

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

302850

ENTERED

Office of Proceedings

August 16, 2021

Part of

Public Record

STB Docket No: FD 35996

SAN JACINTO TRANSPORTATION COMPANY, INCORPORATED

OPERATION EXEMPTION

SJRE RAILROAD SERIES

AND

STB Docket No: FD 36473

**W&P DEVELOPMENT CORPORATION; WW CHAMPTION DEVELOPMENTS,
INC.-AND SJRE RAILROAD SERIES-PETITION FOR DECLARATORY ORDER**

**REPLY TO VERIFIED PETITION TO REJECT THE VERIFIED PETITION FOR A
DECLARATORY ORDER OF W&P DEVELOPMENT CORPORATION; WW
CHAMPTION DEVELOPMENTS INC AND SJRE-RAILROAD SERIES**

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*Attorneys for San Jacinto
Transportation Company, Inc.*

Dated: August 12, 2021

Contains Color Exhibits

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San Jacinto Transportation Company, Inc. ("SJT") a rail carrier hereby petitions the Surface Transportation Board ("the Board") to reject the petition for declaratory order filed in the above captioned dockets. Please note that the facts noted in the presentation are contained in the Verified Statement of Baxter Wellmon which appears as Exhibit A to this filing.

Contrary to the position of W&P Development Corporation ("W&P"), WW Champion Developments Inc ("WW") and SJRE Railroad Series ("SJRE ") (together as "petitioners.") SJT has followed all the procedures in the First Amended and Restated Agreement ("the Agreement") with SJRE. It is SJRE that has failed to follow the procedures it was required to follow under the Agreement which is enclosed as Exhibit B.

At paragraph 9 of Exhibit A of the Agreement, SJRE agreed to build out the original rail infrastructure. SJT was to provide rail management services.

Because of SJRE's breach of the Agreement, SJT filed suit in the District Court of Harris County Texas. A copy of the Petition in that Court explaining in detail the failures of the petitioners to abide by its Agreement is attached to these papers as Exhibit C. This action, for had been scheduled for trial on or about September 6, 2021. The parties have agreed upon a continuance of the trial until April, 2022 subject to the court's approval which is being sought.

Below, SJT will address the issues brought by the petitioners. However, SJT asks the Board to not proceed to decide this matter until the District Court of Harris County Texas decides the many factual issues upon which petitioners are relying. A Texas Court applying Texas law and deciding facts and law involving a Texas contract entered into by Texas parties would assist the Board in this proceeding.

SJT hereby replies to the following issues as discussed in petitioners' application to the Board.

TRANSACTION BACKGROUND

SJRE and SJT entered into the Agreement effective September 28, 2015 signed by the parties on March 3, 2016. (the "Agreement").

The Agreement provides at paragraph 9 in Exhibit A to that SJRE (the "Client" in the Agreement) would pay for the full planning, engineering, construction, installation of initial rail infrastructure including the rail connections to the UP and BNSF and any new or additional rail infrastructure that would be required by SJRE.

Regarding its responsibilities under the Agreement and contrary to the allegations of the petitioners, SJT in fact did everything required by it in the Agreement.

SJT agreed to provide rail-management services for a proposed Storage in Transit Yard located on land owned by SJRE-Rail Railroad Series at 18511 Beaumont Highway in Houston, Texas known as the San Jacinto River & Rail Park.

Indeed, SJT would “provide certain rail transportation services including the operations, marketing and management of the rail infrastructure on behalf of SJRE-Rail Series. SJRE-Rail Series agreed that SJT would be the sole operator of rail transportation services with the Rail Park and the parties agreed that SJT would go to the Board to seek the right to operate as a common carrier connecting with UP and BNSF.

After the Agreement was signed on March 3, 2016, SJT began to comply with all its obligations under the Agreement. Contrary to what is alleged in the petition for Declaratory Order of the petitioners, SJT has done the following to comply with the Agreement.

1. SJT applied to the Board for an Operation Exemption for the San Jacinto Transportation Company to operate the SJRE-Series property. The Operation Exemption was granted on March 25, 2016. The operations were to commence sometime on or after April 9, 2016. SJT had every reason to believe that SJRE-Railroad Series would construct the track it was required to construct. SJRE-Railroad Series never did so. On November 30, 2017 SJRE terminated the Agreement, which was not set to expire for 15 years. The lawsuit pending in Harris County District Court in Houston resulted from SJRE’s breach of the Agreement.
2. After the Board granted its Operation Exemption, SJT held itself out as a common carrier and negotiated with BNSF and UP to connect to their lines. BNSF and UP indicated that once SJRE-Railroad Series had completed its construction of phase 1 that it would negotiate an agreement. The proposed letter of understanding with UP and proposed

Interchange Agreement with BNSF, which were part of those negotiations are attached hereto as Exhibit D.

3. Contrary to what is alleged in the petition, SJT hired a professional marketing firm, Metzger Logistics LLC to begin to contact prospective customers for the rail yard. A copy of an email and report from Carol Metzger of that firm dated November 11, 2016 indicates the interest of customers that she contacted. This email is attached as Exhibit E
4. Petitioners contend that SJT does not have locomotives for this project. Actually, SJT purchased two locomotives, SJT held these locomotives in storage until the petitioners terminated the Agreement. Photos of the locomotives are attached hereto as Exhibit F. Because SJRE did not provide the capital needed in the initial phase, it was not possible for UP or BNSF to deliver the locomotives to the Rail Park.
5. Regarding the operations of the SJT, SJT issued a tariff of rates and services it expected to operate. It showed the tariff to prospective shippers who would use its services. A copy of the tariff is attached as Exhibit G.
6. Regarding its operations by its employees, SJT issued Operating Rules a copy of which is attached as Exhibit H.
7. SJT created for the infrastructure an integrated Vossloh Automated Equipment Identification System with the General Electric Yard and Revenue Management System.
8. SJT complied with all the requirements of the Association of American Railroads to become a common carrier. See letter from AAR confirming the filings made by SJT. It is attached as Exhibit I.

9. SJT created a Side Track Agreement to be sent to prospective customers located in the San Jacinto River and Rail Park and who expressed an interest in using SJT tracks or their private industry tracks in the Rail Park for loading or unloading goods. A copy of the proposed agreement is attached as Exhibit L.

The allegations of the petitioners regarding SJT as to its not holding itself out as a common carrier are untrue. In fact, SJT has complied with all its obligations under the Agreement as well as preparing its common carrier requirements to support the operations of SJT.

PROPERTY OWNERSHIP AND DEVELOPMENT

The parties contemplated that the San Jacinto River & Rail Park would be developed in phases starting with +-6 miles of track, the initial phases were to contain 73,485 track feet and it was to have the capacity to hold 1,106 65-foot railcars. When the initial railroad infrastructure was complete, the San Jacinto River & Rail Park would connect to a rail line owned jointly by Union Pacific (UP) and Burlington Northern Santa Fe Railroad (BNSF). The track, which is located immediately west of the of the San Jacinto River connects to the Houston Ship Channel. In subsequent phases, new or additional rail infrastructure would be developed to increase the capacity of the San Jacinto River & Rail Park by an additional 3,400 65-foot railcars (phase 2) and then an additional phase which could hold an additional 11,440 65-foot railcars.

Petitioners' papers say that SJT's application to the Board was materially false when in fact it was completely true and reflected the obligations of the parties to the Agreement.

COMMON CARRIER APPLICATION

Regarding the application for common carrier status by SJT, this was something which was part of the offer that SJT made to SJRE. A copy of the presentation made to SJRE in July 2015 clearly indicates this and is attached hereto as Exhibit K. Contrary to the contentions of petitioners this presentation was not misleading. Diron Blackburn signed the verification for SJRE, claiming SJRE was misled by SJT during the contract negotiations. But Mr. Blackburn has no personal knowledge of anything SJT said or did not say because he was not yet an officer or employee of SJT and was in no way involved in the negotiations.

Regarding the issues as to Big Spring Railroad (“BSR”) mentioned by petitioners, there is no individual who owns Big Spring Railroad or has control over it or of SJT. There are shareholders none of which have a controlling interest. The shareholders make decisions at board meetings and no one shareholder can overrule the others. Petitioners were aware of this when the proposition to operate the rail yard by SJT was made to SJRE. Mr. Baxter Wellmon who is CEO of BSR is not the CEO of SJT though he has a non-controlling stock interest in both railroads, as do other individuals. A list of the interests of the owners of both are attached hereto as Exhibit L. The three main shareholders have exactly the same amount of stock. If the Board requires the filing of a control petition, the shareholders will be glad to file one though it does not appear to be required by the regulations.

PROVIDING RAIL SERVICE

Regarding SJT’s right to provide rail service on SJRE, the Agreement provides that the right to provide service is exclusive to SJT.

Petitioner says that SJT said in its Verified Notice of Exemption that it would begin service no later than May 31, 2016 when actually the Verified Notice of Exemptions says that SJT

EXPECTS to begin service no later than May 31, 2016. That expectation was dashed when SJRE failed to build the rail infrastructure. Petitioners contend that SJT was not honest and above board with its filing. In fact, they were very honestly giving their expectations of what would happen when the petitioners performed under the Agreement. Petitioners also say there was no track at the time of the filing. In fact, there was track much of which would be retired, upgraded and replaced under the Agreement which included interchanging with UP and BNSF. The track that was in place at the time of the filing was virtually all 70- and 90-pound rail. SJT had an obligation to begin negotiations with UP and BNSF to set up the interchange. However, without obtaining its Operation Exemption to operate, UP and BNSF would not enter into an agreement to SJT. That is why SJT asked the Board for an Operation Exemption so they could arrange to have the interchange agreement in place and begin operations as soon as SJRE had performed its obligations under the Agreement.

Diron J. Blackburn, the current president of SJRE, admits in his Verified Statement that he was not involved with the negotiation or execution of the Agreement between the parties. He insists however that SJT had an obligation to build the initial portion of the trackage under the Agreement when the Agreement clearly says that SJRE would build it. Blackburn also insists that his company was misled as to SJT being a common carrier to operate. That is also absolutely false. As the presentation to his companies clearly show (Exhibit J) the reason for the common carriage was so that SJT could collect fees for its hauling of the cars while the petitioners would get 95% of storage fees. SJT's application to the Board clearly states that the Agreement was that SJT would operate as a common carrier on the property.

SJT applied for an Operation Exemption in good faith worked on marketing, connecting lines, and the belief that while it was marketing, working with connecting lines, purchasing

equipment, ensuring it would have the employees it needed and providing operating rules for them and providing a tariff to send to prospective customers.

SJRE contends it has the right to cancel the Agreement based upon their allegations that SJT did not do all that it said it would do under the Agreement. SJT did do all that was required.

In Summary SJT:

1. Purchased two locomotives and had to store them off site.
2. Provided a face-to-face marketing survey for the project with many customers expressing a need for the project to be completed.
3. Negotiated with UP and BNSF for an interchange agreement.
4. Created operating rules for the government of SJT employees.
5. Completed its common carrier tariff requirements.
6. Created for the infrastructure an integrated Vossloh Automated Equipment Identification System with the General Electric Yard and Revenue Management System.
7. Completed and submitted all AAR forms required to begin operations.
8. Created a Side Track Agreement for customers who wanted to use SJT's tracks or customers private industry tracks for unloading or loading customer's goods.

When one reviews the cases cited in the petitioner's papers, they all are based upon facts which indicate that the railroad involved did not hold itself out as a common carrier or make every effort to be prepared to operate the railroad as it presented in its Operating Exemption to the Board.

But it was SJRE's failure to finance and construct the initial portion of the Rail Park that prevented anyone from operating the line.

We therefore request that the Board reject consideration of the Petition for Declaratory Order of the petitioners at least until the Harris County Court issues its findings of fact and application of Texas law regarding the Agreement and the relationship between the parties.

Respectfully Submitted,



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*Attorneys for San Jacinto Transportation
Company, Incorporated*

cc: Parties of Record

Exhibit

A

Verified Statement of Baxter Wellmon

My name is Baxter Wellmon, I am one of four shareholders in San Jacinto Transportation Company Incorporated (“SJT”). I do not have a controlling interest in SJT, but I was involved in the creation of SJT and the negotiations that took place with SJRE-Railroad Series (“SJRE”). These negotiations resulted in the Agreement which is attached to this filing as Exhibit B.

I was and am the only shareholder of Transportation Handling Specialists, Inc (“THS”). I and other SJT shareholders later formed SJT. On July 22, 2015, we presented to SJRE a proposal for San Jacinto River & Rail Park. A copy of that presentation is attached to this filing as Exhibit J. The presentation explained exactly what we, as the entity that later became SJT, would do and how SJT would collect revenue through line haul and switching changes from tenants. We also explained how SJRE which would pay nothing to SJT for these services. We also explained how SJT would collect all storage charges for use of the property. SJT would then remit 95% of these charges to SJRE. Mr. Diron Blackburn, the current President of SJRE was not an officer or in any way involved with SJRE at the time the Agreement was negotiated and signed.

After the signing of the Agreement on March 3, 2016 and in anticipation that SJRE would begin the construction of the first phase of the project, SJT began working on a list of obligations it had under the Agreement so that San Jacinto River and Rail Park could operate. First of all, the other shareholders of THS and I formed SJT and filed an Operation Exemption with the Board explaining that it had an agreement with SJRE to operate the property. The Board granted the Operation Exemption. This permitted SJT to hold itself out as a common carrier.

SJT then began negotiations with Union Pacific and Burlington Northern Santa Fe for an Interchange agreement so that the UP line and the BNSF line could reach the Rail Park. The proposed documents to be agreed to are attached to this filing as Exhibit D. I was involved in the negotiations. UP and BNSF made it clear that they would not enter into an agreement until the initial construction of the rail infrastructure at the park was begun. Per the Agreement, it was which was the responsibility of SJRE to begin and complete this construction. SJRE has never begun this construction.

SJT also hired a professional marketing firm to begin marketing the services to be provided in the Rail Park. A copy of an email and report from Carol Metzger of Metzger Logistics LLC describing her marketing efforts is attached hereto as Exhibit E.

