor"), as illustrated on the attached print dated June 1, 1996, marked Exhibit "A", attached hereto and made a part hereof:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), MPRR (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW, and SPCSL are hereinafter collectively referred to as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, UP/SP agreed to grant certain rights to User, including haulage rights over the Haulage Corridor; and

WHEREAS, User desires to use the Haulage Corridor for the movement of rail cars (loaded or empty), in User's account, in Owner's trains in each direction over the Haulage Corridor; and

WHEREAS, Owner is agreeable to such an arrangement under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the parties hereto covenant and agree as follows:

Section 1. Haulage Rights.

(A) User hereby hires and confirms Owner as its agent to provide haulage services for loaded and empty rail cars on the Haulage Corridor ("Haulage Services") and Owner agrees to perform such Haulage Services solely as User's agent, and in each case pursuant to the following terms and conditions:

- i. Haulage Services for rail cars shall be provided on a per rail car basis only.
- ii. Haulage Services shall apply to all commodities.
- iii. User agrees that where blocking is requested by User, it shall enter into a separate written agreement with Owner detailing, among other things, the number of blocks required and Owner's cost to provide such blocking.
- iv. It is expressly understood by the parties that any Haulage Services provided by Owner shall, at Owner's option, be on a train load basis or using Owner's existing train service and capacity, in both cases using Owner's locomotives and crews.
- v. For such Haulage Services, User shall be permitted to quote rates in contracts, quotations, or appropriate publications.
- vi. User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, and (b) subject to the geographic limitations set forth below, serve new shipper facilities, future transloading facilities and to establish and serve intermodal and auto facilities at points listed on Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (b) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established they shall be presumed to establish these geographic limitations.

- vii. User shall have the right to have its rail cars for which Haulage Services are provided hereunder interchanged with Ferrocarriles Nacionales de Mexico at Brownsville (Matamoros, Mexico) and Port of Brownsville and Brownsville and Rio Grande International Railroad at Brownsville, pre-blocked as required by Owner.

(B) While performing such Haulage Services, Owner shall not be a connecting or intermediate carrier and shall not be entitled to any division of tariff, contract, or switching rates or like charges other than as herein provided. Rail cars being so moved shall remain in User's car hire account as applicable.

(C) The management, operation, dispatching and maintenance of the Haulage Corridor shall, at all times, be under the exclusive direction and control of Owner, and the movement of rail cars over and along the Haulage Corridor shall at all times be subject to the direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time-to-time institute, but in the management, operation, dispatching and maintenance of the Haulage Corridor, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of rail cars over the Haulage Corridor shall be made on a nondiscriminatory basis, without reference to ownership, and customary priorities shall be accorded differing classes of traffic (i.e. bulk commodities, manifest, intermodal, etc.) irrespective of whether the traffic is that of Owner or User. The foregoing shall include, without limitation, decisions as to terminal departure times, destination terminal receiving times, enroute delays, track maintenance and the scheduling of maintenance windows. User may monitor dispatching operations over the Haulage Corridor. Owner shall from time-to-time notify User of operating rules and any changes thereto.

(D) During the normal course of business it is expected that some rail cars moved under this Haulage Agreement shall be diverted by User. If, in the sole opinion of the Owner, diversion of rail cars by User becomes an unreasonable administrative burden on Owner, Owner shall so notify User and present to User an estimate of Owner's actual cost to handle diversions for User. If such amount is not accepted by User, User and Owner shall then negotiate in good faith to determine an appropriate charge to be paid by User to Owner to cover Owner's reasonable cost for each rail car so diverted after Owner's notification to User as set forth above. If after ninety (90) days Owner and User have been unable to reach agreement that a diversion cost is appropriate or as to what the cost of each diversion shall be then the matter shall be submitted to binding arbitration under the terms and conditions contained in Section 13 of this Haulage Agreement.

Section 2. Pick Up and Delivery Tracks. Rail cars shall be delivered to and received from User at Owner's Yard at Houston (Settegast) in connection with the provision of Haulage Services as mutually agreed upon by the authorized representatives of the parties hereto from time-to-time.

Section 3. Receipt and Delivery of Rail Cars.

(A) Rail cars shall be deemed received from User (i) when Owner couples into such rail cars, or (ii) in the case of run through operations, when, Owner's crews board User's train for the commencement of Haulage Services. Rail cars shall be deemed delivered to User (i) when set out, and the locomotives of Owner are uncoupled therefrom, on agreed to tracks, or (ii) in the case of run through operations, when Owner's crews disembark from User's train at the designated delivery track, and the notification of such delivery has been given to User.

(B) At Brownsville User shall have parity with Owner and shall have equal access to the Mexican border crossing at Brownsville (Matamoros, Mexico) ("Mexican Border Crossing"); provided, however, movements to and from the border crossing bridge and within Brownsville shall be under the direction and control of the authorized representatives of Owner. The parties also agree that:

- (i) User shall be responsible for issuing all shipment notifications; preparation and rendition of all assessorial billing; performing all collections; and provide all rail car tracing in connection with rail cars of User going to or from Mexico, as described in tariffs, transportation agreements and circulars published by User.
- (ii) User shall be responsible for instructing importers, exporters and brokers on processes required on the rail cars of User in order to comply with United States and Mexican customs regulations, agricultural regulations and other United States and Mexican federal regulatory agency regulations required to move rail cars of User between the United States and Mexico.
- (iii) User shall be responsible for the preparation and submission of all Inward Cargo Manifests, United States Customs Form 7533, and In-Bond Documents, United States Customs Form 7512, required by United States Customs on rail cars of User entering the United States. Further, User shall be responsible for submitting all In-Bond T&Es, United States Customs Form 75330-C, on all rail cars of User transiting the United States and exporting via User to Mexico.
- (iv) User shall be responsible for surrendering all Shippers Export Declarations, Form 7525, to United States Customs on United States export shipments of User.

- (v) User shall be responsible for providing, at its sole cost and expense, grain rail car cleaning, fumigation or other services that may be required to prepare a conveyance or its commodity for compliance with regulatory requirements for entry into the United States or Mexico.
- (vi) User shall be responsible for providing, at its sole cost and expense, all labor and equipment required to comply with United States Customs conveyance and/or commodity inspection requirements relative to rail cars of User moving north and south across the United States/Mexican border.
- (vii) User shall be responsible for determining and supplying, at its sole cost and expense (if it chooses to supplement the rail car supply needs of the Mexican railroads), empty rail cars for all rail car orders for northbound loading out of Mexico when User is designated the first United States linehaul carrier in the route.
- (viii) In the event Owner is unable to complete the movement of User's rail cars over the Mexican Border Crossing for any reason, and Owner is required to set out and subsequently pick up rail cars, User shall reimburse Owner for its cost and expense for such additional switching pursuant to a separate written agreement between the parties.

Section 4. Compensation for Haulage Services. As compensation for the Haulage Services as above set forth, User shall pay to Owner, in addition to other payments to be made under this Haulage Agreement, for each loaded or empty rail car movement (including reciprocal switch charges and/or interchange charges) the amount set forth in Exhibit "B", attached hereto and made a part hereof (the "Haulage Rates").

The Haulage Rates shall be subject to adjustment annually beginning on January 1, 1997 to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the Association of American Railroads ("AAR") or successor agency or other organization. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 13 of this Haulage Agreement. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the Haulage Rates shall be increased or decreased in direct proportion to such ratio, but under no circumstances shall the adjusted rate be less than the initial Haulage Rates provided in this Haulage Agreement.

Upon every fifth anniversary of this Haulage Agreement ("Anniversary Date"), either party may request on ninety (90) days' written notice that the parties jointly review the

operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, any party may request binding arbitration under Section 13 of this Haulage Agreement. It is the intention of the parties that the Haulage Rates reflect the same basic relationship to operating costs as upon execution of this Haulage Agreement.

Notwithstanding the foregoing, User shall not be obligated to pay haulage charges for rail cars returning empty from loaded haulage movements delivered to the Owner in violation of Association of American Railroads ("AAR") Circular No. OT - 10 regulations.

Section 5. Bad Ordered Rail Cars. If a rail car of User is bad ordered en route on the Haulage Corridor and it is necessary that it be set out, such bad ordered rail car shall, after being promptly repaired, be promptly picked up and delivered to User. Unless otherwise agreed, Owner shall, at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered rail car safe for movement. The employees and equipment of Owner while in any manner so engaged or while en route to, or returning to Owner's terminal from, such an assignment shall be considered sole User employees and sole User equipment. However, should Owner's employees after repairing such bad ordered rail cars for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability shall end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner for rail cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the AAR, hereinafter called "Interchange Rules," in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the rail car owners for rail car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to rail cars that are User's rail car owner responsibility items as determined under said Interchange Rules should said rail car owner refuse or otherwise fail to make payment therefor.

Section 6. Billing.

(A) Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. For charges other than Haulage Rates, billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by this Haulage Agreement User is required to pay in lawful money of the United States within thirty (30)

days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

(B) Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Surface Transportation Board ("STB") or retroactive adjustment of wage rates and settlement of wage claims.

(C) So much of the books, accounts and records of each party hereto as are related to the subject matter of this Haulage Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

(D) Should any payment become payable by Owner to User under this Haulage Agreement, the provisions of Subsections (A) through (C) of this Section 6 shall apply with User as the billing party and Owner as the paying party.

(E) Either party hereto may assign any receivables due it under this Haulage Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under this Haulage Agreement.

Section 7. Liability and Indemnification. Except as otherwise provided, each party assumes and agrees to settle or pay all claims for loss or damage to property, including rail cars, empty and loaded, handled for each party's sole account as follows:

(A) User agrees to indemnify and hold Owner harmless of and from any and all loss or damage to rail cars in User's account, or the contents thereof (including damages for delay to freight and damage to patrons or property caused by the freight), arising out of Owner's handling of such rail cars pursuant to this Haulage Agreement. In the event claim is made against Owner for any such loss, damage or delay, User agrees to defend, process, adjust, settle, or pay any such claim (whichever is or are applicable), to appear and defend any suit brought to enforce such claim, and to pay all expenses, costs and judgments obtained or incurred in any such suit.

(B) User shall also assume and bear liability for all damage to or loss of Owner's property used in handling rail cars in User's account, including locomotives, cabooses, and end-of-train devices ("ETDs"), tracks and appurtenances, and injury (including death) to Owner's employees or third persons, or damage to or loss of the property of such employees or third persons, suffered as a result of the handling of rail cars in User's account hereunder in that proportion which the number of rail cars in User's account in the train containing such rail cars shall bear to the total number of rail cars in such train (excluding locomotives and cabooses), provided that User shall not bear any portion of damage to or loss of rail cars in Owner's account or the contents thereof which may result from such operation.

(C) It is mutually agreed that the provisions of Subsection (B) of this Section 7 shall not be applicable in the event of a collision between a train of Owner's that contains rail cars in User's account and a train of Owner that does not contain rail cars in User's account, when such collision is caused solely by negligence in the operation of the Owner train that does not contain rail cars in User's account. Then, in such event, Owner shall bear solely the loss of and damage to rail cars in User's account and the contents thereof, and shall bear any other liability for damage, injury (including death) or loss suffered by User or a third party as a result of such collision.