SJT also secured locomotives for the purpose of operating in the Rail Park. Photos of the locomotives are attached as Exhibit F to this filing. Since the interchange agreement could not be completed until SJRE built the initial stage of the project, SJT was forced to store the locomotives off site.

SJT also issued a tariff of rates and services it expected to charge. It gave copies of the tariff to prospective customers. The Tariff is attached to this filing as Exhibit G.

Regarding the safe operations of its employees, SJT issued Operating Rules so that SJT could train employees and be ready to operate. These operating rules are attached to filing as Exhibit H.

SJT also made arrangements with the Association of American Railroads ("AAR") regarding interchange, car service, car hire and other documents. A letter from the AAR dated May 11, 2016 confirms the documents sent by SJT to the AAR. This letter is attached as Exhibit L with this filing.

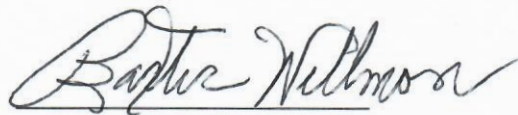
SJT also created for the infrastructure an integrated Vossloh Automated Equipment Identification System with the General Electric Yard and Revenue Management System. The information regarding this, a proposed Master Adoption Agreement, is attached as Exhibit I to this filing.

SJT created a Side Track Agreement to be sent to prospective customers located in the San Jacinto River and Rail Park and who expressed an interest in using SJT tracks or their private industry tracks in the Rail Park for loading or unloading goods. A copy of the proposed agreement is attached as Exhibit M with this filing.

SJT worked extremely hard to hold itself out as a common carrier and to be ready to operate the facilities. But SJT has not been able to operate because SJRE failed to build the rail infrastructure.

Although the Agreement had a 15-year term, SJRE terminated it. After trying unsuccessfully to resolve the matter with SJRE, SJT filed an action in the Harris County Court in Houston, Texas against SJRE seeking damages for SJRE's failure to comply with the Agreement. A copy of the original petition in that action is attached as Exhibit B to this filing.

Finally, while I am involved as a shareholder in both SJT and another carrier Big Spring Railroad, I do not have controlling interests in either carrier. I serve as President of Big Spring Railroad only and not as President of SJT. I do not have a controlling interest in either carrier nor do any of the other shareholders. See Exhibit K for ownership interest in several companies the shareholders are involved in. If the Board is of the opinion that the non-controlling interest, I hold requires a filing of a Control Exemption, I will of course file the Control Exemption.

A handwritten signature in dark ink, appearing to read "Baxter Wellmon", with a stylized, cursive script.

Baxter Wellmon

August 12, 2021

Exhibit B

San Jacinto Transportation Company, Incorporated

1554 Paoli Pike, #179, West Chester PA 19380

Date: September 28, 2015

First Amended and Restated Agreement

This First Amended and Restated Agreement (“**Agreement**”) dated effective September 28, 2015 (“**Effective Date**”) between **SJRE – Railroad Series**, a series within San Jacinto Real Estate, a series LLC formed under the laws of the State of Texas, having a place of business at 18511 Beaumont Highway, Houston, Texas 77049 (“**Client**” or “**SJRE – Railroad Series**”); and **San Jacinto Transportation Company, Incorporated** having a place of business at 1554 Paoli Pike, #179, West Chester, PA 19380 (“**SJT**”) for considerations noted in this agreement good, the receipt which is hereby acknowledged do hereby grant unto SJT its successors or assigns, a license for railroad purposes, including the right to enter upon the lands of the Client situated in the County of Harris Count, State of Texas, particularly described as 18511 Beaumont Highway, Houston, Texas 77049 (the “**Premises**”).

This Agreement replaces and supersedes that certain Agreement dated September 28, 2015 between W&P Development Corp. and San Jacinto Rail Corporation.

SJT represents that it has personnel available who have the requisite technical knowledge and expertise relevant rail management, operating, and marketing services; and

Client has requested the SJT to provide the rail management Services described in detail in the Scope of Services attached hereto as in Exhibit A;

All exhibits and any amendments thereto are a part of this Agreement. The terms of this Agreement and its schedules are intended to be complementary and whenever possible shall be interpreted and construed as complementary. In the event of any contradiction, discrepancy, ambiguity or inconsistency between the terms of this Agreement and the terms of any exhibits, the parts of this Agreement shall have the following order of precedence:

A. Exhibit A: Retainer Scope of Services and Fee Schedule

Client and SJT Agreement as follows:

1.1 Client hereby retains the “exclusive” services of SJT as more specifically set forth in Exhibit A hereto (the “Services”) and matters related thereto.

1.2 SJT agrees to perform the services as set forth in Exhibit A of this Agreement in accordance with the best standards of the applicable industry.

1.3 SJT shall conduct the Services, and carry out its obligations under this Agreement, in full compliance with any and all valid and applicable laws, rules, and regulations adopted by any governmental agency, whether local, state or federal. SJT expressly agrees, in the performance of its work hereunder, to comply with the applicable provisions of the Fair Labor Standards Act of 1938, as amended, and with valid regulations having application thereto. SJT also understands and agrees that it is a contractor or a subcontractor. Throughout the term of this Agreement, SJT shall conduct its services in good faith with all parties and shall not otherwise engage in any unlawful trade practices or conduct the Services in an unsafe manner.

1.4 SJT will provide qualified personnel to perform the Services described in Exhibit A attached. If Client is dissatisfied for any reason with the personnel provided for SJT it may request the removal and replacement of said employee upon 30 days written notice to the SJT.

1.5 If SJT requires access to Client’s proprietary information technology network (e.g. for email and Internet access) in order to carry out SJT’s duties hereunder, SJT shall sign Client’s standard “Contractor Access Agreement” at the request of Client if the Client so requires.

2. Payments and Expenses.

2.1 SJT shall pay Client all storage fees relating to rail cars stored on the Premises ("Storage") that it collects minus its administrative fee as detailed in Exhibit A attached. SJT shall collect storage fees for any rail car parked or located on any "storage track", as defined by Client, whether such storage was contracted, not contracted or identified on the Tariff (collectively, the "Storage Fees"). Client shall negotiate the amount of any contracted Storage Fees directly with the third party.

3. Confidentiality.

3.1 Information designated as "Confidential" by either party shall not be disclosed to any other person, firm, corporation or association UNLESS the parties mutually agree in writing to so disclose this information OR if ordered to do so by a court or agency which has jurisdiction over either of the parties ("Confidential Information").

3.2 In this Agreement, Confidential Information means all form and manner of information and agreements that from this agreement and other agreements made between either party and includes the fact that discussions may take place between SJT and Client concerning the marketing services to enhance rail service at the Client's facility.

3.3 The obligations of this Agreement shall not extend to any Confidential Information which:

- A. at the time of disclosure is in the public domain; or
- B. Client or SJT is required to disclose pursuant to an order of any court of competent jurisdiction or any administrative body having jurisdiction.

3.4 Disclosure of Confidential Information

Client and SJT agree that the wrongful disclosure or unauthorized use of all or any portion of the Confidential Information within this Agreement disclosed by SJT to Client pursuant to the terms of this Agreement may result in irreparable harm that may not be compensated totally by monetary damages; consequently, Client and SJT acknowledge that a temporary restraining order and/or an injunction is an appropriate remedy to protect certain of SJT's rights, in addition to any other rights, legal remedies, and recourses otherwise available to SJT.

3.5 Remedies for Disclosure of Confidential Information

If either party discloses confidential information to an outside party, then the party who is injured by said disclosure to this agreement may take some or all of the following actions:

- 1. Obtain an injunction from a court prohibiting further disclosures
- 2. Liquidated damages from the other party of a minimum of \$50,000 for each and every breach of this confidentiality provision.

3.6 Waiver

The confidentiality provisions contained herein may only be waived by a mutual writing of the parties waiving the provision as to particularly described confidential information.

4. Governing Law

SJT and Client agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of Texas and any suits hereunder must be filed and heard in Harris County, Texas.

5. Assignment.

The rights and obligations covered herein are personal to each party hereto and for this reason this Agreement shall not be assignable by either party in whole or in part, except to any successor to the business and assets and/or assets of the business of the assignor, without the prior written consent of the other party. Notwithstanding the above, Client may assign this Agreement to a wholly owned subsidiary and SJT may assign this Agreement to a wholly-owned operating company for the express purpose of investing the necessary authority and control into an entity having the proper authority from the Surface Transportation Board to operate a railroad.

6. Notices.

Any notice or consent required or permitted by this Agreement shall be in writing and shall be transmitted by regular mail, facsimile, registered mail or by overnight air delivery and shall be effective upon receipt as follows, or any such other address provided by a party in writing:

SJRE – Railroad Series
13641 Dublin Court
Stafford, TX 77477
Attention: Brad Sullivan

San Jacinto Transportation Company Incorporated
1554 Paoli Pike, #179
West Chester, PA 19380
Attention: VP Administration

7. Relationship between the Parties.

7.1 SJT's relationship with Client is that of an independent contractor and not that of an employee or agent. It is understood that SJT is not in any way the legal representative or agent of Client. SJT is not empowered to assume or create in writing or otherwise any obligation of any kind expressed or implied in the name of, or on behalf of, Client.

7.2 Client shall be responsible for the claims of its own employees and contractors and for all contributions to railroad retirement or social security taxes which ever will apply and for the withholding of appropriate state and federal taxes and assessments.

8 General Provisions

8.1 The headings in this Agreement are inserted for convenience only and shall not be used in the interpretation hereof.

8.2 Both parties have reviewed, and have had an opportunity for comment upon, this Agreement.

8.3 The parties agree that each of them reviewed and proposed revisions to this agreement and that its drafting should not be interpreted against either as being primarily responsible for its drafting.

8.4 This Agreement may only be amended by a written document signed by both parties.

8.5 No waiver of any provision of this Agreement, or of a notice of breach hereof, shall be effective unless it is in writing and signed by both parties. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach.

8.6 All provisions of this Agreement are severable, and the unenforceability or invalidity of any of them shall not affect the validity or enforceability of the remaining provisions of this Agreement.

8.7 Any provision of this Agreement that, by its nature, is applicable to circumstances arising after the termination of this Agreement shall survive such termination and remain in full force and effect.

8.8 There are no third party beneficiaries of this Agreement and no party other than Client and SJT shall have any legally enforceable rights hereunder.

8.9 This Agreement and the Exhibit hereto supersede all previous agreements, negotiations, commitments, representations or writings between the parties related to the subject matter hereof. To the extent of any inconsistencies or conflicting terms between this Agreement and an Exhibit, this Agreement shall govern.

8.10 The indemnity and insurance obligations contained in this Agreement are separate and apart from each other, such that failure to fulfil the indemnity obligations does not alter or eliminate the insurance obligations or vice versa. The insurance obligations shall support but shall not in any way limit the defence and indemnity obligations set forth herein. SJT shall maintain insurance coverage for the performance of its services hereunder, as specified Exhibit B. Client shall maintain insurance coverage or shall self-insure for the liabilities assumed hereunder in amounts equal to or greater than the amounts specified in specified Exhibit B. It is expressly acknowledged by Client and SJT that these insurance provisions in no way alter, decrease or eliminate the liability of SJT as assumed or stated elsewhere in this Agreement.

8.12 SJT shall keep records and books of accounts associated with this Agreement and the usage of Client's facilities in accordance with generally accepted accounting principles and practices in the industry which shall be subject to inspection and audit by Client at reasonable times.

9.0 Term of Agreement

This Agreement is to be for a term of fifteen (15) years commencing on the 1st day of October, 2015, and expiring on the 1st day of October, 2030. At the termination of the initial term of this Agreement, SJT, if not in default hereunder, shall have and is hereby granted three (3) successive options to extend this Agreement for a period of ten (10) years each upon the same terms and conditions as set forth in this Agreement. SJT may exercise the options granted herein by delivering a written election to exercise its option to Client at least sixty (60) days prior to the expiration of the initial term of the Lease or if the lease is in an option year, (60) days prior to the end of the option year. Should SJT fail to deliver the required notice within the sixty (60) day period as required then, this Agreement shall terminate.

10.0 General Provisions

Each party hereto agrees to indemnify, defend and hold harmless the other party from any and all damages, claims, suits, actions, judgments or any other proceeding arising out of its own negligence (whether sole or concurrent, without limitation, and regardless of degree of apportionment), gross negligence, or wilful misconduct. Notwithstanding the foregoing, SJT hereby agrees to defend, indemnify and hold harmless Client from and against any and all claims, losses, costs (including, without, limitation, attorney fees and court costs), judgments, actions, causes of actions, and suits, which may arise out of or in connection with the provision of services hereunder, including but not limited to claims, losses, costs, spills, environmental damages, casualty events, theft, property damage, judgments, actions, causes of action, and suits whether brought by an individual or by a governmental entity against Client or SJT, arising out of or in connection with incorrect payment or failure to pay withholding and/or payroll and/or income taxes, premiums for unemployment insurance, worker's compensation insurance, pensions, annuities, retirement benefits, thrift plans, profit sharing plans, health or life insurance, or any other benefits related to SJT or arising out of or in connection with personal injury, death or property damage to SJT or third parties.

11.0 Series LLC

SJT understands that Client/SJRE – Railroad Series is a distinct series within a Texas limited liability company ("LLC"). Under Chapter 101 of the Texas Business Organizations Code, an LLC may establish one or more designated series that have rights, powers and duties that are separate and different from the rights, powers and duties of any other series or the LLC generally. In addition, (i) the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series (such as SJRE – Railroad Series) are enforceable against the assets of that series only, and are not enforceable against the assets of the LLC generally or any other series, and (ii) none of the debts, liabilities, obligations or expenses incurred, contracted for or otherwise existing with respect to the LLC generally or any other series are enforceable against the assets of a particular series (such as SJRE – Railroad Series). SJT expressly agrees to the foregoing limitation on the liability of SJRE – Railroad Series under this Agreement. SJT also acknowledges that certain covenants and obligations of SJRE – Railroad Series under this Agreement may be performed by other series in the LLC. SJRE – Railroad Series shall cause such other series to perform such covenants and obligations in accordance with the terms of this Agreement, and SJT agrees that SJRE – Railroad Series shall be the only series liable for a default in the performance of any such covenant or obligation.