(D) All employees of Owner from time to time engaged in handling rail cars in User's account which are in a train of Owner also involving rail cars in Owner's account shall, for the purpose of this Haulage Agreement, be regarded as joint employees of the parties hereto while so engaged. An employee or employees of a party while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party shall be deemed the sole employee(s) of such party. As between the parties hereto, each party shall assume, bear, settle and pay all loss, costs, or damage which its rail cars or other property, rail cars handled for its account, or freight in its custody as a common carrier, or otherwise, shall suffer by reason of the actions of said joint employees while engaged in joint rail car handling. All damage to property jointly used in handling rail cars, including locomotives, cabooses, ETDs, tracks and appurtenances, and in the performance of any of the services as aforesaid, and all damages or injury (including death) to third persons, or to property of third persons, and all loss, cost and damage or injury (including death) such joint employees may suffer as a result of such joint handling operation (except to the extent caused by the freight), or the performance of such other duties as aforesaid, shall be treated as a common expense incident thereto. Such common expense shall be divided between the parties hereto in proportion that the number of rail cars being handled for User by Owner bears to the total number of rail cars being handled by Owner in such joint rail car handling operation related to such loss, damage or injury (including death) at the time such loss, damage or injury (including death) occurs.

(E) THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS HAULAGE AGREEMENT, SUCH INDEMNITY SHALL INCLUDE INDEMNITY FOR (1) THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 8. Service Standards Committee. A Service Standards Committee ("Committee"), comprised of officers of Owner and User, shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient use of the facilities that are a part of the Haulage Corridor. The Committee shall meet on a regular basis not less often than every three (3) months during the first year of operation under this Haulage Agreement, and thereafter when any party serves upon the other thirty (30) days' written notice of its desire to meet to review the overall performance of Haulage Service provided for under this Haulage Agreement, to resolve conflicts and consider other relevant matters in the discretion of the Committee. The Committee shall consider technological improvements that may foster more rapid and consistent service in the Haulage Corridor. Changes in service standards or decisions on capital investments flowing from such consideration shall be negotiated in good faith and subject to the terms of this Haulage Agreement.

Section 9. Hazardous Materials.

(A) In the event any accident, bad ordered rail car, derailment, vandalism or wreck (hereinafter for the purposes only of this Section 9 called, collectively, "derailment") involving rail cars in the account of User carrying hazardous materials, substances or wastes as defined pursuant to Federal or State law (hereinafter called "Hazardous Materials") shall occur on any segment of the Haulage Corridor, Owner shall notify User of such incident and any report required by Federal, State, or local authorities shall be the responsibility of User. User shall then advise the owner/shipper of Hazardous Materials

in rail cars in User's account involved in the derailment and shall immediately furnish Owner with all necessary information related to the Hazardous Materials.

(B) Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's rail cars on Owner's property in accordance with all Federal, State, or local regulatory requirements. User, at its sole cost and expense and risk, may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of any Hazardous Materials released and the cleanup effort. Such clean up costs shall be borne in accordance with Section 7 of this Haulage Agreement.

(C) If a Hazardous Materials release from User's rail cars results in contamination of real property or water adjacent to Owner's property, Owner shall assume responsibility for emergency clean up conducted to prevent further damage. User shall be responsible for performing clean up efforts thereafter. Any costs associated with cleaning up real property or water adjacent to Owner's property contaminated by Hazardous Materials shall be borne as provided in Section 7 of this Haulage Agreement.

(D) If Hazardous Materials released from User's rail cars must be transferred to undamaged rail cars, User shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged rail cars that are blocking the Haulage Corridor, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne as provided in Section 7 of this Haulage Agreement. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

(E) The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Haulage Corridor or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 7 of this Haulage Agreement.

Section 10. Acts of God. Whenever a period of time is provided in this Haulage Agreement for any party to do or perform any act or thing other than the payment of money for Haulage Services, said party shall not be liable or responsible for any delays due to strikes, extraordinary weather conditions, lockouts, casualties, acts of God, war, court orders, work stoppages, riots, public disorders, criminal acts of other entities, governmental regulations or control or other such causes beyond the reasonable control of said party. In any such event, any time period shall be extended for the amount of time said party is so delayed; provided that this Section 10 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such delays have been removed.

Section 11. No Third Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership,

corporation or governmental entity other than the parties hereto and their respective successors and assigns any right or benefit under or by reason of this Haulage Agreement.

Section 12. Governmental Approvals. The parties agree to cooperate in seeking any necessary governmental approvals or authority for operations under this Haulage Agreement at any time during its term to the extent such approval or authority may be required under then applicable laws or regulations.

Section 13. Arbitration.

(A) If at any time a question or controversy shall arise between the parties hereto in connection with this Haulage Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 13 shall be governed by the rules and procedures set forth in this Section 13.

(B) If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

(C) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

(D) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or

award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Haulage Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

(E) Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

(F) The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(G) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 14. Labor Protection. If, during the term of this Haulage Agreement, Owner adds to its labor force or has furnished employees to provide for the increased business related to the Haulage Services, then User shall be responsible for any labor protection, guarantees, or reserve board payments for such incremental employees.

Section 15. Assignment. Except as provided in Section 6(E) and in the following sentence, this Haulage Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of the other party. This Haulage Agreement may be assigned by any party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets. In the event of an authorized assignment, this Haulage Agreement and the rights hereunder shall be binding upon the successors and assigns of the parties.

Section 16. Term and Termination. This Haulage Agreement shall be effective upon execution for a term of ninety-nine (99) years; provided, however, that the User may terminate this Haulage Agreement at any time during its term upon ninety (90) days' written notice to Owner. The Haulage Services granted to User pursuant to this Haulage Agreement shall not become effective until the acquisition of control of SP by UP pursuant to the application pending before the STB in Finance docket No. 32760, and provided also that in the event the acquisition of the control of SP by UP is (i) finally disapproved by the STB and the time for any appeal has passed without any appeal being filed or, if such disapproval was appealed, the disapproval was affirmed on appeal, or (ii) approved by the STB subject to conditions that are unacceptable to UP/SP and such control of SP by UP is thus not effected, Owner's agreement to provide the Haulage Services pursuant to this Haulage Agreement shall be of no force and effect and this Haulage Agreement shall terminate. In the event that this Haulage Agreement is terminated as provided in the first sentence of this Section, User may commence operations pursuant to the trackage rights agreement of even date between User and Owner by which Owner granted to User trackage rights over the Haulage Corridor, in which case User, at its sole cost and expense, shall obtain any and all necessary approvals of governmental bodies, including, without limitation, the STB, for such operation except for User's operations related to the movement of rail cars over the Mexican Border Crossing. User agrees that it shall not use its companion trackage rights until such time as it no longer uses the Haulage Services provided under this Haulage Agreement. Liabilities created under this Haulage Agreement, if it becomes effective and is later terminated, shall survive such termination.

Section 17. Default.

(A) Notwithstanding the provisions of Section 6 of this Haulage Agreement, either party hereto claiming default of any of the provisions of this Haulage Agreement shall furnish written notice and demand to the other party for performance or compliance with the covenant or condition of this Haulage Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of this Haulage Agreement under which such claim of default is made.

(B) If the default shall continue for an additional period of thirty (30) days after receipt of such written notice, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of this Haulage Agreement, either party may resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate this Haulage Agreement.

(C) Failure of a party to claim a default shall not constitute waiver of such default. Either party hereto entitled to claim default may waive any such default in writing, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 18. Severability. If any part of this Haulage Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Haulage Agreement and the remaining parts of this Haulage Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 19. Conflicting Provisions. If any conflict between the Settlement Agreement and this Haulage Agreement shall arise, the provisions of the Settlement Agreement shall govern unless specific reference is made in this Haulage Agreement, or any amendment thereof, to the fact that an inconsistency exists between it and the Settlement Agreement and that, as to such specifically identified inconsistency, the terms of this Haulage Agreement, or any amendment thereof, control.

Section 20. Notices. All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Haulage Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid and addressed to such other party at the address listed below:

If intended for Owner:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for User:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

General Director Contracts
and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Section 21. Other Agreements. This Haulage Agreement shall not become effective unless and until each and every trackage rights, haulage, purchase/sale and proportional rate agreement between and among the parties to the Settlement Agreement

[illegible]

G:\LAWADM\WGB\SP\HOUSTON.HAU

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By: James W. Dolan
Its: Vice President - Law

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Its: _____

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By:  _____
Its:  _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:  _____
Its:  _____

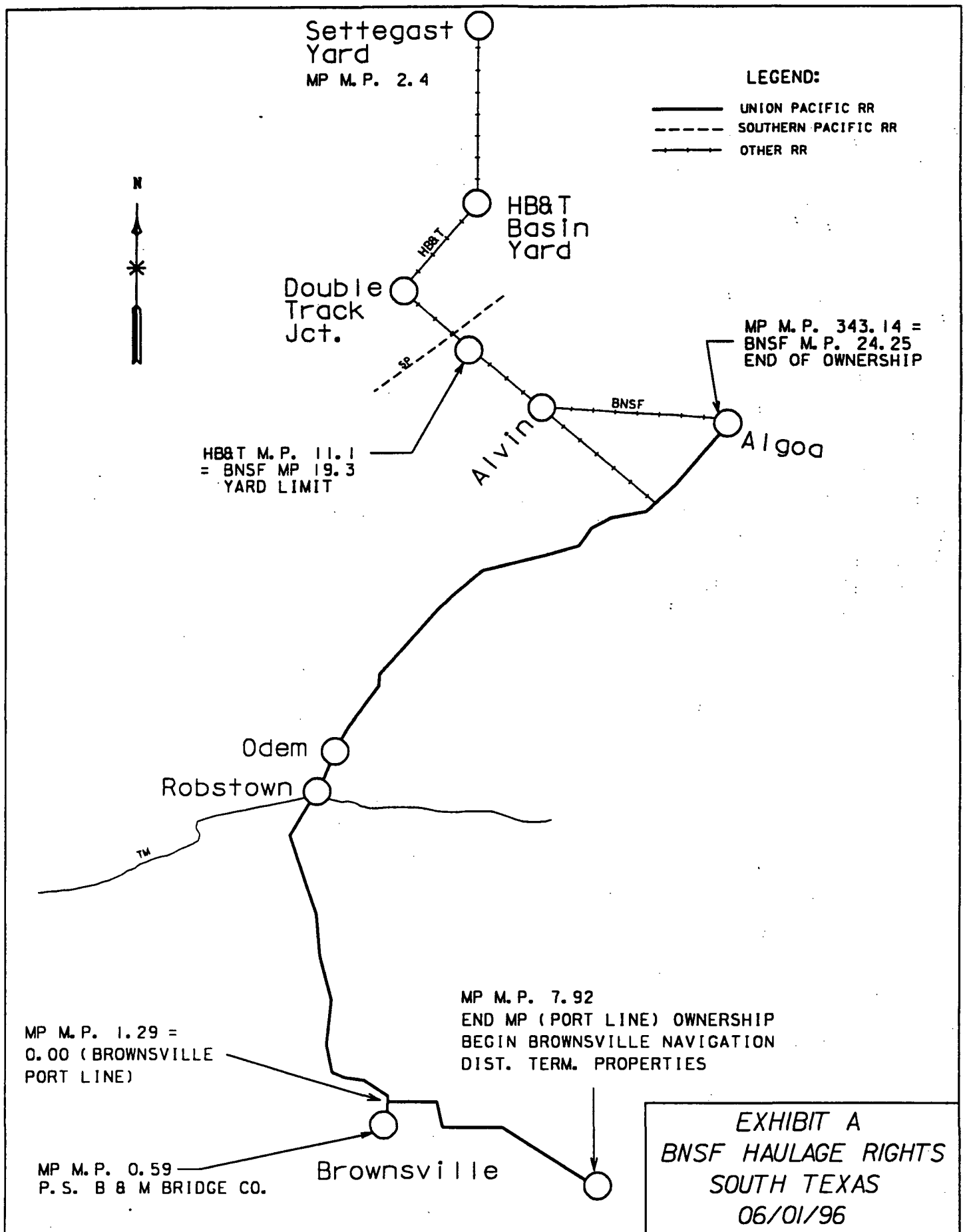


EXHIBIT "B"
TO
HAULAGE AGREEMENT

Intermodal, carload and bulk traffic within defined Haulage Corridor in either direction (loaded or empty):