This Agreement has been duly executed by both parties as of the Effective Date.

**SJRE – Railroad Series
(For Client)**

By: _____

Name: Johnette Rosenbalm

Title: Chief Operating Officer

Date: _____

3/3/2016

**San Jacinto Transportation Company Incorporated
(For SJT)**

By: _____

Name: Charlotte Oschman

Title: VP-Administration/Treasurer/ Corporate Secretary

Date: _____

3.3.2016

Exhibit "A"

RAIL SERVICES SCOPE AND FEES:

SJT will provide certain rail transportation services including the operations, marketing and management of the rail infrastructure on behalf of the Client. Client agrees that SJT will be the sole operator of rail transportation services within Client's Premises as noted in this Agreement.

SJT agrees to provide the following services for Client on the Premises noted in this Agreement:

1. SJT will provide inspection, repairs and maintenance of the track and rail facilities on the Premises (both existing and new track) to Class 1 FRA Standards through the Premises and to where the track connects with the Union Pacific and BNSF Railroads. Client will coordinate with SJT, beginning in the planning phase of such project, with respect to the construction of track and/or rail structures and any non-rail structures or buildings that are located over, under or within 100 feet of the center line of any SJT track. Said maintenance and repairs to track and rail structures shall be provided at SJT's sole cost and expense.
2. SJT is a common carrier to be licensed by the Surface Transportation Board (STB).
3. Bartlett & West shall conduct all rail engineering and related rail infrastructure engineering and such engineering fees and engagement of Bartlett & West shall be controlled and paid by Client.
4. SJT has the option of installing an office trailer, equipment maintenance building, or any other structures for its use on the Premises, subject to the location being agreed upon by Client. SJT will maintain said structures at its sole cost and expense.
5. SJT agrees at their own cost and expense to maintain the railroad infrastructure ("Rail Infrastructure") in good order and condition, including routine maintenance and upon termination of this Agreement to return said Rail Infrastructure in Class 1 FRA standards. Any permanent buildings constructed by SJT shall become the property of Client upon termination of this Agreement.
6. Client shall be entitled from time to time to inspect the Rail Infrastructure and to point out any deficiencies in SJT's maintenance of the Rail Infrastructure. This paragraph notwithstanding, the Client understands and agrees that maintenance of the facility as a common carrier railroad will be controlled by the judgement of the Federal Railroad Administration (FRA) who has the right to oversee the operation and maintenance of the facility pursuant to federal laws and regulations.
7. SJT agrees to promptly repair and restore said Rail Infrastructure to remedy bona fide deficiencies in a reasonable and prompt manner.
8. During the Term of this Agreement, SJT shall collect and remit to Client at Client's address hereinafter stated, monthly in arrears Storage Fees. The billing, accounting, and remittance methods for all Storage Fees must be discussed and agreed to by both Client and SJT at all times. Such payments to Client are only from the Storage Fees collected by SJT. SJT shall receive a five percent (5%) administrative fee of the amount of all funds actually collected from third parties in connection with use of the Rail Infrastructure. At any time, Client may elect to handle the administration process for the Contract Storage Fees. SJT will relinquish this function eliminating the five percent (5%) administration fee described above. In the event that Client elects to assume the administration of Storage Fees, Client agrees to reimburse SJT for any and all startup costs associated with the same provided such startup costs are disclosed in writing within ten (10) days of a written request for such information.
9. Client agrees to pay for the full planning, engineering, construction and installation of the initial Rail Infrastructure, including rail connections to the UP and BNSF and any new or additional rail infrastructure that may be required by Client within the Premises.
10. Notwithstanding the above, storage fees shall not apply to store rail cars on those portions of the Rail Infrastructure or Premises leased to Tenant(s). SJT will publish a railroad Tariff that will list charges for the movement of Tenant's and non-Tenants' rail cars as well as special switches and services. Prior to the publishing of the Tariff, SJT shall provide it to Client for its review and approval. Client shall have the right to add restrictions to the Tariff, including the right to prohibit certain categories of contents of rail cars. Client shall receive all fees relating providing third parties with access to the Premises to deliver or retrieve the contents of any rail car; provided that the fees related to the movement of rail cars to the location designated by Client for delivery or retrieval of contents shall be retained by SJT.

The Tariff will include charges to switch empty Storage cars in and out of the Premises for Client's Tenants (there will be no charge for Tenants' loaded rail cars switched in or out of the Premises). The Tariff will also list a charge

for switching a Storage car, loaded or empty, when contracted storage cars are ordered out on other than a last in – first out basis by the Client's customer.

11. SJT shall accommodate Storage rail car movements on a preferential basis, as needed.

PAYMENT TERMS:

- A. Except as otherwise agreed by the parties, SJT shall remit to Client each month the cash collected by SJT from the previous month, less SJT's administrative fee of 5% for: (i) storage charges and fees generated from storing rail cars using the Rail Infrastructure; and (ii) all other fees charged to non-Tenants relating to use of the Rail Infrastructure. SJT shall issue to Client a report by the end of the first (1st) week of every month for rail car storage collected by SJT in the prior month which was subject to this Agreement and make payment of such amount to Client by the end of the second (2nd) week of every month.
- B. SJT shall pay Client through direct bank transfer of funds into Client's account.

Exhibit “B”

INSURANCE REQUIREMENTS

[SJT’s standard insurance requirements for similar agreements for railroad insurance as required by Class I railroads (UP and or BNSF)] (the “SJT Insurance will be incorporated herein, subject to Client’s prior approval as to such insurance policy.. The SJT Insurance shall name Client as an “additional insured”.

Exhibit C

CAUSE NO. 201962755

SAN JACINTO	§	IN THE DISTRICT COURT
TRANSPORTATION COMPANY,	§	
INC.	§	
<i>PLAINTIFF,</i>	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SJRE-RAILROAD SERIES, SAN	§	
JACINTO REAL ESTATE, A SE-	§	
RIES LLC, AND W & P DEVEL-	§	
OPMENT CORPORATION	§	
<i>DEFENDANTS.</i>	§	<u>164th</u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & REQUEST
FOR DISCLOSURE AND WRITTEN DISCOVERY

Plaintiff San Jacinto Transportation Company, Inc. ("Plaintiff" or "SJT") files this Original Petition and Request for Disclosure and Written Discovery against Defendants SJRE-Railroad Series ("SJRE-Railroad Series"), San Jacinto Real Estate, a series LLC ("SJRE"), and W & P Development Corporation ("W & P") (collectively, "Defendants"). SJT alleges the following:

I. DISCOVERY-CONTROL PLAN & DAMAGES

1. SJT intends for discovery to be governed by rule as a Level 2 Discovery Control Plan in accordance with Rule 190.3 of the Texas Rules of Civil Procedure. Plaintiff affirmatively pleads that this suit is not governed by the expedited-actions process of Texas Rule of Civil Procedure 169(a) because Plaintiff is seeking more than \$100,000 in damages. Indeed, Plaintiff seeks more than \$1,000,000.00 in damages. *See* TRCP 47(c)(5).

II. PARTIES

2. Plaintiff SJT is a Texas Corporation with its principal place of business in Spicewood, Texas.

3. Defendant SJRE-Railroad Series is a Texas designated series. It was established by San Jacinto Real Estate, a series Texas limited liability company. SJRE-Railroad Series has its principal place of business in Harris County, Texas at 18511 Beaumont Highway in Houston, Texas. San Jacinto Real Estate — the LLC that established SJRE-Railroad Series — and SJRE-Railroad Series through it, may be served with process through its registered agent, CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas.

4. Defendant SJRE is a Texas series LLC. SJRE also has its principal place of business in Harris County, Texas at 18511 Beaumont Highway in Houston, Texas. SJRE may be served with process through its registered agent, CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas.

5. Defendant W & P is a Texas corporation. W & P also has its principal place of business in Harris County Texas at 18511 Beaumont Highway in Houston, Texas. W & P may be served with process through its registered agent, CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas.

6. SJRE and W & P are the alter egos of SJRE-Railroad Series. They were used to perpetrate an actual fraud on SJT for direct personal benefit of SJRE and W & P. SJT thus respectfully requests that that the Court disregard the corporate form and pierce the corporate veil to hold SJRE and W & P jointly and severally liable for each other's obligations in an equitable manner.

III. JURISDICTION AND VENUE

7. The amount sought by SJT is within the jurisdictional limits of this Court.

8. This Court has personal jurisdiction over SJRE and W & P because they are Texas companies. This Court has jurisdiction over SJRE-Railroad Series because it is a series estab-

lished by a Texas company. Further, Defendants' principal place of business is in Texas, and SJT's causes of action arise out of Defendants' business activities in the State of Texas.

9. Because SJT and Defendants are Texas business entities, there is not diversity between the parties, and this case is not removable to federal court on that grounds. *See* 28 U.S.C. § 1332. Moreover, because Defendants are each home-state defendants, they are precluded from removing the case under § 1441(b)(2). There is no federal-question jurisdiction because federal law does not create or play an essential ingredient in SJT's causes of action.

10. Venue is proper in this Court because SJT and SJRE-Railroad Series, the parties to the contract at issue, agreed to a venue-selection clause, which mandates that all suits brought under the contract must be filed in Harris County. Moreover, Defendants' principal place of business is in Harris County, Texas, and a substantial part of the events or omissions giving rise to this suit occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1)–(2).

IV. FACTUAL BACKGROUND

11. On March 3, 2016, SJT and SJRE-Railroad Series entered into the First Amended and Restated Agreement (the "Agreement"). The Agreement was effective as of September 28, 2015.

12. In the Agreement, SJT agreed to provide rail-management services for a proposed Storage in Transit ("SIT") Yard located on land owned by Defendants at 18511 Beaumont Highway in Houston, Texas known as the San Jacinto River & Rail Park. The San Jacinto River & Rail Park was part of a larger parcel of land that was formerly developed as a paper mill.

13. The parties contemplated that the San Jacinto River & Rail Park would be developed

in phases. The initial phase was to contain 73,485 track feet, and it was to have the capacity for 1,106 65-foot rail cars. When the initial railroad infrastructure was complete, the San Jacinto River & Rail Park would connect to a rail line owned jointly by Union Pacific (“UP”) and the Burlington North Santa Fe (“BNSF”) Railroad. The tract, which is located immediately west of the San Jacinto River, connects to the Houston Ship Channel. And so the rail park would have had access to rail lines run by UP and BNSF and to the Houston Ship Channel. In subsequent phases, new or additional rail infrastructure would be developed to increase the capacity of the San Jacinto River & Rail Park by an additional 3,400 65-foot rail cars (Phase II), and then an additional 104 unit trains totaling 11,440 65-foot rail cars (Phase III).

14. The Agreement provided that SJRE-Railroad Series would pay for the “full planning, engineering, construction and installation of the initial Rail Infrastructure, including rail connections to the UP and BNSF and any new or additional rail infrastructure that may be required by [SJRE-Railroad Series] within the [San Jacinto River & Rail Park].”

15. In turn, the Agreement stated that SJT would “provide certain rail transportation services including the operations, marketing and management of the rail infrastructure on behalf of [SJRE-Railroad Series].” SJRE-Railroad Series agreed that “SJT will be the sole operator of rail transportation services within [the San Jacinto River & Rail Park] as noted in this Agreement.”

16. The parties agreed that, during the term of the Agreement, SJT would collect and remit to SJRE-Railroad Series all Storage Fees actually collected from third parties in connection with use of the rail infrastructure, minus an administrative fee of five percent (5%) of such Storage Fees payable to SJT.

17. SJT agreed that it would obtain a license to operate the San Jacinto River & Rail Park from the Surface Transportation Board. In its role as operator of the rail infrastructure, SJT was provided the right to collect charges for the movement of rail cars as well as special switches and services, as set forth in a railroad Tariff to be developed and published by SJT.

18. The Agreement was for a term of fifteen (15) years, commencing on October 1, 2015 and expiring on October 1, 2030. Further, SJRE-Railroad Series granted SJT three (3) successive options, if SJT was not in default under the Agreement, to extend the term of the Agreement for a period of ten (10) years each. The Agreement contained no other termination provision and could not be otherwise terminated.

19. Thereafter, SJT obtained a license from the Surface Transportation Board to operate rail infrastructure within the San Jacinto River & Rail Park as a Class III Railroad. Further, SJT worked to provide those rail-transportation services capable of being done prior to Defendant's required development of the San Jacinto River & Rail Park, including but not limited to development of a railroad Tariff, negotiation of railroad interchanges with UP and BNSF, negotiation of a Master Adoption Agreement with Railcar Management, LLC (an affiliate of General Electric Company) to obtain a license to utilize General Electric Company's transportation application software, and engagement in an extensive marketing process in which dozens of customers were solicited to provide feedback and interest in committing to rail car storage at the San Jacinto River & Rail Park.

20. But notwithstanding SJT's compliance with the Agreement, SJRE-Railroad Series failed to satisfy its obligation to pay for the "full planning, engineering, construction and installation of the initial Rail Infrastructure, including rail connections to the UP and BNSF and any new or additional rail infrastructure that may be required by [SJRE-Railroad Series]

within the [San Jacinto River & Rail Park].”

21. Rather, on December 5, 2017, Defendants represented that they no longer intended to pay for development of the San Jacinto River & Rail Park and sought to terminate the Agreement, all the while attempting to replace SJT as operator of rail-transportation services at the San Jacinto River & Rail Park through filings made by SJRE-Railroad Series with the Surface Transportation Board.

V. CAUSES OF ACTION

Count 1 – Breach of Contract

22. SJT incorporates all earlier paragraphs here.

23. On March 3, 2016 SJRE-Railroad Series and SJT entered into the Agreement, which was a valid and enforceable contract — one with offer and acceptance and valid consideration.

24. SJT properly performed under the Agreement and was not in breach of the Agreement.

25. On December 5, 2017, Defendants represented that they no longer intended to pay for development of the San Jacinto River & Rail Park and sought to terminate the Agreement, all the while attempting to replace SJT as operator of rail transportation services at the San Jacinto River & Rail Park through filings made by SJRE-Railroad Series with the Surface Transportation Board. This conduct amounts to breach of contract.