- | | | |
|----|---|------------------|
| 1. | Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher | \$50.00 per car |
| 2. | Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher for unit trains defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee | 25.00 per car |
| 3. | Movement of Rail Car within Haulage Corridor | .50 per car mile |
| 4. | Reciprocal Switch Rail Cars at 2-to-1 industries | 130.00 per car |
| 5. | Reciprocal Switch Rail Cars at 2-to-1 industries that contain commodities within the following STCC: 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144. | 60.00 per car |

NOTE: All charges listed above are subject to annual adjustment as provided for in Agreement

Contract Transmittal

Page 1 of 2



BURLINGTON
NORTHERN
RAILROAD

Instructions: Complete all but the shaded areas and return to Contract Records Coordinator, 777 Main Street, Suite 3800, Fort Worth, Texas

SUBMITTED BY:		☒ MARK THIS BOX TO HAVE A COPY OF THE CONTRACT FORWARDED TO THE ADDRESS BELOW	
NAME		TITLE	DEPARTMENT
Susan J Bywater		Manager Contracts and Jt. Facilities	Burlington Northern Santa Fe
TELEPHONE NO.	STREET ADDRESS		CITY, STATE ZIP
817-352-4938	2600 Lou Menk Drive, P O Box 961034		Fort Worth, TX 76131

☒ NEW CONTRACT	DATE OF CONTRACT (mm/dd/yy)	EFFECTIVE DATE (mm/dd/yy)	TERMINATION DATE (mm/dd/yy)
	Complete the following: June 1, 1996	Upon Execution	99 years
☐ AMENDMENT	DATE OF AMENDMENT (mm/dd/yy)	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yy)
	Complete the following:		
☐ CANCELLATION	DATE OF CANCELLATION (mm/dd/yy)	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yy)
	Complete the following:		

P R O P O S E L E A S E T R A N S F E R / R E I S S U E	DATE OF CANCELLATION (mm/dd/yy)	NEW LEASE NO.	
	FOR EACH LEASE BEING CANCELLED, INDICATE WHETHER IT IS BEING TRANSFERRED OR REISSUED, AND SUPPLY THE ORIGINAL LEASE NUMBER AND DATE:		
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)

CONTRACT PARTIES (OTHER THAN BN)	
Missouri Pacific Railroad Company, BN and Santa Fe	
BN INVOLVEMENT	
User	
DESCRIPTION	
Haulage between Houston, TX and Brownsville Texas	

LOCATION		LINE SEGMENT / MILEPOST INFORMATION					
STATE	CITY	LINE SEG. #	FROM MP #	TO MP #	LINE SEG. #	FROM MP #	TO MP #
TX	Houston and Brownsville						

RAILROAD PROTECTIVE INSURANCE (Y, N)	CERTIFICATE OF INSURANCE ATTACHED (Y, N/A)	CONFIDENTIAL (Y, N)	CONTRACT TYPE
y		Y	OP/JF

FORWARD COPIES OF THIS CONTRACT TO:				
NAME / TITLE	STREET ADDRESS	CITY	STATE	ZIP

BILLABLE CONTRACT (Y, N)	Y
IF YES, COMPLETE THE APPROPRIATE SECTIONS ON PAGE 2 OF THIS FORM	

CONTRACT NO.
BF 63

**FIRST SUPPLEMENT TO
HAULAGE AGREEMENT
BETWEEN
HOUSTON, TEXAS AND BROWNSVILLE, TEXAS**

THIS FIRST SUPPLEMENTAL AGREEMENT, made and entered into as of the 19th day of September, 1996, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as "MPRR" or "Owner"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User").

WITNESSETH:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended ("Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), MPRR (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, UP/SP agreed to grant certain rights to User, including haulage rights over (i) Owner's trackage between Houston, Texas and Brownsville, Texas, and (ii) Owner's Brownsville Port Lead at Brownsville (the "Haulage Corridor") and between Odem, Texas and Corpus Christi, Texas;

WHEREAS, pursuant to the Settlement Agreement, Owner and User entered into a Haulage Agreement dated as of June 1, 1996 (the "Original Haulage Agreement") by which Owner agreed to act as User's agent to provide haulage services for loaded and empty cars on the Haulage Corridor (the "Haulage Services");

WHEREAS, Owner and User wish to modify the terms of the Original Haulage Agreement to specifically include the Odem - Corpus Christi trackage.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the parties hereto agree as follows:

1. The first WHEREAS of the Original Haulage Agreement is hereby deleted in its entirety and replaced by the following:

"WHEREAS, Owner owns lines of railroad which extend (i) from Houston (Settegast Yard), Texas in the vicinity of Owner's Milepost 2.4 (Owner's Palestine Subdivision) to Brownsville, Texas in the vicinity of Owner's Milepost 0.59 (Owner's Brownsville Subdivision), (ii) over Owner's Brownsville Port Lead to Brownsville, Texas in the vicinity of Owner's Milepost 0.00 (Brownsville Subdivision Milepost 1.29) to the end of Owner's ownership of the Brownsville Port Lead in the vicinity of Owner's Milepost 7.92 at Port of Brownsville, Texas, and (iii) over Owner's Corpus Christi Subdivision from Odem, Texas in the vicinity of Milepost 132.2 (Brownsville Subdivision Milepost 154.62) and Corpus Christi, Texas, in the vicinity of Milepost 145.59, a total distance of 375.7 miles, 7.92 miles and 13.39 miles, respectively ("Haulage Corridor"), as illustrated on the attached print dated June 1, 1996, revised September 19, 1996, marked Exhibit "A", attached hereto and made a part hereof;"

2. Section 2 of the Original Haulage Agreement is hereby deleted in its entirety and replaced by the following:

"Section 2. Pick Up and Delivery Tracks. Rail cars shall be delivered to and received from User at Owner's yards at Houston (Settegast), Alcoa, Texas, and Odem, Texas, in connection with the provision of Haulage Services as mutually agreed upon by the authorized representatives of the parties hereto from time-to-time."

3. Exhibit "A", dated June 1, 1996, to the Original Haulage Agreement is hereby deleted in its entirety and replaced by Exhibit "A-1", dated June 1, 1996, revised September 19, 1996, attached hereto and by this reference made a part hereof.

4. Exhibit "B" to the Original Haulage Agreement is hereby deleted in its entirety and replaced by Exhibit "B-1" attached hereto and by this reference made a part hereof.

5. The Original Haulage Agreement shall remain in full force and effect, except as specifically modified herein.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to Haulage Agreement to be duly executed as the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By: *L. M. Starn*
Its: Director - Tr. Facilities

BURLINGTON NORTHERN RAILROAD
COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

By: *J. W. Woolly*
Its: Director Contracts and Joint Facilities

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

By: *J. W. Woolly*
Its: Director Contracts and Joint Facilities

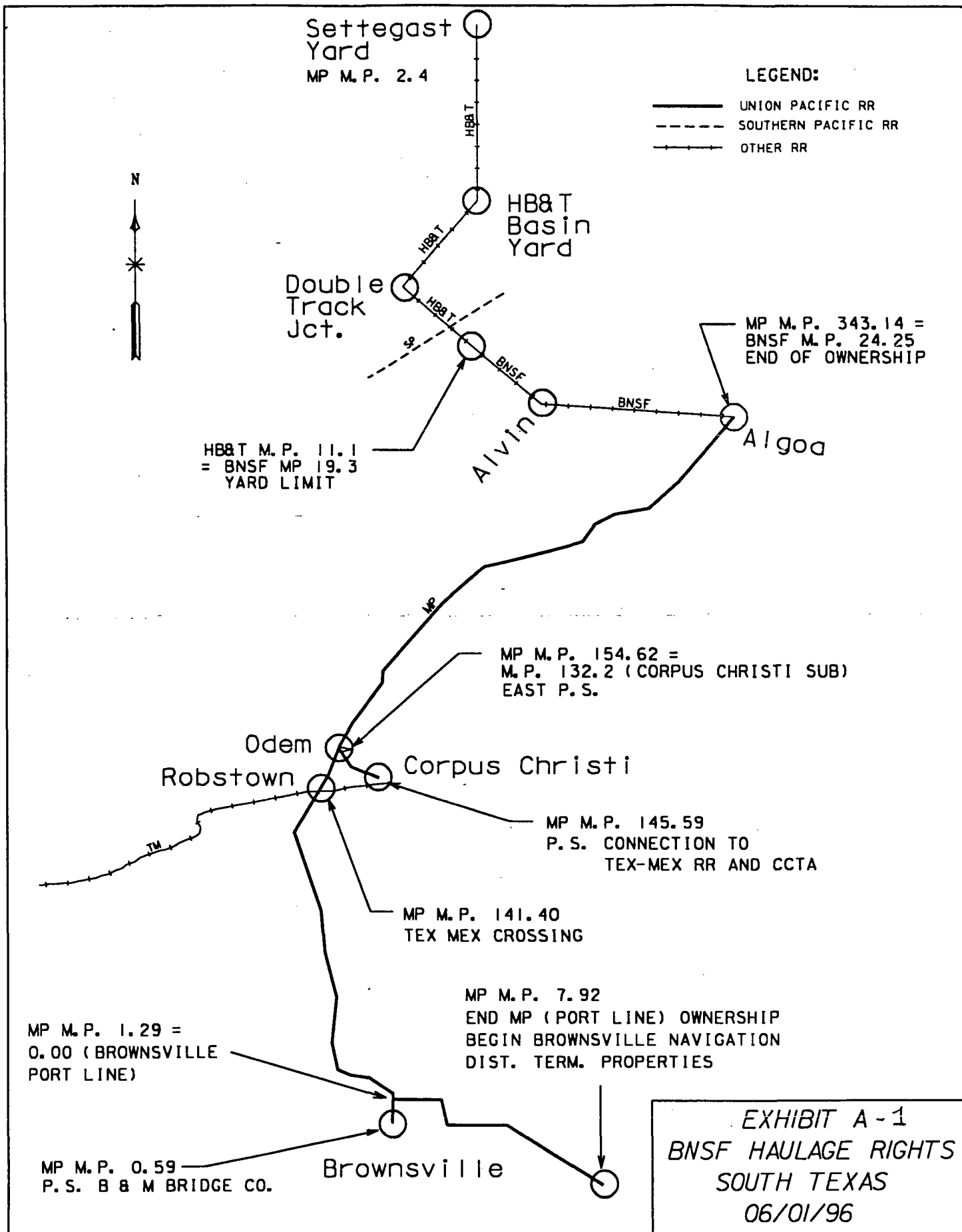


EXHIBIT "B-1"
TO
HAULAGE AGREEMENT

Intermodal, carload and bulk traffic within defined Haulage Corridor in either direction (loaded or empty):

- | | | |
|----|---|------------------|
| 1. | Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher | \$50.00 per car |
| 2. | Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher for unit trains defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee | 25.00 per car |
| 3. | Movement of Rail Car within Haulage Corridor | |
| | i) Rate if Owner provides power and ETDs | .50 per car mile |
| | ii) Rate if User provides power and ETDs | .40 per car mile |
| 4. | Reciprocal Switch Rail Cars at 2-to-1 industries | 130.00 per car |
| 5. | Reciprocal Switch Rail Cars at 2-to-1 industries that contain commodities within the following STCC: 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144. | 60.00 per car |

NOTE: All charges listed above are subject to annual adjustment as provided for in Agreement

September 19, 1996

Contract Transmittal

**BNSF**

Burlington Northern Santa Fe

Instructions: Complete the form and send with original contract to Contract Records Coordinator, 777 Main Street, Suite 3800, Fort Worth, Texas 76102; see attached instructions for more information.