26. Each of SJRE-Railroad Series, SJRE and W & P planned, participated, caused or otherwise instigated the foregoing breach.

27. This breach of the contract caused SJT to suffer damages, which Defendants are responsible for.

Count 2 – Alter Ego/Piercing the Corporate Veil

28. SJRE and W & P are, and in the past were, alter egos of SJRE-Railroad Series. They used SJRE-Railroad Series to perpetrate a fraud for their own direct personal benefit.

29. Upon information and belief, SJRE, W & P, and SJRE-Railroad Series share the same physical address, employees, and officers. Moreover, SJRE-Railroad Series is undercapitalized, and SJRE and W & P are SJRE-Railroad Series's sole source of business.

30. SJRE-Railroad Series's corporate form should be disregarded, and the corporate veil of SJRE and W & P should be pierced to hold SJRE and W & P jointly and severally liable for each other's obligations in an equitable manner.

VI. CONDITIONS PRECEDENT

31. All conditions precedent to SJT's recovery for the claims asserted herein have been performed or have occurred.

VII. ATTORNEYS' FEES

32. SJT is represented by counsel. This petition is a presentment of claim under Texas Civil Practice & Remedies Code § 38.002(2). If Defendants do not tender payment within 30 days of service of the Original Petition, SJT will seek, and Defendants will be required to pay, SJT's reasonable attorneys' fees.

VIII. JURY DEMAND

33. SJT demands a jury trial and tenders the appropriate fee with this Petition.

IX. PLAINTIFF'S REQUESTS FOR DISCLOSURE & REQUESTS FOR PRODUCTION

34. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

35. SJT is serving with its Original Petition the attached Requests for Production. Defendants must respond to this written discovery within 50 days of service of this petition.

X. PRAYER

Plaintiff SJT respectfully prays that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for SJT against Defendants as follows:

- i. Contractual damages due and owing under the Agreement;
- ii. All other damages, both general and specific, including lost or anticipated profits, cost of mitigation, and loss of goodwill;
- iii. Pre-judgment and post-judgment interest as allowed by law;
- iv. Reasonable and necessary attorneys' fees;
- v. All costs of court; and
- vi. All such other and further relief, at law or in equity, to which SJT may show itself to be justly entitled.

Respectfully submitted,

WILLIAMS HART BOUNDAS EASTERBY, LLP

By: /s/ Brian Abramson_____

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ATTORNEYS FOR SAN JACINTO TRANSPORTATION COMPANY

Exhibit

D

**INTERCHANGE AGREEMENT
AT SHELDON, TX
BETWEEN SJR AND BNSF**

THIS INTERCHANGE AGREEMENT (“Agreement”), is entered into effective as of this _____ day of _____, 2016 (hereinafter referred to as the “**Effective Date**”), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as “**BNSF**”) and **SAN JACINTO TRANSPORTATION COMPANY**, a Texas _____ corporation (hereinafter referred to as “**SJR**”). BNSF and SJR are sometimes referred to herein as a “**Party**” and together as “**Parties**.”

RECITALS:

WHEREAS, the Parties desire to enter into this Agreement for the purpose of effecting interchange of loaded and empty rail cars on SJR’s track located near Sheldon, Texas;

NOW THEREFORE, in consideration of the mutual covenants and obligations of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. DEFINITIONS

In addition to definitions set forth elsewhere in this Agreement, the following terms shall have the meanings indicated below:

- (a) “**Affiliates**” means all entities, directly or indirectly, owned, controlled by or under the common control of a Party and its respective officers, directors, employees, agents and representatives;
- (b) “**Legal Requirements**” means all applicable statutes, laws, rules, regulations, ordinances, orders, codes, permits, licenses, and requirements (including consent decrees, judicial decisions and administrative orders) of all federal, state and local governments, departments, commissions, agencies and boards with appropriate jurisdiction, including, without limitation, any other statutes, laws, regulations or rules, respecting the operation, condition, inspection or safety of trains, locomotives, cars and equipment, all as amended or supplemented;
- (c) Any reference to a “**Party’s Affiliates**” shall mean, with respect to SJR, SJR Affiliates and with respect to BNSF, BNSF Affiliates; and

Section 2. INTERCHANGE PROVISIONS

(a) SJR grants to BNSF the limited right to use (i) SJR track within the limits of SJR’s property solely for interchange between the Parties as depicted on **Exhibit “A”**, attached to and made a part of this Agreement, and (ii) other trackage, as is necessary to reach the trackage designated for interchange between the Parties (the trackage set forth in (a)(i) and (a)(ii) is hereinafter collectively referred to as “**Interchange Tracks**”). The Parties hereby agree that SJR’s yard is designated as

the point of interchange of loaded or empty rail cars to be interchanged between the Parties pursuant to this Agreement. Notwithstanding the foregoing, the term “**Interchange Tracks**” shall also include any other tracks designated by SJR to be used to effect interchange under this Agreement. Specific track designations to be used for interchange may be changed from time to time at SJR’s local operating officers’ sole discretion. The interchange of rail cars under this Agreement shall be on an “as needed (as defined as a car which arrives to be interchanged and or ready for departure on the interchange track)” basis unless otherwise mutually agreed to by the Parties.

(b) The Parties understand and agree that at all times the Interchange Tracks may be used by SJR for other purposes so long as such use does not unreasonably interfere with BNSF’s right of interchange provided for herein. This Agreement does not vest any right of ownership to BNSF in the Interchange Tracks.

(c) BNSF shall deliver rail cars to SJR and pick up rail cars from SJR on the Interchange Tracks. Except as set forth below with respect to the interchange of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced), the Parties agree that the rail cars shall be considered interchanged at the time (i) the rail cars are placed on the Interchange Tracks, (ii) the delivering Party’s crew uncouples from the rail cars, AND (iii) any necessary data or information for forwarding or handling precedes or accompanies the rail cars. Each Party agrees to provide the other Party with EDI 417 waybills and an EDI 418 advance consist standing orders for each interchange delivery either before or at the time of such delivery. Rail cars containing rail security-sensitive materials shall not be considered interchanged until such time as (i) the transfer of custody of the rail cars is documented pursuant to 49 CFR Part 1580 (as amended, supplemented or replaced), and (ii) where required, such transfer of custody of rail cars is “attended” pursuant to 49 CFR 1580.107 (as amended, supplemented or replaced). Once the rail cars containing rail security-sensitive materials are deemed interchanged pursuant to the preceding sentence, then the receiving Party shall, if required pursuant to 49 CFR 1580.107, “attend” such rail cars and shall perform the inspection required pursuant to 49 CFR 174.9 (as amended, supplemented or replaced) unless the delivering Party performs such inspection in conjunction with the inspections performed by the delivering Party pursuant to 49 CFR Parts 215 and 232.”

(d) Except to the extent provided otherwise herein, the Parties agree that the interchange, car service and car hire rules of the Association of American Railroads (hereinafter referred to as the “AAR”) governing the interchange of cars between railroads shall govern the interchange of equipment hereunder, as such rules may be amended from time to time.

(e) Each Party undertakes and agrees, with respect to such Party’s use of the Interchange Tracks and the operation of equipment and appliances thereon and thereover, to comply with all Legal Requirements. If any failure by a Party to comply with Legal Requirements shall result in a fine, penalty, cost or charge being assessed, imposed or charged against the other Party hereto, the non-compliant Party agrees to promptly reimburse and indemnify the other Party for or on account of such fine, penalty, cost or charge; and further agrees in the event of any such action, upon notice thereof, to defend such action free of cost, charge and expense to the other Party.

(f) Except as expressly provided elsewhere in this Agreement, in the event use of the Interchange Tracks is interrupted or delayed at any time for any or no reason, BNSF shall have no claim against SJR for loss and/or damage (defined below) of any kind resulting from any such interruption or delay. BNSF hereby waives, releases, indemnifies and defends SJR and SJR Affiliates from and against any loss and/or damage arising from any interruption or delay of use of the Interchange Tracks.

Section 3. OPERATING RIGHTS

[This Section Intentionally Left Blank]

Section 4. CAPITAL IMPROVEMENTS AND CHANGES IN AND/OR ADDITIONS TO THE INTERCHANGE TRACK

SJR, from time to time, shall have the right but not the obligation to make such capital improvements, changes in, additions and betterments to, or retirements from the Interchange Tracks as shall, in its sole judgment, be necessary or desirable or as may be required Legal Requirements. Such capital improvements, additions and betterments shall become part of the Interchange Tracks and such retirements shall be excluded from the Interchange Tracks.

Section 5. MAINTENANCE OF INTERCHANGE TRACKS

SJR shall maintain and repair the Interchange Tracks with its own supervision and labor. BNSF accepts the Interchange Tracks in their AS IS WHERE IS condition. SJR does not guarantee, represent or warrant the condition of the Interchange Tracks now or in the future or that operation there over will not be interrupted or delayed. Furthermore, BNSF shall not by reason of failure or neglect on the part of SJR to maintain or repair the Interchange Tracks, have or make any claim or demand against SJR for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, resulting from any such neglect or failure.

Section 6. MANAGEMENT AND OPERATION

(a) During the term of this Agreement, SJR shall have the exclusive direction and control of the management and operation of the Interchange Tracks. When BNSF and SJR interchange rail cars containing rail security-sensitive materials (as defined in 49 CFR Part 1580, as amended, supplemented or replaced) under this Agreement, BNSF and SJR shall coordinate such interchange prior to the delivery of such rail cars.

(b) Use of the Interchange Tracks by BNSF shall comply in all respects with the operating rules and regulations of SJR (including, but not limited to, SJR's maximum weight restrictions in effect for the Interchange Tracks), and movement of BNSF trains, locomotives, cars and caboose's over the Interchange Tracks shall at all times be subject to the orders of SJR. BNSF shall defend,

indemnify, protect and save SJR harmless from all fines, penalties and liabilities imposed upon SJR and SJR Affiliates for any failures by BNSF to comply with this provision.

(c) Upon the request of SJR, BNSF shall, at BNSF's sole expense, secure and establish the appropriate frequency on BNSF radios for BNSF trains operating over the Interchange Tracks.

(d) BNSF employees operating equipment, trains, locomotives, cars and cabooses over or along the Interchange Tracks shall be certified and qualified for such operation in compliance with Legal Requirements. SJR may, but is not obligated to, test BNSF employees operating on, over or along the Interchange Tracks to verify that such employees are certified and qualified in accordance with Legal Requirements.

(e) If any employee of BNSF shall allegedly violate Legal Requirements or allegedly neglect, refuse or fail to abide by SJR's rules, instructions and restrictions governing the operation on or along SJR's Interchange Tracks, such employee shall, upon written request of SJR, be prohibited by BNSF from working on the SJR Interchange Tracks. If either Party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of BNSF, then upon such notice presented in writing, SJR and BNSF shall promptly hold a joint investigation in which the Parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to BNSF's employees shall be given by BNSF's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between BNSF and its employees.

(f) SJR shall have the right to exclude from the Interchange Tracks any employee of BNSF determined by SJR in its sole and absolute discretion, as the result of such investigation or hearing described above found to be in violation of Legal Requirements or SJR's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. BNSF shall release, indemnify, defend and save harmless SJR and SJR Affiliates from and against any and all claims and expenses resulting from any such exclusion.

(g) If the disciplinary action is appealed by the employee of BNSF to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Interchange Tracks by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds SJR's continued exclusion of such employee).

(h) If it becomes necessary to make repairs to BNSF equipment, or to adjust or transfer the lading of crippled or defective cars in order to move such cars, such work shall be done by SJR, with costs thereof to be borne by BNSF.

Section 7. SPECIAL PROVISIONS

[This Section Intentionally Left Blank]

Section 8. COMPENSATION

Subject to the terms and conditions of this Agreement, use of the Interchange Tracks under this Agreement is granted without charge.

Section 9. CLEARING OF WRECKS

Whenever BNSF use of the Interchange Tracks requires rerailling, wrecking service or wrecking train service, SJR shall perform such service as SJR deems appropriate. At SJR's option, SJR may agree to allow BNSF to perform rerailling or wrecking services, including the repair and restoration of roadbed, track and structures, and the cost and expense thereof, including without limitation loss of, damage to and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting there from, shall be apportioned in accordance with the provisions of Section 10 herein. All locomotives, cars and cabooses and salvage from the same so picked up and removed which are owned by or under the management and control of or used by BNSF at the time of such wreck shall be promptly picked up by BNSF or delivered to BNSF and all cost and expense therefore shall be in accordance with the provisions of Section 10 herein.

Section 10. LIABILITY

(a) For purposes of this Section 10, the following definitions shall apply:

(i) **"Loss and/or Damage"** shall mean without limitation all claims, suits, demands, judgments, damages, economic losses, and fines and penalties resulting from or arising out of any injuries, death, loss or damage (except liability for punitive and exemplary damages), and all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation or arbitration. Loss and/or damage shall further include the expense of clearing wrecked or derailed equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties.

(ii) **"Equipment"** shall mean (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the ~~Subject Trackage~~ Interchange Tracks, and (iii) vehicles and machinery that, at the time of an occurrence, are on the ~~Subject Trackage~~ Interchange Tracks, or the right-of-way for such tracks, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(iii) References to SJR and BNSF shall include their respective directors, officers, agents or employees.

(b) As between the Parties hereto only, Loss and/or Damage resulting from, arising out of, incidental to, or occurring in connection with the interchange operations and operating rights set forth in this Agreement shall be determined as follows:

(i) **SJR involved, BNSF not involved**

Whenever any Loss and/or Damage occurs with the Equipment of, or in the account of, SJR being involved, without the Equipment of, or in the account of, BNSF being involved, SJR shall assume all liability for and release, indemnify, defend and hold harmless BNSF from and against such Loss and/or Damage regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of BNSF.