ONLY ORIGINAL CONTRACTS WITH ORIGINAL SIGNATURES ARE TO BE SUBMITTED



MARK THIS BOX AND INCLUDE A FAX NUMBER IN THE SPACE BELOW TO REQUEST A RETURN FAX OF THIS TRANSMITTAL ONCE THE CONTRACT NUMBER IS ASSIGNED

FORM SUBMITTED BY:	PHONE NUMBER	FAX NUMBER	DATE SUBMITTED
Sue Bywater	352-4938	352-7219	December 23, 1996

DEPARTMENT	LOCATION	CONTRACT SIGNED BY:	OFFICER CODE
Operations Support	Ft. Worth	E W Woolley	JF

**NEW CONTRACT**

Complete the following:

DATE OF CONTRACT (mm/dd/yyyy)	EFFECTIVE DATE (mm/dd/yyyy)	TERMINATION DATE (mm/dd/yyyy)	REVIEW DATE (mm/dd/yyyy)

**AMENDMENT**

Complete the following:

ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	DATE OF AMENDMENT (mm/dd/yyyy)
	September 11, 1996	September 19, 1996

**CANCELLATION**

Complete the following:

ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	DATE OF CANCELLATION (mm/dd/yyyy)

CONTRACT TYPE CODE	AMOUNT (TOTAL OR MAXIMUM CONSIDERATION)	FORM CONTRACT OR LAW DEPT. APPROVED (SPECIFY)	CONFIDENTIAL (Y, N)
OP-JF			Y

CONTRACT PARTIES (OTHER THAN BNSF)
Missouri Pacific Railroad Company

DESCRIPTION OF THE CONTRACT
Amends original contract replacing first Whereas, Section 2, Exhibit A, Exhibit B and the original Haulage Agreement shall remain in full force and effect.

CONTRACT LOCATION		LINE SEGMENT / MILEPOST INFORMATION						
STATE	CITY	LINE SEG. #	FROM MP #	TO MP #		LINE SEG. #	FROM MP #	TO MP #
TX	Houston to Brownville							

RAILROAD PROTECTIVE INSURANCE (Y, N)	CERTIFICATE OF INSURANCE ATTACHED (Y, N/A)	REFERENCE NUMBER (IF APPLICABLE)

BNSF BILLS OTHER PARTY? (Y, N)	Y	Patty Shirk-Customer Service and Support-Topeka KS	CONTRACT NO. (ASSIGNED BY INFO. RESOURCE MGMT.)
IF YES, ATTACH EXTRA COPY OF CONTRACT FOR ACCT. DISTRIBUTION		Manager Miscellaneous Receivables-Topeka KS	BF 63.01
*NOTE: NO OTHER DISTRIBUTION WILL BE MADE			

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 3

**Key Terms of Haulage Agreement Between Houston, Texas and
Brownsville, Texas Relevant to Dispute**

Exhibit 3

Key Terms of Haulage Agreement Between Houston, Texas and Brownsville, Texas Relevant to Dispute

BNSF and UP entered into a Haulage Agreement Between Houston, Texas and Brownsville, Texas, on June 1, 1996 (the “Haulage Agreement”), as amended subsequently, and attached here in full as Exhibit 2.

As relevant to the current dispute, the Haulage Agreement contains the following provisions:

I. Frequency of haulage service.

- A. “Haulage Services for rail cars shall be provided on a per rail car basis only.” Haulage Agreement § 1(A)(i), Ex. 2 at 2.
- B. “any Haulage Services provided by [UP] shall, at [UP]’s option, be on a train load basis or using [UP]’s existing train service and capacity, in both cases using UP’s locomotives and crews.” Haulage Agreement § 1(A)(iv), Ex. 2 at 2.
- C. “The management, operation, dispatching and maintenance of the Haulage Corridor shall, at all times, be under the exclusive direction and control of [UP], and the movement of rail cars over and along the Haulage Corridor shall at all times be subject to the direction and control of [UP]’s authorized representatives and in accordance with such reasonable operating rules as [UP] shall from time to time institute, but in the management, operation, dispatching and maintenance of the Haulage Corridor, [UP] and [BNSF] shall be treated equally. All operating, dispatching and maintenance decisions by UP affecting the movement of rail cars over the Haulage Corridor shall be made on a nondiscriminatory basis, without reference to ownership, and customary priorities shall be accorded differing classes of traffic (i.e., bulk commodities, manifest, intermodal, etc.) irrespective of whether the traffic is that of [UP] or [BNSF]. The foregoing shall include, without limitation, decisions as to terminal departure times, destination terminal receiving times, enroute delays, track maintenance and the scheduling of maintenance windows.” Haulage Agreement § 1(C), Ex. 2 at 3.

II. Locomotive power.

- A. “Haulage Services provided by [UP] shall, at [UP]’s option, be on a train load basis or using [UP]’s existing train service and capacity, in

both cases using [UP's]'s locomotives and crews." Haulage Agreement § 1(A)(iv), Ex. 2 at 2.

- B. On October 9, 1997, BNSF and UP signed a letter agreement regarding operations under the Haulage Agreement, attached hereto as Exhibit 7. The parties agreed that "BNSF will supply its own locomotives for haulage trains moving between Algoa and Brownsville ("Haulage Trains")." Ex. 7 at 1.

III. Delivery/receipt location.

- A. "Rail cars shall be delivered to and received from [BNSF] at [UP]'s Yard at Houston (Settegast), Algoa, Texas, and Odem, Texas in connection with the provision of Haulage Services as mutually agreed upon by the authorized representatives of the parties hereto from time to time." First Supplement to Haulage Agreement § 2, Ex. 2 at 22.

IV. Pre-blocking of KCSM and Port of Brownsville/BRG cars.

- A. "[BNSF] shall have the right to have its rail cars for which Haulage Services are provided hereunder interchanged with Ferrocarriles Nacionales de Mexico at Brownsville (Matamoros, Mexico)¹ and Port of Brownsville and Brownsville and Rio Grande International Railroad at Brownsville, pre-blocked as required by [UP]." Haulage Agreement § 1(A)(vii), Ex. 2 at 3.

¹ Ferrocarriles Nacionales de Mexico is a predecessor in interest to Kansas City Southern de México ("KCSM").

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 4

RASA

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ____ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company;

WHEREAS, the Surface Transportation Board ("STB") approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

“2-to-1” Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The “2-to-1 Point Identification Protocol” between the parties attached hereto as Exhibit E shall govern the process for identifying “2-to-1” Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

in Finance Docket No. 32760. An “Existing Transload Facility” is a Transload Facility which was in existence on September 25, 1995.

1. **Western Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP’s line between Denver, CO and Salt Lake City, UT;
- UP’s line between Salt Lake City and Ogden, UT;
- SP’s line between Ogden and Little Mountain, UT;
- UP’s line between Salt Lake City and Alazon, NV;
- UP’s and SP’s lines between Alazon and Weso, NV;
- SP’s line between Weso, and Oakland, CA via SP’s line between Sacramento, CA and Oakland referred to as the “Cal-P” (subject to traffic restrictions as set forth in Section 1(g));
- Overhead Trackage Rights on SP's line between Binney Junction, CA and Roseville, CA in the vicinity of SP MP 106.6;
- SP’s line between Elvas (Elvas Interlocking) and Stockton, CA (subject to traffic restrictions as set forth in Section 1(g) and also excluding any trains moving over the line between Bieber and Keddie, CA purchased by BNSF pursuant to Section 2(a) of this Agreement);
- UP’s line between Weso and Stockton, CA; and
- SP’s line between Oakland and San Jose, CA.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) “2-to-1” Shipper Facilities and Existing Transload

Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also receive the right to interchange with: the BHP Nevada Railroad Company at Shafter, NV; the Utah Railway Company at Utah Railway Junction, UT; Grand Junction, CO; and Provo, UT; the Utah Central Railway Company at Ogden; the Salt Lake, Garfield and Western at Salt Lake City; and the Salt Lake City Southern Railroad Company at Salt Lake City. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash Transload Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash Transload Facilities in Ogden and Salt Lake City and to establish its own soda ash Transload Facilities along the Trackage Rights Lines. BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities and "2-to-1" Points between Salt Lake City, UT, and SP MP 755.1 north of Woods Cross, UT.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections,

sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 1(c) above, of the manner by which it proposes such service be provided and

the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks, NV with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of SP's Sparks intermodal facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins. If for any reason UP/SP vacates its Sparks intermodal facility, BNSF (i) may vacate the facility and independently establish one of its own, or (ii) shall be permitted by UP/SP to continue to occupy the Sparks facility upon entry into an agreement with UP/SP containing normal and customary terms and conditions (including, without limitation, rental) for the use of similar facilities. If UP elects to offer the Sparks intermodal ramp property for sale to a third party and/or receives an offer UP is willing to accept,

UP will offer to sell the property to BNSF on the same terms and conditions as are applicable to the third party. BNSF shall have thirty (30) days in which to advise UP whether or not it will buy the property on those terms. In the event BNSF declines to buy the property on those terms or fails to advise UP of its intentions within thirty (30) days, BNSF's right of first refusal will be extinguished, and UP may sell the property to the third party. BNSF will then be required to vacate the property within six (6) months, and UP's obligation to furnish BNSF with intermodal terminal services and access to a UP intermodal facility in the Sparks/Reno area will be extinguished.

(f) Except as otherwise herein provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service. The restrictions set forth in this section do not apply to local trains serving Shipper Facilities to which BNSF has

access on the identified lines, and such trains shall not be considered in determining whether BNSF is in compliance with such restrictions. If UP grants its prior concurrence, BNSF's overhead through manifest trains shall be allowed to set out and pick up traffic to or from intermediate points on the identified lines.

(h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

(i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide BNSF non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

(j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) if UP/SP

subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) at such time as BNSF begins to use the line for domestic high cube double stacks.

(k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

(a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, CA. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

(b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, OR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) The parties will, under the procedures established in Section 9(f) of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor" attached hereto as Exhibit B.

3. **Southern California Access**

(a) UP/SP shall grant access to BNSF to serve all "2-to-1" Shipper Facilities in Southern California at the points listed on Exhibit A to this Agreement.

(b) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Riverside and Ontario, CA; and

- UP's line between Basta, CA and Fullerton and La Habra, CA.

(c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement.

(d) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(e) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, CA.

(f) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

4. **South Texas Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio, TX;

- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo and Port Lavaca, TX, for the purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor, TX;
- Overhead Trackage Rights on UP's line between Round Rock and McNeil, TX for the purpose of interchanging with the Capital Metro Transit Authority, its successors or agent;

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville, TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 4(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville, TX (including TFM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

(g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie, TX with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

(h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston and Iowa Junction in Louisiana, which trackage rights have been amended by the Term Sheet Agreement and the TX-LA Line Sale Agreement implementing UP's and BNSF's joint ownership of SP's line between Dawes, TX and Avondale, LA;

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles, Rose Bluff and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles. BNSF shall also have the right to interchange with: the Acadiana Railway Company at Crowley, LA; and the Louisiana & Delta Railroad, Inc. at Lafayette, Raceland and Schreiver, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction, LA.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 5(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) UP/SP shall grant BNSF the right to use SP's Bridge 5A at Houston, Texas.

(f) Except as otherwise provided herein, trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C; and SP's Lafayette Yard.

6. **Houston, TX-Valley Junction, IL Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, TX and Fair Oaks, AR via Cleveland and Pine Bluff, AR;
- UP's line between Fair Oaks and Bridge Junction, AR;
- SP's line between Brinkley and Briark, AR;
- UP's line between Pine Bluff and North Little Rock, AR
- UP's line between Houston and Valley Junction, IL via Palestine, TX;
- SP's line between Fair Oaks and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

- UP's line between Fair Oaks and Bald Knob, AR.

(b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, AR, UP/SP agrees, upon request of BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement.

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii)

any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 6(e) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(g) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(h) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction, AK. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. St. Louis Area Coordinations

(a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company ("A&S"). If

BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue in St. Louis, MO and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

(b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis ("TRRA"). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

(c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

(d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

(e) UP/SP shall provide BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO for the purpose of accessing Ameren UE's facility at Labadie. BNSF shall have the right to serve all "2-to-1" Shipper Facilities, New Shipper Facilities and Existing Transload Facilities at Labadie.

8. **Additional Rights**

(a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, CA for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to \$2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege, CA (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor," 3.1 mills per ton mile on all other carload and intermodal business, and 3.0 mills per ton mile for bulk business (as defined in Section 9(a) of this Agreement) escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

(b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

(c) BNSF shall grant to UP overhead trackage rights on BN's line between Saunders, WI and access to the MERC dock in Superior, WI.

(d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, WI (i.e., the southwest quadrant connection at Saunders including the track between BN MP 10.43 and MP 11.14).

(e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

(f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

(g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, IL. UP/SP shall be responsible for the cost of any connections required.

(h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, KS, and switching UP industries at that point.

(i) It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for (a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement and (b) all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger.

The parties recognize that some "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at "2-to-1" Points will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA and Herington, KS are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service

to “2-to-1” Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and at other “2-to-1” Points not along a Trackage Rights Line.

(j) BNSF shall have the right to interchange with any short-line railroad which, prior to the Effective Date of this Agreement, could interchange with both UP and SP and no other railroad.

(k) BNSF shall also have the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line subsequent to UP's acquisition of control of SP; PROVIDED, HOWEVER, that the short-line railroad must be a Class II or Class III railroad neither owned nor operated by BNSF or any BNSF affiliate. In addition, the new rail line must be either (i) an extension of an existing Class II or Class III carrier that does not connect with UP or (ii) a new Class II or Class III carrier. BNSF shall not be entitled to interchange traffic with a Class II or Class III carrier at such a new interchange on a Trackage Rights Line if the traffic originates or terminates at a Shipper Facility that is now served solely by UP unless the Shipper Facility qualifies as a New Shipper Facility or unless the new line qualifies as a build-in or build-out under this Agreement.

(l) In addition to the right to serve build-in/build-out lines specified in Sections 4(a), 5(a) and 6(c) of this Agreement, BNSF shall have the right to serve a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two railroad service upon construction of the build-in/build-out line (i) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (ii) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF Overhead Trackage Rights necessary for BNSF to reach the build-in/build-out line. The routing of such trackage rights shall seek to minimize the

operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service.

(m) Where this Agreement authorizes BNSF to utilize haulage to provide service, the fee for such haulage shall be \$.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be \$50 per loaded or empty car for intermodal and carload and \$25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the \$50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the \$50 per car handling fee was a unit train, adjust prior billings by \$25 per car for each car BNSF demonstrates to have been eligible for the \$25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" Shipper Facilities as provided for in Section 9(i) of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge set forth above as of September 25, 1995, shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

(n) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

(o) In the event UP determines to terminate or not renew a lease to an Existing Transload Facility to which BNSF gained access as a result of this Agreement or the conditions

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

Table I		
Trackage Rights Compensation		
(mills per ton-mile)		
	Keddie-Stockton/Richmond	All Other Lines
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

- (i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.
- (ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.
- (iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.
- (iv) BNSF and UP/SP agree that a capital reserve fund of \$25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

- (v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a “cap” (up or down) of two percentage points more or less than the prior year’s interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement (“Joint Trackage”) shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

The owning carrier shall keep and maintain the Joint Trackage at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the Joint Trackage lines.

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

(e) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over Joint Trackage. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, BNSF and UP/SP shall give preference to each other's employees when hiring employees needed to carry out trackage rights operations or operate lines being purchased. The parties shall provide each other with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 9(e) is intended to create an obligation to hire any specific employee.

(f) The trackage rights grants described in this Agreement and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the

arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

(g) All locations referenced herein shall be deemed to include all areas within the switching limits of the location designated by tariff, clarified to the extent necessary by publicly-available information, in effect as of September 25, 1995, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations.

(h) The tenant carrier on the Joint Trackage shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, storage in transit facilities, team tracks and yards along the Joint Trackage pursuant to the following terms and conditions:

- (i) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;
- (ii) In the case of the construction of team tracks and ancillary facilities, including loading facilities and necessary track connections, the parties shall work cooperatively with each other to enable such construction;
- (iii) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(iv) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value. If the tenant carrier uses property of the owning carrier for the construction of exclusively owned or leased and used facilities, the tenant carrier shall reimburse the owning carrier for its ownership of the property at 100% of its then current fair market value.

(i) Where UP/SP provides reciprocal switching services to BNSF under this Agreement, UP/SP will do so at a rate of no more than \$130 per car as of September 25, 1995, adjusted pursuant to Section 12 of this Agreement, and all such reciprocal switching services shall be provided on an impartial basis. In the event BNSF's access to a Shipper Facility pursuant to this Agreement is effected by means of a third party contractor, (i) any associated third party switch fee shall be paid by UP/SP, (ii) BNSF shall pay to UP/SP the applicable reciprocal switch fee established between the parties to this Agreement, and (iii) BNSF shall neither be entitled to become an assignee of UP/SP nor become eligible to enter into a separate agreement with the shipper so served.

(j) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities for traffic handled by BNSF under the terms of this Agreement. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and

customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access, along with UP/SP, to all SP Gulf Coast storage in transit facilities ("SIT") (i.e., those SP facilities at Dayton, East Baytown, and Beaumont, TX), on economic terms no less favorable than the terms of UP/SP's access, for storage in transit of traffic handled by BNSF under the terms of this Agreement, including, but not limited to, traffic to or from Shipper Facilities to which BNSF gained access under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line as necessary.

(k) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

(l) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this Agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

(m) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including

existing trackage rights) intersect with Trackage Rights Lines or lines it will purchase pursuant to this Agreement. UP/SP shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines over which it will receive trackage rights pursuant to this Agreement. BNSF shall also have the right, at the option of the City Public Service Board of San Antonio, TX, to connect for movement to and from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX.

(n) In the event UP/SP institute directional operations over any Trackage Rights Line or on lines over which BNSF is granted Overhead Trackage Rights, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement so as to avoid impairing BNSF's ability to provide competitive service on a Trackage Rights Line, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that any rights granted to BNSF as a result of UP/SP's institution of directional operations shall be Overhead Trackage Rights only, and PROVIDED FURTHER that BNSF shall have the right, on any Trackage Rights Line over which directional operations have been instituted (including lines on which BNSF received Overhead Trackage Rights to serve a point listed or described in Section 8(i) of this Agreement or a build-in/build-out line), to operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service to shippers on the line which are accessible to BNSF (including service to New Shipper Facilities and build-in/build-out lines) over such line including but not

limited to circumstances where UP operates against the flow of traffic with trains of the same or similar type for the same shipper(s) or for shipper(s) in the same general area.

10. **Compensation for Sale of Line Segments**

(a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

<u>Line Segment</u>	<u>Purchase Price</u>
Keddie-Bieber	\$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's old Avondale yard; and SP's Lafayette yard)	100 million

(b) The purchase shall be subject to the following terms:

- (i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).
- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

- (v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.
- (vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

BNSF shall have the right to inspect the line segments and associated property to be sold and records associated therewith for a period of ninety days from the Effective Date of this Agreement to determine the condition and title of such property. At the end of such period, BNSF shall have the right to decline to purchase any specific line segment or segments. In such event, UP/SP shall grant BNSF overhead trackage rights on any such segment with compensation to be paid, in the case of Avondale-Iowa Junction on the basis of the charges set forth in Section 9(a) of this Agreement, and in the case of Keddie-Bieber on a typical joint facility basis with maintenance and operating costs to be shared on a usage basis (gross ton miles used to allocate usage) and annual interest rental equal to the depreciated book value times the then current cost of capital as determined by the ICC times a usage basis (gross ton miles). In the case of Dallas-Waxahachie, operations would continue under the existing trackage rights agreement.

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider

whether its condition at closing meets the standard established in Section 10(b)(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place \$10.5 million of the purchase price in escrow with a mutually agreed upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10(b)(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the standard, the Arbitrator shall determine the amount (which shall not exceed \$10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10(c).

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the "Effective Date") for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP's acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and

deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. **Adjustment of Charges**

All trackage rights charges under this Agreement shall be subject to adjustment upward or downward July 1 of each year by the difference in the two preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the trackage rights fee. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

The rates for reciprocal switching services established in Section 9(i) and for haulage service established in Section 8(m) shall be adjusted upward or downward each July 1 of each year to reflect fifty percent (50%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement.

The parties will agree on appropriate adjustment factors if not covered herein for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operation of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement (September 25, 1995).

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9(f) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such

agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the “control case”), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; PROVIDED, HOWEVER, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF’s written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibit A
LIST OF “2-TO-1” POINTS

Points Referred to in Section 1(b)

Provo UT
Salt Lake City UT
Ogden UT
Ironton UT
Gatex UT
Pioneer UT
Garfield/Smelter/Magna UT (access to Kennecott private railway)
Geneva UT
Clearfield UT
Woods Cross UT
Relico UT
Evona UT
Little Mountain UT
Weber Industrial Park UT
North Salt Lake City UT
American Fork UT
Orem UT
Points on paired track from Weso NV to Alazon NV
Reno NV (only intermodal, automotive [BNSF must establish its own
automotive facility], transloading, and new shipper facilities)
Herlong CA
Johnson Industrial Park at Sacramento CA
West Sacramento CA (Farmers Rice)
Port of Sacramento CA
Points between Oakland CA and San Jose CA (including Warm Springs CA,
Freemont CA, Elmhurst CA, Shinn CA, Kohler CA, and Melrose CA)
San Jose CA

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
Elmendorf TX
Halstead TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5(b)

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon, TX (Bayer plant)
Harbor, LA

Points Referred to in Section 6(d)

Camden AR
Pine Buff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR
Paragould AR
Dexter MO

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Valley Subdivision between MP 141.9 near Binney Junction, CA and Roseville, CA in the vicinity of SP's Valley Subdivision MP 106.6.