(ii) **BNSF involved, SJR not involved**

Whenever any Loss and/or Damage occurs with the Equipment of, or in the account of, BNSF being involved, without the Equipment of, or in the account of, SJR being involved, BNSF shall assume all liability for and release, indemnify, defend and hold harmless SJR from and against such Loss and/or Damage regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of SJR.

(iii) **SJR and BNSF involved**

Whenever any Loss and/or Damage occurs with the Equipment of, or in the account of, both SJR and BNSF being involved, SJR and BNSF shall separately assume all liability for Loss and/or Damage to its own Equipment and its own directors, officers, agents, and employees or persons in its own care and custody and shall equally assume all liability for Loss and/or Damage to third parties. SJR and BNSF shall release, indemnify, defend and hold harmless each other for their respective portions of the Loss and/or Damage regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the other Party.

(c) The indemnification obligation assumed by a Party under this Agreement shall include indemnity for an indemnified Party's Affiliates and shall also include indemnity for strict liability resulting from violation or alleged violation of any Legal Requirements including, without limitation, the Federal Employer's Liability Act or state based worker's compensation laws and regulations, the Occupational Safety and Health Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Oil Pollution Act, the Locomotive Inspection Act and the Safety Appliance Act.

(d) Notwithstanding the foregoing, no Party hereto shall be liable for or indemnify any other Party against any punitive or exemplary damages resulting from the acts, omissions, or conduct of

such other Party.

(e) Equipment of any third party railroad company or companies being detoured or operating over the Interchange Tracks pursuant to SJR's consent or authority and all persons other than SJR and BNSF employees engaged in moving such equipment shall be considered the Equipment and employees of SJR.

(f) Pilots furnished by SJR to BNSF shall be considered to be employees under the custody and control of BNSF while such employees are on duty as pilots.

(g) In the case of Loss and/or Damage suffered by an employee of SJR or BNSF, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and any Party is required to pay said compensation in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement.

Section 11. INSURANCE REQUIREMENTS

(a) BNSF shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

1. Railroad liability policy of insurance acceptable to SJR in an amount of at least **Five Million Dollars (\$5,000,000) per occurrence, Ten MILLION DOLLARS (\$10,000,000) in the aggregate or at a minimum Five MILLION DOLLARS (\$5,000,000) per claim with one reinstatement.**

(i) Such insurance shall include coverage for:

- injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;
- seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn;
- contractual liability; and
- evacuation expense coverage.

(ii) If coverage is purchased on a “claims made” basis, BNSF hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract.

(iii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation acceptable to SJR
- Additional insured endorsement in favor of SJR and acceptable to SJR
- Separation of insureds
- The policy shall be primary and non-contributing with respect to any insurance carried by SJR.

(iv) No other endorsements limiting coverage as respects to obligations under this Agreement or work being performed under this Agreement may be included on the policy.

2. Business Automobile Insurance.

(i) This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired.

(ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation acceptable to SJR
- Additional insured endorsement acceptable to SJR
- Separation of insureds
- The policy shall be primary and non-contributing with respect to any insurance carried by SJR.

3. If applicable, Workers Compensation and Employers Liability

(i) This insurance shall include coverage for, but not be limited to:

- BNSF’s statutory liability under the worker’s compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- All such coverage shall include coverage for the Federal Employers Liability Act and include an alternate employer endorsement naming SJR as the alternate employer with coverage for the Federal Employers Liability Act. The term Alternate Employer as used herein and above is being used solely as an insurance term of art. By BNSF's actions of obtaining insurance coverage as set forth above BNSF is in no way intending or evidencing an alternate or dual employment relationship with SJR. The Parties agree: (1) SJR has no right to direct or control BNSF's employees with respect to the physical conduct or the performance of services; (2) SJR does not supervise, nor does it have the right to supervise, details of BNSF's employees' work or the manner in which such work is accomplished; (3) SJR retains no control over the details of the BNSF's employees' work; and (4) SJR has no right to select, hire, train or fire BNSF's employees.

(ii) This policy shall also contain Waiver of subrogation acceptable to SJR which shall be indicated on the certificate of insurance:

Other Requirements:

(b) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

(c) BNSF agrees to waive its right of recovery against SJR for all claims and suits against SJR. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against SJR for all claims and suits. BNSF further waives its right of recovery, and its insurers also waive their right of subrogation against SJR for loss of its owned or leased property or property under BNSF's care, custody or control.

(d) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

(e) BNSF is not allowed to self-insure without the prior written consent of SJR. If granted by SJR, any self-insured retention or other financial responsibility for claims shall be covered directly by BNSF in lieu of insurance. Any and all SJR liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by BNSF's insurance will be covered as if BNSF elected not to include a deductible, self-insured retention or other financial responsibility for claims.

(f) Prior to exercising any rights granted under this Agreement, BNSF shall furnish to SJR an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage, endorsements, and amendments.

(g) The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify SJR in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

(h) Any insurance policy shall be written by a reputable insurance company acceptable to SJR or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

(i) BNSF represents that this Agreement has been thoroughly reviewed by BNSF's insurance agent(s)/broker(s), who have been instructed by BNSF to procure the insurance coverage required by this Agreement. Not more frequently than once every five years, SJR may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(j) If any portion of the operation is to be subcontracted by BNSF, BNSF shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming SJR as an additional insured, and shall require that the subcontractor shall release, defend and indemnify SJR to the same extent and under the same terms and conditions as BNSF is required to release, defend and indemnify SJR herein.

(k) Failure to provide evidence as required by this Section shall entitle, but not require, SJR to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of BNSF's obligations hereunder.

(l) The fact that insurance (including, without limitation, self-insurance) is obtained by BNSF shall not be deemed to release or diminish the liability of BNSF including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by SJR shall not be limited by the amount of the required insurance coverage.

(m) In the event of a claim or lawsuit involving SJR arising out of this Agreement, BNSF will make available any required policy covering such claim or lawsuit.

(n) SJR will, during the term of this Agreement and during operations or occupancy of all any part of the Interchange Track(s), at its own expense, carry and maintain (i) property insurance in respect of the SJR property and property in the care, custody, and control of SJR and (ii) public liability insurance with respect to third party personal injury and property damage, against such risks and in such amounts, if any, as customarily insured against by SJR in respect to similar agreements entered into by SJR. SJR, at its sole option, may elect to satisfy all or a part of the above insurance requirements through self-insurance. In the event of any insured property loss, the payment for such loss shall be made directly to SJR.

(o) For purposes of this Section, SJR shall mean “Burlington Northern Santa Fe LLC”, “SJR Railway” and the subsidiaries, successors, assigns and affiliates of each.

Section 12. LABOR CLAIMS

Each Party agrees to indemnify and hold harmless the other Party from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement. Each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements, if any, with its employees.

Notwithstanding the foregoing, it is further understood and agreed that while employees of a Party are on the other Party's property and/or subject to the other Party's supervision, neither Party will request or require the other Party's employees to perform any work beyond the scope of work permitted by current and applicable labor agreements (as amended). In the event one Party requests or requires the other Party's employees to perform any work beyond the scope of work permitted by their current and applicable labor agreements, then the Party requesting or requiring such work shall be liable for the payment of any valid labor claims under the grieving Party's labor agreements. Labor claims shall be submitted in the form of an invoice with supporting documentation attached to such invoice and payment shall be made pursuant to Section 13 below.

Section 13. PAYMENTS OF BILLS

(a) Invoices and billings under this Agreement shall be in a mutually agreed upon format. Each invoice shall contain sufficient detail to permit computation of payments due hereunder. Invoices shall be prepared according to the rules, additives, and equipment rental rates as published by the SJR. BNSF shall pay SJR, at the Office of the Treasurer of SJR or at such other location designated by SJR from time to time, all compensation and charges that BNSF is required to pay pursuant to the terms and conditions of this Agreement. BNSF shall pay undisputed invoices in United States money within thirty (30) days after receipt of SJR invoices. Invoices shall include a statement of the amount due and services rendered during the applicable billing time period.

(b) BNSF shall notify SJR in writing of any errors or disputed items within thirty (30) days after receipt of SJR invoices. BNSF and SJR shall work together in good faith to resolve any billing errors or disputes within thirty (30) days of SJR receiving BNSF's written notice setting forth such errors and/or disputes. If the Parties are unable to resolve the billing errors or disputes in accordance with this provision, the Parties may proceed to arbitration pursuant to Section 14 below. Notwithstanding the foregoing, no dispute or exception to any invoice shall be honored, recognized, or considered after the expiration of two (2) years after the last day of the calendar month in which the invoice was rendered. Additionally, the Parties agree that no invoice shall be

rendered later than two (2) years after the last day of the calendar month in which any expense covered in the invoice is incurred. This provision shall not limit the retroactive adjustment of invoices or billings made pursuant to exceptions taken to original accounting by or under authority of the Surface Transportation Board or retroactive adjustment of wage rates and settlement of wage claims.

(c) Books, accounts, and records of each Party that are reasonably related to the subject matter of this Agreement and which are necessary for the administration of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the Parties.

(d) If any amount is due and payable by a Party under this Agreement, then provisions of this Section pertaining to billing shall apply equally to each Party in its role as the paying Party or the billing Party. A Party shall have no right to offset or deduct any amounts from payments due to the other Party without obtaining the other Party's prior written consent.

(e) If BNSF fails to make any undisputed payment when due and such failure continues for a period of six (6) months after notice in writing of such failure is given by SJR to BNSF, then SJR may, at its election, exclude BNSF from using the Interchange Tracks until such failure is cured by BNSF. The Parties also agree that any failure to make any payment which is the subject of arbitration or litigation between the Parties shall not be deemed a default hereunder, pending the final decision in such arbitration or litigation.

Section 14. ARBITRATION

(a) If at any time a question or controversy shall arise between the Parties hereto in connection with this Agreement upon which the Parties cannot agree, either Party shall have the right to require a meeting of designated representatives with authority to settle the matter within thirty (30) days of written notice of a desire to meet; if it cannot be resolved within thirty (30) days of the meeting of the Parties, then the aggrieved Party may demand arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties shall be governed by the rules and procedures set forth in this Section. The Parties intend that any dispute arising out of this Agreement that cannot be resolved through negotiation as provided above must be resolved through binding arbitration as set forth in this Section.

(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 American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, 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 in the same manner hereto before 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. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. 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 the American Arbitration Association, as the case may be, 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 in the United States of America 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 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.

1. (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 (or the maximum interest allowed by applicable law, if lower), 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 15. TERM AND TERMINATION

(a) (a) This Agreement commences on the Effective Date and remains in effect for an initial period of thirty (30) days and will thereafter continue in full force and effect until terminated pursuant to the terms and conditions set forth herein, (hereinafter referred to as the “**Term**”).

(b) SJR shall have the right to terminate this Agreement upon written notice to BNSF if BNSF fails to comply with any of its material representations, warranties, covenants or obligations set forth in this Agreement, including, without limitation, any failure to make payments due hereunder (hereinafter collectively referred to as a “**BNSF Default**”), and such failure has not been cured within seven (7) days of receiving written notice from SJR reasonably describing such failure or within the applicable cure period set forth elsewhere herein.

(c) Either Party may, at any time and for any or no reason whatsoever, terminate this Agreement upon thirty (30) days written notice to the other Party.

Section 16. SUCCESSORS AND ASSIGNS, WAIVERS AND AMENDMENTS

BNSF shall not assign or transfer this Agreement or any of its rights hereunder to any party without the advance written consent of SJR; provided, however, no such consent shall be required where assignment occurs by way of sale or transfer of all or substantially all of BNSF’ assets, whether such transfer occurs as a result of a merger, sale, consolidation, combination, divestiture, or order or decree of a court or other governing body, or any other means. Subject to the foregoing, this Agreement shall inure to the benefit of and bind each Party’s successors and permitted assigns. Any Party may waive any default of any other Party in writing at any time without affecting or impairing any right arising from any other default. No amendment hereto shall be valid and binding upon the Parties unless such amendment is made in writing and is signed by both Parties hereto. This Agreement is for the exclusive benefit of the Parties and shall not be for the benefit of any third party.

Section 17. GOVERNING LAW

The terms of this Agreement and all claims and controversies arising hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles.

Section 18. NOTICES

All communication provided for in this Agreement shall be in writing and shall become effective when delivered by hand, by a nationally recognized overnight courier service or by e-mail transmission (as long as receipt of such e-mail transmission may be verified) to the respective Party at such address as such Party may from time to time designate by notice duly given in accordance with the provisions of this Section to the other Party. Until further notice, the following addresses and telephone numbers shall be used for all such notices:

(a) If to the **BNSF**:

AVP – Contracts & Joint Facilities
SJR Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76161-0034
E-mail: OPRDLJointFacilities@BNSF.com

(b) If to **SJR**:

VP Administration/ Treasure & Corporate Secretary
1554 Paoli Pike #179
West Chester, PA 19380
E-mail: cfoschman@gmail.com

Section 19. SURVIVAL AND INTERPRETATION OF AGREEMENT

No expiration or termination of this Agreement shall release either Party from any obligation or liability accrued prior to the date of such expiration or termination or from any obligations surviving the expiration or termination of this Agreement. Each Party acknowledges and agrees that it had the opportunity to have counsel review this Agreement and, therefore, the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed to interpret this Agreement.

Section 20. ENTIRE AGREEMENT

This Agreement (together with any appendices or exhibits attached hereto) constitutes the final agreement between the Parties concerning the subject matter herein. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement.