2. South Texas Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on the following lines:
 - a) SP's Port Lavaca Branch, between Placedo, TX in the vicinity of MP 14.2, and a point of build-in along said branch in the vicinity of MP 6.93 at Kamey, TX; and
 - b) UP's line between Round Rock, TX, in the vicinity of UP's Austin Subdivision Milepost 161.79, and McNeil, TX, in the vicinity of UP's Austin Subdivision Milepost 166.1.

3. Eastern Texas – Louisiana Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on UP's Beaumont Subdivision between MP 458.69 in the vicinity of Beaumont, TX and MP 377.98 (Gulf Coast Junction) in the vicinity of Houston, TX.

4. Additional Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

- A. UP/SP shall grant BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO.

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 5

March 30, 2021 Email from UP General Manager Andrey Drozdov

From: Andrey A. Drozdov <AADROZDO@UP.COM>
Sent: Tuesday, March 30, 2021 10:18 AM
To: Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
Cc: Brian E. Gorton <BEGORTON@up.com>; Brian W. McGavock <BWMCGAVOCK@UP.COM>
Subject: Change in Brownsville Haulage Service

**EXTERNAL
EMAIL**

Janssen and Lance,

In accordance with the BNSF-UP Brownsville Haulage agreement and after review of the car volumes, please be advised of the following operating changes to the Brownsville haulage service effective [Monday, April 12, 2021](#):

- Southbound (Monday / Thursday) - BNSF to provide UP with 2 blocks: KCSM block and Port of Brownsville/BRG block at Algoa interchange for train service to Brownsville.
- Northbound (Tuesday / Friday) – BNSF to ensure that its partners KCSM and Port of Brownsville/BRG provide UP with dedicated BNSF blocks at Brownsville for train service to the Algoa interchange.
- Locomotives - BNSF to supply sufficient power and EOT for its haulage trains at Algoa interchange for twice per week service to Brownsville and the return trips to Algoa.

Please contact me for further coordination.

Thank you.

Andrey Drozdov
General Manager Transportation

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 6

Correspondence between UP and BNSF

From: Lizabeth S. Brubeck <lsbrubeck@up.com>
Sent: Tuesday, April 20, 2021 12:07 PM
To: Power, Olivia E <Olivia.Power@BNSF.com>
Cc: Andrey A. Drozdov/UPC <AADROZDO@UP.COM>; Brian W. McGavock/UPC <BWMCGAVOCK@UP.COM>; David W. Hughes <DWHUGHES@up.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>
Subject: RE: Change in Brownsville Haulage Service

EXTERNAL EMAIL

Olivia,

Thanks for your response. I wanted to clarify a few items from your note below.

As per the agreement, UP at its option is making the operating change to provide movement of BNSF's traffic in haulage trains and thus, we require and expect that BNSF supply locomotives for the haulage trains per the 1997 letter agreement come April 30th. The haulage trains are not solely for bulk commodities in large trainload volumes but all of BNSF's haulage traffic is to move in haulage train service.

The operating change from manifest service to haulage train service does not require mutual agreement. While the proposed interchange location of Pearland appears to have been mutually agreed to by our respective operating officers, the requirement for BNSF to provide locomotives for the haulage trains still stands. Unless BNSF is inferring that the haulage train service is only allowed at Algoa, then UP may need to reconsider Pearland as a viable interchange location and instead require the haulage trains move from Algoa per the letter agreement as BNSF has already agreed to.

Additionally, BNSF should not wait for UP to make its blocking arrangement with its partners at Brownsville. BNSF has the commercial arrangement with Port/BRG and KCSM on its traffic not UP, therefore it is BNSF's responsibility to communicate such requirements.

We look forward to discussion on this afternoon's call at 1300. Hopefully we can make further progress.

Regards,

Lizabeth Brubeck
Union Pacific – Joint Facilities
(281) 350-7198

From: "Power, Olivia E" <Olivia.Power@BNSF.com>
To: "Lizabeth S. Brubeck/UPC" <lsbrubeck@up.com>
Cc: "Helm, Jon H" <Jon.Helm@bnsf.com>; "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>; "David W. Hughes" <DWHUGHES@up.com>; "Brewer, Lance R" <Lance.Brewer@BNSF.com>; "Thompson, Janssen" <Wesley.Thompson@BNSF.com>; "Andrey A. Drozdov/UPC" <AADROZDO@UP.COM>; "Brian W. McGavock/UPC" <BWMCGAVOCK@UP.COM>
Date: 04/20/2021 11:16 AM
Subject: RE: Change in Brownsville Haulage Service

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Lizabeth – In response to your message of April 9th along with additional follow up correspondence between our operating teams, as I understand it BNSF and UP local operating teams have tentatively agreed to a relocate BNSF's rail car haulage interchange from Englewood to BNSF's Pearland Yard. Effective April 30th, BNSF will be prepared to have 2 blocks (one KCSM block and one BRG block) available for interchange with UP at Pearland. It still remains our preference to have these 2 blocks delivered to Englewood in our normal interchange delivery to UP as we do today. In addition to this, it is our expectation that these 2 blocks will be picked up (or delivered to UP at Englewood if you prefer) on a consistent and mutually agreed to schedule to ensure that BNSF's traffic is not discriminated against and receives the same level service that UP provides for its own cars destined to Brownsville -- as required by the RASA and the Houston – Brownsville Haulage Agreement. For bulk commodities in large trainload volumes, we still consider haulage interchange over Algoa to be in effect including arrangements for run through power on these trains, unless mutually agreed otherwise.

As we mentioned previously, BNSF's position remains that the haulage interchange location must be mutually agreed between the parties. Accordingly, please confirm UP agrees to the 2 block plan at Pearland.

Also, since BNSF will interchange its haulage rail cars to UP at Pearland (and not Algoa, as initially requested), we will not supply run through power for these moves, except when there is mutual agreement for an Algoa interchange as mentioned above. In addition to that, whenever your operating officers are available, our local operating officers are prepared to have a joint discussion with UP to discuss with BRG and KCSM the requirement that UP and BNSF interchanges at Brownsville should not be intermingled.

To move things forward here, I've limited my communication to trying to get a plan in place in the very near term, and silence as to any positions/statements you've taken below should not be construed as concurrence on my part.

Thanks,
Olivia

Begin forwarded message:

From: "Lizabeth S. Brubeck" <lsbrubeck@up.com>

Date: April 9, 2021 at 3:13:30 PM CDT

To: "Power, Olivia E" <Olivia.Power@bnsf.com>

Cc: "Helm, Jon H" <Jon.Helm@bnsf.com>, "Brewer, Lance R" <Lance.Brewer@bnsf.com>, "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>, "Thompson, Janssen" <Wesley.Thompson@bnsf.com>, "Andrey A. Drozdov" <AADROZDO@up.com>, bwmcgavock@up.com, "Brian E. Gorton" <BEGORTON@up.com>

Subject: RE: Change in Brownsville Haulage Service

**EXTERNAL
EMAIL**

Olivia,

Thank you for your response as we work toward implementing the BNSF Haulage Service operating change effective 4/30/2021. My response to each of your concerns is noted below:

1. **Delivery/Receipt Location** – As you are aware, the Owner's Yard in Houston (Settegast) was referenced in the 6/1/1996 Agreement. The 9/18/1996 Supplement included the additional interchange locations of Algoa and Odem. The

most recent mention of interchange location was the 10/9/1997 letter agreement that fixed Algoa as the mutually agreed upon location to interchange Haulage Trains. However, Englewood is not mentioned in any of the agreements as an interchange location for Haulage Services. UP, at its option, may provide Haulage Services on a train load basis which after a review of haulage car volumes, UP has elected to change the service to Haulage Trains. Algoa is the location that is documented as acceptable to both Parties for Haulage Trains, therefore, UP again requests that BNSF tender its Haulage Trains to UP at Algoa.

2. **Pre-blocking of KCSM and Port of Brownsville/BRG cars** – BNSF may have misinterpreted the Agreement - Section 1 (A) vii - that blocking only applies to its southbound traffic “destined” to its partners at Brownsville. However, agreement states BNSF traffic interchanged “with” the KCSM, Port and BRG is to be “pre-blocked as required by Owner.” UP requires that BNSF’s northbound haulage traffic interchanged with its partners at Brownsville is to be pre-blocked with a BNSF block. UP simply cannot continue to have BNSF’s northbound haulage cars taken to a hump yard to correct the blocking nor can UP switch out all of BNSF cars to make a BNSF block at Brownsville with limited resources and capacity. UP requires pre-blocked traffic in both southbound and northbound directions and as it is BNSF traffic, BNSF must make the arrangements with its partners at Brownsville to ensure cars are blocked or UP will set-back cars improperly blocked that are tendered incorrectly to UP.

3. **Locomotive Power** – The 1997 letter agreement on BNSF letter head as executed by both Parties is valid, binding and still in effect today. UP, at its option, is making the operating change to Haulage Trains at Algoa and requests BNSF’s compliance to provide locomotives to move its trains as BNSF agreed to do.

4. **Reduction in Frequency of Haulage Service**– The Agreement provides that UP, at its option, can run BNSF haulage traffic in Haulage Trains. BNSF’s current haulage volumes are such that local operating officials have determined the frequency of Haulage Train Service is twice a week. RASA Section 9 (d) – “Owner has the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended.” There has been no discrimination in service as UP applies the same operating principles to its own trains traversing the Haulage Corridor. The Dispatch Protocols continue to be consistently applied to the BNSF Haulage Trains operating on the Haulage Corridor.

5. **Non-haulage Interchange** –The Haulage Agreement only applies to the BNSF cars that UP handles for BNSF between Algoa and Brownsville in Haulage Service and the associated interchange is governed accordingly. BNSF’s perennial threat to revert to AAR interchange arrangements across the system must consider many other long-standing agreements in place that may affect other haulage services provided as well as manifest traffic interchanged in the Houston Complex.

We look forward to resolving any further outstanding concerns BNSF may have. If you have questions before our next planned call on April 13th, please reach out to me.

Thank you.

---Lizabeth

From: "Power, Olivia E" <Olivia.Power@BNSF.com>
To: "Lizabeth S. Brubeck/UPC" <lsbrubeck@up.com>
Cc: "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>, "Helm, Jon H" <Jon.Helm@bnsf.com>
Date: 04/08/2021 08:33 AM
Subject: RE: Change in Brownsville Haulage Service

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Lizabeth – As our collective operating teams continue to look for a path forward for interchange of our two blocks of traffic destined to Brownsville, for BRG and KCSM, I am following up on UP's note below directing changes to our Hou-Brownsville haulage service. Per discussions yesterday, given the complexity of our joint operations and the need to reach mutual agreement on UP's requested change in delivery/receipt location, we appreciate UP's agreement to extend any planned changes until April 30th. Meanwhile, in order to progress the parties discussions, I am outlining below BNSF's position on various contract matters raised by UP's notice of planned changes:

1. **Delivery/Receipt Location** – Changes in delivery/receipt locations will require mutual agreement per Section 2 of our agreement. As discussed, although we prefer not to make major changes to our current arrangements, we are reviewing internally whether there may be possible alternatives to Englewood or Settegast, which is UP's stated preference. We do not, however, agree to an exchange of haulage cars at Algoa.
2. **Pre-blocking of KCSM and Port of Brownsville/BRG cars** – BNSF agrees that under the terms of our agreement we may be required to provide UP pre-blocking for Brownsville traffic destined to BRG and KCSM, and we are making plans for that change. However, on the matter concerning northbound blocking from KCSM and BRG, BNSF has no obligation and cannot obligate those parties, to perform blocking on behalf of UP for the return northbound move to UP for movement back to BNSF on the northbound side. If UP desires those carriers to perform blocking on the northbound side, UP will need to make that request or demand directly with those carriers.
3. **Locomotive Power** – As we mentioned yesterday, the supplemental arrangement for BNSF to supply power for haulage trains at Algoa, even assuming it remains in effect, is not relevant, as we are not in agreement on exchange of haulage at that location.
4. **Reduction in Frequency of Haulage Service** – UP also has directed BNSF to restrict its exchange of haulage volume to certain days of the week and the number of days for handoff of this traffic to UP. As you are well aware, UP itself operates a regular train to/from Brownsville (5-7 days/week) by plan. The RASA Section 4(f) expressly provides that UP "shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP's account." Accordingly, BNSF should not be discriminated against in the performance of the handoff of our Brownsville traffic to UP in interchange over the agreed upon interchange location. We will insist that BNSF's volumes from/to Brownsville will continue to be accepted and handled commensurate with the same level of service UP provides for its own cars moving from/to Brownsville, and accordingly cannot agree to UP's unauthorized reduction in service.
5. **Non-haulage Interchange** – On a final note, we would point out that any discussion of changes to our haulage operations necessarily requires consideration of our interchange operations with UP. Today, those hand-offs are consolidated with our haulage volumes. In the event haulage volumes are redirected to another location, we may need to review our informal arrangements at Englewood, such that all other non-haulage traffic that interchanges within the Houston complex may need to revert to normal AAR interchange arrangements where BNSF and UP each may designate its interchange receipt location in Houston.

Olivia

From: Andrey A. Drozdov <AADROZDO@UP.COM>

Sent: Tuesday, March 30, 2021 10:18 AM

To: Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>

Cc: Brian E. Gorton <BEGORTON@up.com>; Brian W. McGavock <BWMCGAVOCK@UP.COM>

Subject: Change in Brownsville Haulage Service

**EXTERNAL
EMAIL**

Janssen and Lance,

In accordance with the BNSF-UP Brownsville Haulage agreement and after review of the car volumes, please be advised of the following operating changes to the Brownsville haulage service effective [Monday, April 12, 2021](#):

- Southbound (Monday / Thursday) - BNSF to provide UP with 2 blocks: KCSM block and Port of Brownsville/BRG block at Algoa interchange for train service to Brownsville.
- Northbound (Tuesday / Friday) – BNSF to ensure that its partners KCSM and Port of Brownsville/BRG provide UP with dedicated BNSF blocks at Brownsville for train service to the Algoa interchange.
- Locomotives - BNSF to supply sufficient power and EOT for its haulage trains at Algoa interchange for twice per week service to Brownsville and the return trips to Algoa.

Please contact me for further coordination.

Thank you.

Andrey Drozdov
General Manager Transportation

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From: Lizabeth S. Brubeck [<mailto:lsbrubeck@up.com>]
Sent: Tuesday, April 27, 2021 3:59 PM
To: Power, Olivia E <Olivia.Power@BNSF.com>
Cc: Andrey A. Drozdov/UPC <AADROZDO@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>
Subject: RE: Change in Brownsville Haulage Service 402-544-8901, 1422796

EXTERNAL EMAIL

Olivia,

John Turner sent an offer to Paul Duncan, however, he received no response from BNSF. As such, UP expects the BNSF haulage operating change to take place as previously extended on May 1st.

If BNSF would like to continue to work through any remaining issues it has, we can reschedule another call this week. Please advise.

Thank you.

Lizabeth Brubeck
Union Pacific – Joint Facilities
(281) 350-7198

From: "Power, Olivia E" <Olivia.Power@BNSF.com>
To: "Andrey A. Drozdov/UPC" <AADROZDO@UP.COM>, "Lizabeth S. Brubeck/UPC" <lsbrubeck@up.com>
Cc: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
Date: 04/27/2021 11:59 AM
Subject: RE: Change in Brownsville Haulage Service 402-544-8901, 1422796

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Andrey and Lizabeth – BNSF will not be participating on this call today. This has been elevated to our leadership for further discussion.

Olivia

-----Original Appointment-----

From: Andrey A. Drozdov/UPC [<mailto:AADROZDO@UP.COM>]
Sent: Wednesday, April 21, 2021 8:40 AM
To: Andrey A. Drozdov/UPC; Brian W. McGavock/UPC; David W. Hughes/UPC; Hamilton, Eric; Brewer, Lance R; Lizabeth S. Brubeck/UPC; Power, Olivia E; Bailiff, Sarah W

Subject: Change in Brownsville Haulage Service 402-544-8901, 1422796
When: Tuesday, April 27, 2021 1:00 PM-2:00 PM (UTC-06:00) Central Time (US & Canada).
Where:

**EXTERNAL
EMAIL**

Invitation: Change in Brownsville Haulage Service 402-544-8901, 1422796



04/27/2021 -

No Location Information

Andrey A. Drozdov

has invited you to a meeting You have not yet responded

Required:

Brian W McGavock/UPC@UP, David W Hughes/UPC@UP, Eric.hamilton@bnsf.com, Lance.Brewer@BNSF.com, Lizabeth S Brubeck/UPC@UP, Olivia.power@bnsf.com, Sarah.bailiff@bnsf.com

From: Mulligan, Jill K
Sent: Thursday, May 6, 2021 12:44 PM
To: James Boles <jbboles@up.com>; jimberman@up.com
Cc: 'Estes, Courtney B' <Courtney.Estes@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>
Subject: URGENT--FW: MOLBNX 05 {BNSF} 05/05/21
Importance: High

Hi James-- our ops team received the email below a short while ago in which UP takes the position that during our agreed-upon unconditioned two week extension, BNSF must operate northbound haulage in train service or else UP will immediately and unilaterally implement the new operating changes. From our discussions and our 4/29/2021 email exchange (and also communicated between our Joint Facilities teams), BNSF agreed to a two week extension that left in place the current operating practices and not one with the assorted conditions that the UP team had previously attempted to unilaterally impose. Please confirm UP will honor that agreement and continue with the unconditioned extension until May 15th or we will need to proceed with filing by close of business today. Thanks, Jill

From: David Giandinoto [<mailto:DGIANDIN@up.com>]
Sent: Thursday, May 6, 2021 11:08 AM
To: Gabriel, Jon <Jon.Gabriel@BNSF.com>
Cc: John W. Turner <JWTURNER@UP.COM>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>
Subject: RE: MOLBNX 05 {BNSF} 05/05/21

EXTERNAL EMAIL

Jon,

I appreciate the response. I spoke with Mr. Turner who confirmed our understanding that the two week extension to allow for transition included the northbound haulage cars to be operated in train service in the interim.

If this is not the case then we will begin the new haulage service outlined in our original email to Mr. Brewer on April 30th immediately.

Please inform me where you will interchange the haulage train in Houston, per the agreement, with a BRG and KCSM block with BNSF locomotives and EOT. We will haul the train, per the agreement, to your interchange partners in Brownsville. UP will no longer accept haulage cars in interchange service at Englewood all other cars will be accepted.

Also please inform me when your interchange partners will interchange BNSF blocked cars in Brownsville and when you will provided locomotives for this haulage train to operate to Houston. In addition please inform me where this haulage train will be accepted in Houston or other location outlined in the agreement.. UP will no longer accept haulage cars unblocked from the BRG and KCSM in Brownsville.

Thank you,

David M. Giandinoto – SVPO Southern Region
[Union Pacific Railroad](#) | 24125 Aldine Westfield Rd Spring, TX 77373
(O): 281-350-7201 (F): 402.501.2430 | DGIANDIN@up.com



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From: "Gabriel, Jon" <Jon.Gabriel@BNSF.com>
To: "David Giandinoto" <DGIANDIN@up.com>
Cc: "Garland, Matthew C" <Matthew.Garland@BNSF.com>, "Duncan, Paul B" <Paul.Duncan@BNSF.com>, "John W. Turner" <JWTURNER@UP.COM>
Date: 05/06/2021 09:21 AM
Subject: RE: MOLBNX 05 {BNSF} 05/05/21

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Good Morning Again David,

As we discussed, BNSF understanding and interpretation of what was agreed upon between Service Design / Joint Facilities teams were the collective organizations would hold status quo, as stated "UP...agreeable to a two week temp pause to the previous May 1", outlined below.

Consistent with this, BNSF will only accept captioned symbol at Englewood as noted overnight. Paul will be reaching out to John this morning.

Respectfully,
Jon

From: John W. Turner [<mailto:JWTURNER@up.com>]
Sent: Saturday, April 24, 2021 2:27 PM
To: Duncan, Paul B <Paul.Duncan@BNSF.com>
Subject: 2 week pause on haulage change

**EXTERNAL
EMAIL**

Per our discussion, the UP would be agreeable to a two week temporary pause to the previous May 1 haulage agreement transportation plan change under the following conditions:

1. BN and UP would work together to find an agreeable solution to both parties. If one can not be agreed to by both parties then May 15 will be the effective date for the change as previously outlined.
2. Southbound traffic currently moving through Englewood Yard continue to move as it does today.
3. Northbound traffic in Olmito would hold for MOLBNX to interchange directly at Algoa.
4. As long as none of the items 2 & 3 will be held against the UP, we would be agreeable to extending until May 15.

Let me know if this works for you.

John W. Turner
Vice President -- Network Planning & Operations
Union Pacific Railroad
jwturner@up.com Email
(402) 544-5505 Office
(360) 624-3264 Cell

From: Gabriel, Jon
Sent: Wednesday, May 5, 2021 9:27 PM
To: David Giandinoto <DGIANDIN@up.com>
Subject: Re: MOLBNX 05 {BNSF} 05/05/21

Normal haulage is the ask until we get the Joint Facilities, legal and / or STB stay sorted out.

On May 5, 2021, at 9:09 PM, David Giandinoto <DGIANDIN@up.com> wrote:

**EXTERNAL
EMAIL**

Hello Jon,

So you want us to take them past south yard with our crew to Englewood so your crew can pull them back to south yard?

On May 5, 2021, at 8:55 PM, Gabriel, Jon <Jon.Gabriel@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Evening Sir,

Hope the meetings went well today. While we are in active Jt Facilities / Legal conversations, these I/C symbols will need to come in normal interchange until this Haulage situation is resolved.

Appreciate any clarification for the teams. Let me know if we need to discuss amongst ourselves.