Section 21. SEVERABILITY

If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

Section 22. FORCE MAJEURE

Either Party shall be relieved from its performance of this Agreement to the other Party

without penalty if at any time due to reason of any cause or causes beyond either Party's control, including, but not limited to flood, earthquake, hurricane, tornado or other severe heat or climatic conditions, a derailment that shuts down railroad line used for receiving or delivering rail cars, acts of God, acts of public enemy, War, blockade, insurrection, vandalism, sabotage, terrorism, strike, lockout, or other labor disturbance, or governmental law, order, or regulation, or other similar cause (hereinafter these events shall be referred to individually and collectively as a "Force Majeure"), provided the Party so relieved hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, cure, or remove such Force Majeure as soon as reasonably practical. The Party declaring such Force Majeure shall notify the other Party in writing when such Force Majeure begins, the nature of the interruption, and when the Force Majeure is terminated. Such notices shall be provided as soon as practicable, but in no event after 15 days of commencement and termination of the Force Majeure event.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

SAN JACINTO TRANSPORTATION COMPANY

BNSF RAILROAD

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

EXHIBIT A

[Insert map of Subject Trackage]

San Jacinto Transportation Company
Houston, TX
May 2, 2016

DRAFT

**UNION PACIFIC
LETTER OF UNDERSTANDING**

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Union Pacific Railroad Company ("UP") has reviewed the San Jacinto Transportation Company ("Company") request establishing an interchange near Houston, TX with extension of track 112 and new UP siding as depicted on the conceptual plan dated September 18, 2015. Based on the conceptual plans and representations made to UP, UP agrees to move forward with discussion on establishing a new interchange subject to Company satisfying the conditions detailed below. This letter is being provided to Company to outline the infrastructure elements and agreements that UP requires to efficiently and safely provide rail service to Company's Interchange (the "Facility") and to establish an understanding of UP's authorization process.

The following terms and conditions must be met prior to Company proceeding with its track construction project:

Execution of an interchange agreement containing the following provisions:

- All railcars destined to the Interchange track must be received by Company upon arrival (i.e., spot on arrival). Railcars will not be held or stored in rail yards or other Union Pacific owned or controlled trackage.
- Company shall manage the inventory of inbound and outbound railcars at their Interchange so as not to adversely impact railroad operations and shall cooperate with the railroad operational requirements regarding railcar inventory management.
- Company will provide, at its expense, overhead lighting at the Interchange to illuminate the area used for Union Pacific interchange operations. Illumination installation is subject to prior Union Pacific review and approval.
- Company shall perform the locomotive inspections required under 49 C.F.R. Parts 215, 231 and 232 (or such successor provisions in effect from time to time) inside the Facility, including the Pre-departure Inspection, Class 1 Brake Test - Initial Terminal Inspection and for moves greater than 1,000 miles the Extended Haul Trains Inspection.
- Interchange agreement to be effective only upon completion of the new interchange track
- All tracks where UP will interchange must meet UP Engineering standards

Execution of a construction agreement containing the following provisions:

- UP will retain ownership of track 112, UP siding including all appurtenances as depicted by on the conceptual plan dated September 18, 2015.
- Company will be solely responsible for the entire cost of all track and signal work (including the track and signal to meet UP standards).
- Company will pay UP for the construction costs associated with this project.
- Union Pacific will not participate in the funding of this project.

San Jacinto Transportation Company
Houston, TX
May 2, 2016

Once Company has satisfied the aforementioned terms and conditions, the next steps in UP's authorization process are as follows:

1. Company will receive a Letter Agreement requiring the deposit of \$75,000 to allow the signal design work to begin.
2. Company must prepare an Interchange track Construction Plan and exhibit A drawing for proposed crossovers and submit to UP via the Engineering Document Exchange (web application) to facilitate UP's design of the signal system associated with Company's project.

The authorization in this letter shall terminate twelve (12) months from the date of this letter unless Company has requested an extension. The extension must be requested in writing and approved by Union Pacific.

Company understands that Union Pacific will not authorize construction of the planned interchange tracks until the entire authorization process is complete. Company understands that at no time prior to authorization of track construction is UP agreeing to provide expanded rail service at Facility. Further, Company understands that Union Pacific will not operate on the interchange tracks until UP has approved the Facility track design/construction drawings and Company has fully executed a new Interchange Agreement with Union Pacific. Additionally, Company understands that all of UP's approvals and authorizations are based on Company's representation of particular volumes and commodities that will be shipped to and/or from the Facility. Any changes in volumes or commodities may change UP's requirements. Consequently, if volumes or commodities change after rail service has begun, UP may not be able to meet Company's expectation for increased or additional rail service without Company making modifications to the infrastructure or constructing additional infrastructure.

Exhibit

E

From: David Lee [<mailto:david.lee@dslogisticsllc.com>]

Sent: Monday, November 14, 2016 11:35 AM

To: Ed Keenan <EKeenan@twcousa.com>

Cc: Brad Sullivan - SJRR <bsullivan@sjrr.us>; Johnette M. Rosenbalm <JMRose@twcousa.com>; R A Bowes <rabowes@hotmail.com>; Baxter Wellman <bwellmon@geminc.com>; Mike Murphy <mike@thetgbgroup.com>; Carol Metzger <cmetzger@metzgerlogisticsllc.com>

Subject: FW: Customer recap of SJRRP SIT

Ed:

As promised, attached are the results of the marketing survey Carol Metzger initiated over the last couple of weeks in which she contacted various chemical shippers which are our primary target for utilizing rail storage at the San Jacinto River & Rail Park. You will see, from the attached emails that there is considerable interest in the project and all wanted to know how soon it will be ready to accept rail traffic. It is also notable, that the Park's Houston address and location it demands higher storage rates. I hope this goes a long way towards putting to rest any questions your lender might have regarding the Park's Marketing ability.

Regards,

Dave

David W. Lee

Transport Handling Specialists

1419 Majestic Hills Blvd.

Spicewood, TX 78669

(O) 830-693-5708

© 713-823-1182

From: Carol Metzger <cmetzger@metzgerlogisticsllc.com>

Date: Friday, November 11, 2016 1:05 PM

To: David Lee <david.lee@dslogisticsllc.com>, Ron Bowes <rabowes@geminc.com>, Baxter Wellman <bwellmon@geminc.com>, Mike Murphy <mike@thetgbgroup.com>

Subject: Customer recap of SJRRP SIT

Gentlemen,

I want to recap my efforts and accomplishments so far.

To date, I have been in contact with 16 customers.

1. Shintech
2. Sasol
3. Phillips 66
4. INEOS O&P
5. Chevron Phillips
6. Total
7. Westlake
8. LyondellBasell
9. Occidental Chemical

10. Solvay America
11. Huntsman
12. DuPont
13. BP
14. Exxon Mobil
15. INEOS Nitriles
16. BASF

All of the customers, that I actually got to speak to, thought the SIT yard was a great idea and one that is needed in the Houston area. So far, I have been able to garner letters of interest from INEOS O&P, Westlake, Occidental Chemical, Chevron Phillips and BASF (see attachment). I am waiting on responses from Shintech, Sasol, Total and LyondellBasell. Exxon Mobil advises that they have sent all the SJRRP SIT information to their rail planning organization to determine their level of involvement needed. Exxon Mobil usually moves very slowly so I was very encouraged to hear that their "wheels are turning".

INEOS Nitriles, DuPont, Phillips 66 and Huntsman do not use storage facilities in Houston. I am waiting to hear back from Solvay and BP.

I was able to find out that empty rail car prices in the Houston area range from \$12-\$25 per car/per day. On loaded plastics rail cars, depending on contractual agreements, there are prices anywhere from \$25 to \$75 per day outside the Houston switching district (Dayton, TX). So, in my opinion, because the SJRRP is within the Houston switching district they can expect the prices to be on the higher end.

While researching costs related to the plastics industry I had several customer inquires regarding hazardous materials storage (no TIH/PIH). I am in the process of investigating the costs associated with haz mat storage, which I expect to be much higher. I will advise further as I secure this information.

With plastics getting ready to flood the market there is a lot of excitement surrounding the SJRRP SIT project and customers want to be kept in the loop of progress. Please let me know if you have any questions.



Carol Metzger
cmetzger@metzgerlogisticsllc.com
713-824-4983

Marketing Process for Customer Indications of Interest in SJR Facility (Carol Metzger – Team Leader)

1. The following are the original customers Carol Metzger contacted for "indications of interest in SJR facility".

Shintech: Jack Hensen, Consultant to
Shintech

Sasol: Mike Kerlegon, Senior Manager:
Logistics and Infrastructure

INEOS O&P: Rick Scharzburg, Logistics
Operations Manager

Total Chemical: Rosie Barrow, Rail
Transportation

Westlake: Brandon Huff, Director,
Transportation & Logistics

Lyondell Basell: Kim Foley, Sr. Director
Global Supply Chain

Occidental Chemical: Meredith Pearson,
Manager – Commercial Rail

Solvay Chemical: Robin Arnold, Logistics
Distribution Specialist

Phillips66: Anil Nath, Director, Rail
Contracting & Vendor Mgmt

Huntsman Chemical: Tommy Buchholz,
Manager Transportation & Logistics

ExxonMobil: Patrick O'Hern, Sr.
Procurement Associate

Chevron Phillips: Susan Cox, Rail Services
Manager

BASF: Monica Lennie, Logistics Procurement
Specialist

Dupont

BP

INEOS Nitriles

2. Received support emails from the following customers with statements:

INEOS O&P - "We would be interested in learning more about the site as we can expect over the next couple of years to have further need for railcar storage due to our expansion plans I shared with you. "

Westlake – "For the San Jacinto project, I know there will be plenty of need for SIT and packaging to support the plastics boom. The next closest facility that I know of is in Dayton, TX and it is at full capacity. (This is where I currently have 600 SIT spots under contract.) Being dual switched and outside the PTRS is huge."

Occidental Chemical - "Yes, storage in the Houston area is something Oxy is interested in. Any additional information you can share (storage and switch fees, etc.) would be much appreciated."

BASF - "We are always interested in reasonably priced storage in the Houston area, which is in need of more capacity, that can accommodate both long and short term needs. Please keep in contact as the project develops."

CP Chemical - "It is always good to have options, especially dual served by both UP and BNSF."

Exhibit

F



TRSX

6499

SAN JACINTO



SAN JACINTO

TRSX 9975

Exhibit

G

**San Jacinto Transportation
Company, Inc.
(SJR)**

FREIGHT TARIFF

FTSJR 1000

(VERSION V)

**Naming
Miscellaneous Rules
And Charges, Switching, Demurrage, Storage Charges
Applying
From, To and Within the Terminal of SJR**

Local Tariff

This tariff is applicable on intrastate and interstate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: JUNE 16, 2017 Effective: June 19, 2017

Issued by:

**San Jacinto Transportation Company, Incorporated
1554 Paoli Pike, #179
West Chester, PA 19380**

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**RULES AND OTHER GOVERNING
PROVISIONS RULES AND REGULATIONS –
UNLIMITED**

ITEM 1

SJR TARIFF APPLICATION

This Tariff applies to the local services, and charges of the **San Jacinto Transportation Company, Incorporated**, also referred to by the American Railroad Association's reporting marks of "SJR".

The regulation, rules and terms of this Tariff apply throughout SJR's territory that is defined as all trackage located within the boundaries of the *San Jacinto River and Rail Industrial Park*¹; this description also serves as the definition of SJR's Terminal territory.

The charges and assessments listed within this Tariff apply to local traffic – within the SJR Terminal – only. Cars interchanged to Union Pacific (UP) and Burlington Santa Fe (BNSF) fall under *Line Haul* service and are covered by separate rates.

Line Haul movements to and from SJR **must be accompanied** with Bill of Lading which **must** show SJR in the routing. (See **ITEM 100**).

¹ SJR is not owned or operated by the San Jacinto River and Rail Real Estate LLC, W & P Development Corporation, but SJR is the exclusive rail service provider to all tenants and enterprises within the San Jacinto River and Rail Industrial Park.

ITEM 5

**REFERENCE TO TARIFFS, ITEMS, NOTES, RULES,
ETC.**

This Tariff and supplements apply to all points on the SJR and Items herein are applicable to movement, storage and handling of railroad and private owned cars.

Re-consignment, diversion and transfer charges will be assessed against the Industry who requested such action.

**RULES AND OTHER GOVERNING
PROVISIONS RULES AND REGULATIONS –
UNLIMITED**

ITEM 10

METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes cancel corresponding numbered items in the original tariff or prior supplement. The tariff numbers will not change, only the letter for a revised item will – beginning with "A" and moving in an alphabetical sequence (e.g. Old: ITEM 10; Revised: ITEM 10 [A]).

ITEM 15

SUPPLEMENTS AND REISSUES

This is the first issue of the SJR Tariff; hence, there are no other previous publications and/or supplements that apply to the charges and handling of rail cars over this SJR.

This tariff covers all Industries located within the San Jacinto River & Rail Industrial Park (SJR&RIP) with the intention of shipping and/or receiving rail cars.

ITEM 30

INDUSTRIES RECEIVING RAIL CARS

Industries who receive or intends to receive rail cars acknowledge that upon notice of car(s) arrival, Industry will issue placement instructions with SJR – unless prior understanding has been agreed to between the Industry and SJR.

If hazardous cars are received by SJR for an Industry, and said Industry is unable to accept the car; SJR will immediately place the car into *Storage* status on a track of the railroads choosing and the Industry will be subject to Storage Charges beginning immediately, without any applicable Free Time per **ITEM 340** of this tariff.

ITEM 34

DAMAGED CARS UNDER INDUSTRY CONTROL

Industry is liable for rail cars delivered to or in the custody of Industry whether such cars are owned by a railroad or otherwise, and in the event of destruction of or damage to said cars for any reason, Industry shall pay the cost of

RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS – UNLIMITED
(ITEM 34 cont'd) replacement or repairs of such destruction or damage upon presentation of SJR's invoice for said repairs. Rail cars will be considered as delivered to and in the custody of Industry once placed at Industry's track. Cars shall be considered delivered to and in custody of SJR at the time said car(s) is coupled into by SJR's locomotive within Industry track.
ITEM 55 CLEARANCE – DIMENSION – WEIGHT EXCESS SJR will not accept in interchange shipments containing excessive dimensions, or shipments exceeding 290,000 lbs. gross weight (car and lading) unless prior arrangements have been made with SJR (See ITEM 115-C).
ITEM 56 CAPACITY AND DIMENSIONS OF CARS For marked capacities, length, dimension and cubical capacities of cars, see Official Railway Equipment Register, R.E.R. Publishing Corporation, Agent. All over-dimensional or heavy loads must comply with rules of FRA and AAR.
ITEM 60 CARS BILLED "TO ORDER NOTIFY" Cars will not be accepted under this tariff for delivery on the SJR if billed "To Order Notify".
ITEM 65 STATION LIST This tariff is governed by Official Railroad Station List (OPSL) 6000 Series.