Jon

From: Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>

Sent: Wednesday, May 5, 2021 8:22:33 PM

To: Raul R. Martinez <RRMARTI1@up.com>

Cc: Orson D. Robinson <ODROBINS@up.com>; Lakishia Batson <LBATSON1@up.com>; Robert S. Vega <RSVEGA@up.com>; Troy L. Cox <TLCOX@up.com>; Eric M. Fleming <EMFLEMING@up.com>; John M. Hopkins <JMHPKIN@up.com>; Alexandria M. Talamantez <amtalama@up.com>; Jesse W. Davis <jwdavis@up.com>; Harlan O. Jones <hojones@up.com>; Jaime J. Martinez <JIMARTIN@up.com>; Michael Everhart <MEVERHAR@up.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Hale, Darren T <Darren.Hale@BNSF.com>; Todd P. Peters <TPPETERS@up.com>; Glenn C. Tanner Jr <gctanner@up.com>; Michael S. Nolan <msnolan@up.com>; OPR DL Houston Terminal Managers <OPRDLHoustonTerminalManagers@BNSF.com>; Kurtis A. Bigler <kabigler@up.com>; Scott L. Erickson <slericks@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>

Subject: Re: MOLBNX 05 {BNSF} 05/05/21

This will need to come via normal interchange at Englewood. We will not be able to take more than the 1 cut per day in interchange. This MOLBNX will need to plan to go to Englewood.

On May 5, 2021, at 3:15 PM, Raul R. Martinez <RRMARTI1@up.com> wrote:

EXTERNAL EMAIL

Good afternoon, the train MOLBNX 05 {BNSF train} is ready to be called North out of Brownsville. Please plan on receiving this train and call me with any questions you may have , thank you.

*** CARS IN TRAIN ORDER

05 05 1508

GENERAL INQUIRY TYPE- TR

REPETITIVE INQUIRY - 23242

SCHEDULED TRAIN SUMMARY--LAST 2 EVENTS

TRAIN/JOB	MOLBNX 05	ORIG STA	OLMITO	TX	B 009	ATCS-WO
CATEGORY -	M-STANDARD MANIFEST	BNSF	TYPE-THRU	SECONDARY ID	FDAGTN	
CONDUCTOR	X XXXXXXXXXXXXXXXX	ENGINEER	X XXXXXXXXXXXXXXXX			

D#PCDAAS SCHED PROJ P VAR MAX REQ

*****LINK ORIGIN*****	*****LINK DEST*****	BLSSPTXT	TONS	TONS	M	%%	TPA	EPA
OLMITO TX B 009	BLOOMINGT TX B 219	Y.....3	5342		000	595	009	
BLOOMINGT TX B 219	ALGOA TX B 343	Y.....3	5342		000	800	007	

ST LOCOMOTIVE	EQVP	PICKUP	SETOUT	RECV	*NEXT ASSIGNMENT	PVCAHECDASD	
CD INIT NUMBER	AXLE	D	CIRC-7	CIRC-7	ROAD	****OR NOTES****	CCACCMSPTTB DP
X UP 009053	12.1	F	B	009	Y RX	OYYYYMBCG4A	
X UP 003850	10.4	F	B	009	R RX	DYYYY.B.G3E	

TOTAL EPA:	22.5	CUR CREW SEG	EPA	9	CUR CREW SEG	TPA	595
CURRENT TONS =	5342	----->	ACTUAL TPA	238	LOWEST TPA	IN ROUTE	595

CABOOSE ID- NONE REPORTED

SSI MAXIMUM SPEED (UNLESS OTHERWISE RESTRICTED) IS AS FOLLOWS:

MAXIMUM SPEED * 50 * MPH BETWEEN B 009 AND B 343 LOWEST CAR SPEED

BE FURTHER GOVERNED BY MAXIMUM SPEEDS: TONS PER OPERATIVE BRAKE (TPOB)

ITEM #2F OR SUBDIVISION TIMETABLE SI-12

**** BLANK LNE ****

TRAIN HAS NO RAIL SECURITY SENSITIVE MATERIAL SHIPMENTS

CUR STATS 20LDS 83MTYS 5342TONS 6317FT MT AT OLMITO TX B 009

LAST AEI SITE

AEI CAR COUNT

EVENT CITY/ST STA/YD MO-DA-YR-TIME TIM DIF LOADS MTYS CAR-TONS TRN-LGTH

CT OLMITO TX B 009 05-05-21-2330

EQUIPMT-ID	L	COMDTY	CONSIGNEE	SHIPPER	ROAD/ STP/ZTS	NXT-FGN-DEST	OB	EQUIP COUNT
INT NUMBER	E					CITY	ST BLOK	
GATX 35328	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	1
SHQX 70426	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	2
SKSX101711	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	3
GATX 66186	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	4
UTLX950546	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	5
PPRX 55216	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	6
TILX309692	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	7
UTLX954720	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	8
UTLX958824	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	9
TILX305752	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	10
BKTY154334	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	11
ITLX 41329	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	12
BNSF430444	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	13
TEIX 234	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	14
CITX702133	L	LQBYPD	AGENT	AGENT	BNSF	ENGLEWOOD	TX	15
ECUX405376	E		BURLINNORSAN	LPINFINEUSA	BNSF	BATROUGE	LA	16
XOMX100492	E		BURLINNORSAN	LPINFINEUSA	BNSF	BATROUGE	LA	17
WLPX 10204	E		BURLINNORSAN	BURLINNORSAN	BNSF	ENGLEWOOD	TX	18
NOKL560679	E	RWYCAR	AGENT	AGENT	BNSF	HOUSTON	TX	19
ASOX 21236	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	20
UTLX663027	E		AGTBNSF	GOODYETIRRUB	BNSF	QUINCY	MA	21
TAEX 3256	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	22
GLNX 33010	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	23
NAHX323081	E		BURLINNORSAN	UNIONPACRRCO	BNSF	ENGLEWOOD	TX	24
SKSX101346	L	SBUILD	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	25
DOWX 20591	L	SBUILD	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	26
TIMX901785	L	SBUILD	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	27
CBTX784982	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	28
TILX308240	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	29
UTLX953264	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	30
TILX303393	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	31
ABOX 51053	L	FEED	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	32
BNSF436161	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	33
SIRX 421	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	34
GAMX 14347	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	35
GATX 30482	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	36
GATX 30514	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	37
TILX135510	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	38
TILX150441	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	39
GATX 8582	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	40
GATX 65010	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	41
BNSF518723	L	SCRAP	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	42
TILX306139	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	43
UTLX955915	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	44
GATX214626	E		KINDERMORKAN	BURLINNORSAN	BNSF	HOUSTON	TX	45
ATSF169588	L	SCRAP	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	46

BNSF518728	L	SCRAP	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	47
GATX 53884	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	48
GATX 95576	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	49
GATX 95580	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	50
GAMX 3142	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	51
GATX211308	E		KINDERMORKAN	BURLINNORSAN	BNSF	HOUSTON	TX	52
SHPX208690	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	53
SHPX208694	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	54
GAMX 3144	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	55
GATX 95588	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	56
GATX 95586	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	57
GATX 95581	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	58
GATX 53898	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	59
GAMX 3139	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	60
UTLX662795	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	61
TILX150813	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	62
BNSF519560	L	SCRAP	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	63
BNSF519694	L	SCRAP	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	64
UTLX950376	E		ENTERPPROOPE	BURLINNORSAN	BNSF	PIEJCT	TX	65
EAMX 33014	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	66
BKTY152260	L	CLCCHL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	67
ATW 54124	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	68
ATW 54235	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	69
ATW 54122	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	70
ATW 54058	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	71
CBTX729823	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	72
ITDX 5008	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	73
TILX135712	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	74
SHQX 8089	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	75
TILX135655	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	76
WCHX 29235	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	77
SKSX101070	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	78
TBOX666292	L	CTNLNT	BURLINNORSAN	VALLEYCOOOIL	BNSF	HOUSTON	TX	79
FBOX504951	L	CTNLNT	BURLINNORSAN	VALLEYCOOOIL	BNSF	HOUSTON	TX	80
GATX 1957	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	81
GATX 8576	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	82
SHQX 6771	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	83
TEIX 33753	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	84
GATX 57164	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	85
UTLX958959	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	86
GATX 70665	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	87
HS 3565	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	88
MULX 410	L	STEEL	BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	89
COER800309	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	90
ATSF 68002	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	91
BN 967004	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	92
BN 560462	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	93
BN 448296	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	94
NS 450674	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	95
NS 450615	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	96
TILX257975	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	97
SHQX 70443	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	98
CN 618134	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	99
ASOX889144	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	100
BNSF516391	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	101
BN 560665	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	102
BN 967111	E		BURLINNORSAN	BURLINNORSAN	BNSF	HOUSTON	TX	103
SUB-TOT 00020	LOADS		00083 MTYS	00000 UNKNOWNNS				
TOTALS 00020	LOADS		00083 MTYS	00000 UNKNOWNNS				

THE ABOVE GENERAL INQUIRY REPORT IS FROM THE FOLLOWING INPUT
TR-TRAINS

Y N MOLBNX 05
S/D-D, L/E-A
SW-SORT/SUMMARY/WT
N TRO
FM-FORMAT
LE CMS CS SH ND FD OB

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Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

EXHIBIT 7

Letter Agreement (October 9, 1997)

BNSF



E. W. WOOLLEY
Director Contracts and Joint Facilities

Burlington Northern Santa Fe

2600 Lou Menk Drive
P. O. Box 961034
Fort Worth, Texas 76131
817-352-4936

186772

October 9, 1997

Mr. Jerry Wilmoth
Director - Joint Facilities
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Dear Mr. Wilmoth:

Reference is made to the Haulage Agreement between Houston and Brownsville, Texas dated June 1, 1996, as supplemented ("Haulage Agreement"), presently in effect between our respective companies.

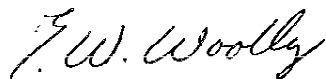
This letter will confirm that UP and BNSF have agreed to the following with respect to operations under the Haulage Agreement:

1. BNSF will supply its own locomotives for haulage trains moving between Algoa and Brownsville ("Haulage Trains").
2. BNSF will allow UP to operate and use BNSF's locomotives in Haulage Trains at no charge to UP from the time a Haulage Train is received by UP until such Haulage Train is delivered at Brownsville to BNSF, BNSF's agent or TFM. Thereafter, UP will have twenty-four (24) hours' free time ("Free Time Period") to return to BNSF, or its agent, any BNSF locomotives used in such haulage service; PROVIDED, HOWEVER, that UP shall have no obligation to return any such locomotive within the Free Time Period if it is run-through to another railroad company.
3. Liability for BNSF locomotives in Haulage Trains shall be governed by the Haulage Agreement.
4. In the event UP does not return BNSF locomotive(s) used in a Haulage Train within the Free Time Period, (i) UP shall incur horsepower hours for that period of time which begins with the conclusion of the Free Time Period and ends with the actual return of said locomotive to BNSF or its agent, and said excess hours will be equalized on a horsepower hour basis and (ii) liability for said locomotive(s) during the Free Time Period and any subsequent time period until BNSF locomotive(s) are delivered to BNSF or its agent as outlined in item 2 above, shall be governed by the applicable provision of that certain agreement dated December 14, 1979

covering the run-through of the Belle Ayr coal trains to Jeffreys, Kansas, which are interchanged at Northport, Nebraska.

Please confirm UP's agreement to the terms set forth in the letter by executing both copies provided where indicated below and returning one fully executed original for BNSF's records.

Very truly yours,



Director Contracts and Joint Facilities

AGREED AND ACCEPTED ON BEHALF OF
UNION PACIFIC RAILROAD COMPANY

By  _____

Its Dir. Joint Facilities _____

Date 10/17/97 _____