RULES AND OTHER GOVERNING PROVISIONS RULES AND REGULATIONS – UNLIMITED
ITEM 70 FORCE MAJURE Every effort will be expended for the timely delivery of cars to the industries served by SJR, but disruption due to tornadoes, hurricanes, floods, earthquakes, other acts of destruction or Acts of God will not be considered normal operating conditions and SJR will not be liable for delays in services withheld.
ITEM 80 NORMAL HOURS OF OPERATION For applying the provisions of this tariff, SJR's normal hours of operation are: A. 7:00 a.m. to 5:00 p.m.; Monday through Friday. B. Except for the following HOLIDAYS: NEW YEARS DAY GOOD FRIDAY MEMORIAL DAY INDEPENDENCE DAY LABOR DAY THANKSGIVING DAY CHRISTMAS DAY
ITEM 90 INDUSTRY FINANCIAL RESPONSIBILITY The Collection Terms of SJR are as follows: A. Invoices/Bills are payable upon receipt. Any charge that payment has not been received within thirty (30) days of issuance will be considered past due. B. Any past due charges will be subject to a service charge of 18% per annum (1.5% per month). C. Contested charges must be submitted in writing within 30 days. D. Invoice or Bill of Lading numbers must accompany all payments. If an Industry is past due on paying any issued charges, SJR – at its sole discretion – may use a collection agency or attorneys to collect delinquent charges and if SJR is successful collecting such charges, Industry shall reimburse SJR for all reasonable collection costs, including

**RULES AND OTHER GOVERNING
PROVISIONS RULES AND REGULATIONS –
UNLIMITED**

(ITEM 90 cont'd)

reasonable collection agency fees and reasonable attorney's fees.

Security Deposit:

SJR may require a security deposit from industries that have not established a payment history, or failed to pay freight, demurrage, storage, switching or other accessorial charges within the stipulated thirty (30) days allowance.

This deposit must be paid in a wire transfer, certified check, cashier's check, or money order before SJR will deliver a car to the Industry for loading or unloading.

The required amount of the *security deposit* will be determined by SJR.

SJR will place this deposit in an account and if a bill is not paid when due, SJR will satisfy the bill by drawing against the security on deposit. Thereafter, the customer must immediately reinstate the required funds on deposit before another car can be delivered.

Because *security deposits* are established for security of SJR due to the Industry's lack of payment history or delinquency in payment of prior bills, no interest will be paid by SJR on any security deposited in accordance with this ITEM.

It is the discretion of SJR as when to determine the factors requiring a *security deposit* have been resolved and that the Industry no longer is required to maintain such a deposit.

**RULES AND OTHER GOVERNING
PROVISIONS RULES AND REGULATIONS –
UNLIMITED**

ITEM 95

DISPUTES

If Industry believes a given invoice issued by SJR is incorrect the procedure to handle such a dispute is as follows:

- A. Notify SJR in writing within thirty (30) days of the invoice in question's issuing date - with supporting documentation.

The dispute must fully state the conditions for which relief is claimed, and identify disputed charges by car number and date.

- B. Mail or fax to SJR noting at top of fax or outside of envelope "Dispute"

Address:

SJR Finance Dept.
1554 Paoli Pike, #179
West Chester, PA 19380

Fax:

610-701-0659

- C.
1. If charges were a result of an error on the part of SJR, an adjusted statement will be issued less the erroneous entry.
 2. If SJR fails to respond to a claim within forty-five (45) days from the date the claim was submitted, SJR will accept the dispute as submitted and credit the industry for the full disputed amount.
 3. Claims submitted to SJR that are found not to be valid will be subject to a fifty five (55) dollar processing fee.
 4. An invoice received by the industry, which contains multiple charges of which the dispute applies to only some of the charges, the valid charges must be paid per **ITEM 90** by the due date.

**RULES AND OTHER GOVERNING
PROVISIONS RULES AND REGULATIONS –
UNLIMITED**

(ITEM 95 cont'd)

5. Disputes submitted more than thirty (30) days after the invoice issue date will not be accepted.
6. Bunching of cars will not be considered a SJR error; consequently, will have no merit as to the invoices disputed.

SECTION 1 MISCELLANEOUS RULES AND CHARGES

ITEM 100

BILL OF LADING REQUIREMENTS

- A. Movement of a railcar cannot begin until proper billing information has been received by the SJR.
- B. SJR will not charge for any billing received via EDI or eBOL prior to the car movement to BNSF, UP or within the SJR Terminal.
- C. Every shipment requires the following:
 1. Railcar Initial and Number
 2. Load/ Empty Status
 3. Standard Commodity Code (STCC) (i.e. Description)
 4. Net Weight
 5. Origin, Destination and Route ²
 6. Shipper's Name and Full Address
 7. Consignee's Name and Full Address
 8. Care of Party (when using a third party)
 9. Payment of Freight (Prepaid or Collect)
 10. Hazardous Declaration for Hazardous Commodities
 11. Customs Broker (required for trans-border shipments).
- D. In addition to the above listed information, if the commodity is deemed hazardous, the necessary information and/or documents relating to the transportation of dangerous goods/hazardous materials are required.
- E. See **ITEM 302** Notification by Customer to SJR.

² Listing in line haul order all Carriers (reporting marks) that will handle the shipment.

ITEM 110

PERISHABLES

The SJR does not provide protective service. Perishable freight under protective service will be accepted from connecting railroad for delivery to Industries with the understanding that protective service is not provided by the SJR and that SJR

SECTION 1 MISCELLANEOUS RULES AND CHARGES

(ITEM 110 cont'd)

accepts no liability for any loss or damage resulting from failure of such protective service.

ITEM 115

HANDLING CHARGES FOR OVER-DIMENSIONAL AND/OR HEAVY LOADS

- A. Product Piece 75,000 – 263,000 pounds.
 1. Zero Carrier Liability -- **\$1,050.00** ³
 2. Full Carrier Liability -- **\$6,600.00**
- B. Product Piece 263,001 - 290,000 pounds.
 1. Zero Carrier Liability -- **\$2,100.00** ³
 2. Full Carrier Liability -- **\$13,000.00**
- C. **ITEM 55** restricts rail cars in excess of 290,000 lbs. gross weight (car and lading) will not be accepted in interchange without prior arrangements with SJR. Industry must have permission from SJR - in writing - prior to presenting car.
- D. Idler Car: Lading piece(s) that exceed the striker length of the rail car will require an idler car.
 1. **IDLER CAR HANDLING CHARGE - \$450.00 per idler car.**

³ Carrier must be notified in writing prior to movement of car stating that shipper is stipulating SJR is **NOT** liable for the condition of lading while on SJR's tracks or property.

ITEM 120

CHARGES TO CARRIERS FOR IMPROPER INTERCHANGE

- A. A charge of **\$300.00 per car** will be assessed delivering carriers on all cars interchanged to the SJR in error.
- B. A car ordered by Industries for loading and is subsequently rejected due to not being in proper condition to load, a charge of **\$350.00** will be assessed against the railroad furnishing the car.
- C. If a car is received in interchange from connections and is found to be overloaded, such car will be returned to delivering carrier for adjustment to lading to eliminate the overload

SECTION 1 MISCELLANEOUS RULES AND CHARGES

(ITEM 120 cont'd)

- D. condition. A charge of **\$500.00 per car** - to be assessed delivering carrier.
- E. SJR will assess a charge to the delivering carrier of **\$700.00 per car** for delivering a car and lading that is in excess of 290,000 lbs. delivered without prior approval from SJR.

ITEM 130

LOADED CARS RELEASED BY CUSTOMER WITHOUT PROPER BILLING DISPOSITION INSTRUCTIONS

The SJR will assess Industry a charge of **\$300.00 per car** for cars released to the SJR from Industry, shop or team tracks without proper billing (Bill of Lading/ waybill) or written disposition instructions.^{4,5}

If instructions are not received within twenty-four (24) hours from time of release of car from Industry, a storage charge of **\$80.00 per car** will be assessed Industry thereafter for each twenty-four (24) hours or fraction thereof until such instructions or billing is received.

⁴ For movement within the SJR Terminal proper minimum forwarding instructions are defined as containing, but not limited to address of Shipper authorizing move, Consignee, Destination (location or track); whether Prepaid or Collect; Commodity and complying to all hazardous materials requirements).

⁵ For movement beyond SJR's terminal to connecting Class I carriers (UP and BNSF) the above information must be received electronically without errors in accordance with **ITEM 100**.

ITEM 135

EMPTY CARS ORDERED BUT NOT LOADED

An Industry orders an empty car, but later determines the car is not required. If the ordered car is in route or has been placed on the Industry track a charge of **\$350.00 per car** will be assessed.

SECTION 1 MISCELLANEOUS RULES AND CHARGES

(ITEM 135 cont'd)

NOTE 1: If change or cancellation of the car order is made before car has begun to move – there is no charge.

NOTE 2: If car can be placed at alternative location within the Industry before uncoupling at initial designated location, there will be no charge.

NOTE 3: Any car deemed unfit for loading, as defined (**ITEM 120 B**) by this Tariff, charges will not apply.

ITEM 146

CARS RELEASED AND SUBSEQUENTLY ORDERED BACK TO INDUSTRY

When a shipper orders back a car that was previously released and pulled by SJR to be returned to Industry, a charge of **\$380.00 per car** will be assessed for the return of such cars.

Demurrage charges will continue to apply as if car had never been pulled until car's final release.

ITEM 160

INDUSTRY ALTERS PLACE - PULL ORDERS

When Industry alters placement, or pull instructions prior to being fulfilled by SJR, there will be no charge if the crew can perform the revised instruction without having to return to yard and/or is not required to re-order their train.

If the crew must return to the yard to pick up or drop off cars causing them to re-switch their train a charge of **\$110.00 per changed item** will be assessed against the Industry making the request.

ITEM 165

DIVERSION OR RECONSIGNMENT

The term "diversion" or "re-consignment" have the same meaning and the use of either shall mean an order is received by SJR for car(s) under the control of SJR which require any of the following:

SECTION 1 MISCELLANEOUS RULES AND CHARGES

(ITEM 165 cont'd)

- A. A change in the name of the consignee.
- B. A change in the name of the consignor.
- C. A change in the destination.
- D. A change in the route at the request of the consignor, consignee, or equipment owner.
- E. Any other instructions given by consignor, consignee, or equipment owner necessary to effect delivery which requires a change in the billing or an additional movement of the car, or both.

APPLICATION

- A. Orders for diversions or reconsignment will be accepted for only:
 - 1. Parties listed on bill of lading.
 - 2. Any rail carrier participating in line-haul movement.
- B. Charges for diversions or reconsignment shall be paid by the authorized party requesting the change.
- C. After a car, has been actually placed, any changes that affect the movement of the car will constitute a new movement and are subject to applicable switching and/or line haul charges.
- D. Only one change in destination will be authorized under these provisions. Requests for additional changes will be executed as a shipment terminating and originating at the diversion station location.
- E. The diversion or reconsignment charges applies in addition to all other applicable charges.

Diversion/reconsignment charge **\$500.00 per car.**

ITEM 170

SPECIAL (DEDICATED) SWITCH CREW

Special Freight Train and Switching Service is when SJR provides a special switch crew only to service an Industry.

SECTION 1 MISCELLANEOUS RULES AND CHARGES

(ITEM 170 cont'd)

- A. If the request for a special crew is made for normal hours (ITEM 80), the charge will be **\$2,000.00 plus \$300.00 per hour** (minimum 4 hours), but not exceeding 10 hours, per occurrence, and will be in addition to all other normal Tariff charges associated with the switching performed.
- B. If the request for a special crew is made outside of normal hours (ITEM 80) the charge will be **\$3,000.00 plus \$375.00 per hour** (minimum 4 hours) but not exceeding 8 hours, per occurrence and will be in addition to all other normal Tariff charges associated with the switching performed.

Above charges to be calculated from the time the crew reports to the SJR "on duty" location and their Federal "hours of service" begins and ends when the crew ends their tour of duty at the "on duty" location and "marks off" on their federal "hours of service" record.

The Industry/Industries that ordered the crew has the right to release the crew once their services are no longer required.

Industry will allow the crew a thirty (30) minute meal period before, but no later than 4 ½ hours on duty.

Once the crew is released by the Industry, SJR reserves the right to use the crew for other duties at SJR's sole expense and discretion.

NOTE: SJR reserves the right to restrict or modify any request for special freight train or switching services.

SECTION 1
MISCELLANEOUS RULES AND CHARGES

ITEM 175**INDUSTRY DELAY OF CREW**

When a SJR locomotive and crew are held at the request of an Industry or delayed by conditions attributed to the Industry – within the confines of the Industry or immediately adjacent thereto, a charge for holding a crew shall apply against the delaying industry.

Such charge will not become effective until the crew has been held for 20 minutes, at which time charges for such a delay or standby service shall begin and will continue until the crew is allowed to perform their duties.

The charge for delaying a Train Crew is **\$12.00 per minute**.

Such charges shall be in addition to other published charges, if any, applicable to cars delayed or handled contained within this tariff.

ITEM 180**OVERLOADED CARS**

Cars found to be overloaded will be subject to the following additional charge:

- A. **\$500.00 per car** – When a car is beyond loading point or confines of the Industry and is discovered overloaded. The car will be placed where Industry can adjust load. If the Industry requires that the car be returned to the Industry site, the move will be made under normal Tariff charges. In either case, the car will remain on Demurrage and Industry will be responsible for all charges (**ITEM 165** reconsignment).
- B. **\$500.00 per car** - When a car is received in interchange from connections and is found to be overloaded, such car will be returned to delivering carrier for adjustment to lading to eliminate the overload condition. Charge to be assessed against the delivering carrier (**Item 120**).

SECTION 2 SWITCHING RULES AND CHARGES

ITEM 203

INTRA-PLANT SWITCHING CHARGE

The Inter-Plant switch charge is applicable for a single movement of a rail car from one spot or location to another spot or location – either on the same track or between two separate tracks.

Intra-plant switching charge for **non-hazardous car(s)** is **\$240.00 per car** and **\$290.00 per hazardous car(s)**.

APPLICATION

When delivering a car to be placed on the Industry track, existing cars may be moved in order to place the “new” car. If the existing cars are replaced to their origin location (and order) no inter-plant charge will apply. Where the existing cars are returned to a different track, a different location on the same track, or in a different order on the same track, such a move constitutes an intra-plant switch for the existing cars.

ITEM 205

INTRA-TERMINAL SWITCHING CHARGE

SJR will assess an Intra-Terminal switch charge of **\$300.00 per non-hazardous car** and **\$380.00 per hazardous car** for Intra-Terminal switch. This charge is applicable for a single movement from one origin to one destination within the terminal.

SJR will apply the Intra-Terminal switching charge for moving a car, loaded or empty from one location within the Terminal to another location within the Terminal. A return movement back will be considered a second occurrence and will be charged a separate Intra-Terminal switch.

ITEM 212

CARS BILLED TO THE TRANSLOAD TRACK

A car billed to SJR with a destination of “SJR Transload Track” will be delivered directly to the Transload Track upon interchange from the delivering carrier.

There will be no charge for this initial placement directly from interchange.

Once placed, the car will be allowed to remain on the Transload Track for a period not to exceed 48

SECTION 2 SWITCHING RULES AND CHARGES

(ITEM 212 cont'd)

hours –time commencing with placement of the car. Time will not be affected by weekends, holidays; nor is this time cumulative.

APPLICATION

A car is placed on the Transload Track for 48 hours or less, then the Industry orders the car to the storage yard. Three days later the Industry orders the car placed back on the Transload Track. The car can remain on the Transload Track for up to 48 hours before it must be released or moved back to the storage yard.

After 48 hours, cars that have not been released (i.e. SJR has not received proper billing), or redirected will be moved by SJR to storage and storage and switching charges will apply upon car's placement in the storage yard.

NOTE: Partially unloaded cars cannot be released for movement until the shipper can verify the car's load is evenly distributed within the car.

ITEM 213

TRANSLOAD SWITCH CHARGE

Rail cars moved between the SIT yard and the Transload Track will be charged a Transload Switch Charge.

This charge is **\$270.00 per car** and will be applied each time a car is moved between these two locations only.

ITEM 214

LOADED CARS CONSIGNED TO STORAGE

Loaded cars in storage or are billed to storage will NOT be assessed a switch charge for a movement to or from the UP or BNSF.

ITEM 215

EMPTY CARS CONSIGNED TO STORAGE

Empty cars in storage or are billed to storage WILL be assessed a Handling Charge for a movement to or from the UP or BNSF.

SECTION 2 SWITCHING RULES AND CHARGES

(ITEM 215 cont'd)

Empty Car to Storage Handling Charge

Number of Cars Per BOL	Placement/Removal Per Car
1 - 19	\$280 non-Haz; \$315 Haz
20 - 39	\$240 non-Haz; \$286 Haz
40 – greater	\$220 non-Haz; \$257 Haz

ITEM 217

“CHERRY PICKING”

A car removed from storage will be assessed a “Cherry Picking” charge of **\$315.00 per car**.

NOTE: See Section 5 of this Tariff for Definition as to what constitutes “Cherry Picking”.

ITEM 219

TURNING CAR CHARGES

Turning a non-hazardous car the charge is **\$400.00 per car** turned; to turn a hazardous car the charge is **\$460.00 per car** turned.

NOTE 1: This Item does not apply to dimensional loads – contact SJR for applicable charges.

- A.** NOTE 2: If the car is properly placarded as to the side to be unloaded from and upon receipt it is unreachable for the Industry due the wrong side of the car being placed inside the Industry – SJR will turn the car at no charge.

ITEM 221

SECOND SWITCH

Industries are entitled to one switch, if required, each day under “normal” operations. If an Industry requires multiple switches within the same 24-hour period, and SJR can provide such a switch without placing other Industries at a disadvantage, SJR will comply with the request.

A second or multiple switches will be charged at **\$90.00 per crew hour** or fraction thereof.

ITEM 225

CONSTRUCTIVE PLACEMENT

When a car consigned, or ordered to a private track, industrial track or other-than-public-delivery track and is found that the railcar cannot actually be placed because of a attributable to

SECTION 2 SWITCHING RULES AND CHARGES

(ITEM 225 cont'd)

condition the consignor or consignee, such car will be placed in storage and notice shall be given the consignor or consignee that the car is being stored due to the fact that SJR was unable to affect placement.

- A.** Storage Charges will apply (**ITEM 340**) and storage charges will cease when Industry instructs SJR to move the car from the storage point to a location within the Industry’s facility. Instruction following car’s placement in Constructive Placement Storage to another location will constitute additional charge(s) (see **ITEM 213**).
- B.** Interchange loaded cars destined to an Industry, but could not be placed, will be switched into storage using the switch included in the Line Haul Rate.
- C.** If the car is placed on a non-SJR track or a private siding, the car will be considered placed and no notice will be given.

SECTION 3 DEMURRAGE AND STORAGE CHARGES

ITEM 301

NOTIFICATION BY SJR TO INDUSTRY

The SJR will provide notification via fax or phone using contact information supplied by Industry.

ITEM 302

CUSTOMER NOTIFICATION TO SJR

Industry can call SJR at any time during normal hours. Industry may fax SJR, but time sensitive information will be accepted at the time shown on the fax – if received after normal business hours (as defined by this Tariff) the beginning of business hours of the following day will be used as the notification time. **ITEM 100 C and D** indicates the required movement information if a car is to move beyond SJR to another railroad.

NOTE: Inter-Plant Switch, Transload Switch and Inter-Terminal Switch “orders” may be given via fax. SJR will not accept movement information left on “phone mail”.

ITEM 310

DEMURRAGE CHARGES

General Freight

Both loaded or empty railroad owned cars on SJR will be subject to a demurrage charge after Industry has used “Free Days”. Charges are **\$90.00 per day for non-hazardous** material and **\$120.00 per day for placarded hazardous** material. Charges are the responsibility of the Industry who is the receiver of the cars and/or has the cars under their control under the following circumstances:

- A. Railroad owned cars loaded or empty Constructive Placed or actual placement (or a combination of) that exceed two (2) free days. The “Free Days” begin only if the cars were placed prior to 7:00 AM, otherwise, the “Free Days” will begin on the 2nd (second) day beginning at 7:00 AM.
- B. Railroad owned cars re-loaded, after previously being unloading, SJR will grant the Industry two (2) additional free days for that car.

SECTION 3 DEMURRAGE AND STORAGE CHARGES

(ITEM 310 cont'd)

- C. Inbound loaded or empty railroad owned car(s) constructively placed will be assessed Demurrage in the same manner as explained in section “A” of this Item.
- D. Released outbound cars that are owned by railroads released without shipping instructions will remain on Demurrage and will continue until the necessary paper work has been delivered to SJR. (See Section 5: Definition; Release)
- E. If Demurrage charges have not begun, there will be no charges for Saturday and Sunday or Holidays.
- F. After the first chargeable day begins, Demurrage charges will be applied on all days including Saturdays, Sundays and Holidays.
- G. This item is not applicable to private cars.

NOTE: If a railroad owned car has been placed in storage due to Industry’s inability to provide room to place the car on Industry track; or, Industry releases car without proper shipping instructions, car will be placed into storage. Storage Charges will begin upon placement and Demurrage and other assessorial charges will apply while a car is in storage.

ITEM 340

STORAGE OF CARS ON SJR TRACKS

Anytime empty and/or loaded cars are held on SJR track either due to instructions from car owner or Industry in control of car; car(s) cannot be placed due to Industry track inaccessibility; absence of Industry movement instructions; or, cars set aside due to non-compliance with SJR’s weight and/or dimensional instructions, storage charges will apply.

Storage charges will begin on date car is received by SJR for storage and charges will begin at that time – NO FREE DAYS WILL BE ALLOWED FOR CARS.

SECTION 3 DEMURRAGE AND STORAGE CHARGES

(ITEM 340 cont'd)

Non-hazardous; Loaded cars **\$92.00 per day^{7,8}**
 Non-hazardous; Empty cars **\$40.00 per day^{7,8}**
 Industrial sand, frac sands, **\$70.00 per day⁷**
 Drilling proppants

Note 1: Subject to the availability of track space on SJR.

Note 2: Charges will be issued when car is removed from storage.

Note 3: Time will be computed beginning with the time car is spotted on the storage track and will continue until the car removed from the storage track.

Note 4: Charges will be computed for each 24-hour period or fraction thereof until release instructions are received by SJR from car owner or Industry.

Note 5: No Free Time factors will apply to Storage Charges.

⁷ Charges apply to Saturdays, Sundays and Holidays.

⁸ No Free Days will be allowed on stored cars.

ITEM 341

NO STORAGE OF HAZARDOUS MATERIAL CARS
SJR will NOT accept placarded cars containing Hazardous Material or Hazardous Material Residue for storage.

ITEM 342

EXPORT-IMPORT FREIGHT

Export loads in rail cars, using the SJR&RIP's barge docks will be stored at **\$80.00 per car day**.
 Empty cars waiting for a scheduled arrival lading will be stored at **\$38.00 per car day**.

ITEM 348

UNIT TRAINS LOADED OR EMPTY

Absent spotting instructions, or if the unit train cannot be spotted due to any reason attributable to the receiving Industry, the unit train will be charged a storage charge.

SECTION 3 DEMURRAGE AND STORAGE CHARGES

(ITEM 348 cont'd)

If the unit train cannot be delivered to the receiving Industry the unit train, either loaded or empty, will be placed on Constructive Placement until valid spotting instructions are received.

Constructive Placement of a unit train will have Storage Charges assessed for railroad controlled or private cars.

Unit Train Storage Charges:

Non-Hazardous	\$100.00 per car per day
Placarded Hazardous	\$150.00 per car per day

Charges will be made on a daily or fraction of a day basis.

SECTION 4 HAZARDOUS MATERIALS

ITEM 500

EXPLOSIVES, DANGEROUS ARTICLES AND INHALATION HAZARDS

For rules and regulations governing the transportation of explosives and other dangerous articles by freight, and for specifications applying to shipping containers and restrictions governing the acceptance and transportation of explosives and other dangerous articles, see **Tariff BOE 6000-Series**.

ITEM 530

CAR SWITCHING AND SPILL MITIGATION DUE TO NON-ACCIDENT RELEASE OF LADING

Non-Accident Release (NAR) is defined as an unintentional lading release of either hazardous or non-hazardous materials while in possession of SJR or on SJR&RIP property which, results from an act or an omission of a shipper, including but not limited to, failure to properly secure valves and/or fittings, failed closure and/or pressure relief devices, or overloaded containers.

For any NAR, SJR will assess a minimum "Car Switching and NAR Spill Mitigation Charge" to the shipper, *as identified on the waybill* for each NAR incident.

NAR Spill Mitigation Charge: \$3,600.00 plus cost of repair and remediation per car \$2,000.00 plus cost of repair and remediation per car, per NAR, for each car containing a non-hazardous lading or its residue. Non-hazardous lading is defined as any commodity not defined as hazardous by the U.S. Department of Transportation or is not as found in the current Directory of Hazardous Materials Shipping Descriptions as issued by U.S. Department of Transportation or is not as found in the current Directory of Hazardous Materials Shipping Description as issued by RAILINC.

SECTION 4 HAZARDOUS MATERIALS

(ITEM 530 cont'd)

- **\$2,570.00** plus cost of repair and remediation per car, for each car containing HazMat with improperly secured or open closures (fittings, plugs, valves, manways, gaskets) presenting the potential for a NAR but not yet releasing lading.

The shipper, as identified on the waybill, shall also be responsible for all expenses incurred by the carrier where such expenses result from an act of omission or a shipper that causes an NAR and such expenses exceed the applicable "Car Switching and" NAR Spill Mitigation Charges" and includes but are not limited to expenses associated with emergency response, environmental mitigation, site cleanup, waste disposal, personal injury, exposure, evacuation, regulatory penalties, litigation, lading transfer, and long term environmental investigation.

The agent, and the agent's principal will be considered the shipper of record and will be subject to this **ITEM 530**, "Car Switching and "NAR Spill Mitigation Charge".

If possible and practical, SJR, upon notification of a NAR, will advise the shipper of incident details and will allow the shipper the opportunity to assist in the spill mitigation, provided their responders are qualified with all applicable railroad safety rules. Cause determination of the NAR will be performed by SJR and documentation will be made available to the shipper upon their request.

These charges apply to all Non-Accidental Releases of lading, regardless of commodity type, commodity hazard or the lack thereof, and apply to all rail car equipment or lading packages contained within, i.e. tank car,

SECTION 4
HAZARDOUS MATERIALS

(ITEM 530 cont'd)

hopper car, box car, gondola car, platform car, refrigerated unit, intermodal tank, intermodal container, tote, drum bag, box pail, etc.

The switching of a leaking car involved in a NAR will be at the discretion of SJR's Terminal Officer in charge at the time of the NAR. The "NAR Car Switch and Spill Mitigation Charge" for a NAR will be in addition to any other involved chargeable services performed in connection with such cars.

SECTION 5 ABBREVIATIONS AND DEFINITIONS

A

Actual Placement: Industry orders a car to a given "car spot" and SJR places car there.

AAR: American Association of Railroads.

B

B O E: Bureau of Explosives.

B O L: Shipping instructions that initiates shipments and provides SJR with necessary information to release, pull, deliver and properly rate shipment.

BNSF: Burlington Northern Santa Fe.

Bunching: Railcars shipped on different BOL dates, but arrive at destination at the same day and time.

C

Cherry Picking: When an Industry sends a block of cars on one waybill to SJR for storage - after which the Industry orders a specific car (by number) removed from that block a Cherry Picking Charge will apply (**ITEM 340**).

Constructive Placement: A car is ordered to an Industry track or a previously designated point, but cannot be placed because of a condition attributable to the Industry – such car will be held at a point on SJR track and notice will be given to Industry that car was placed at a point other than the designated location. A car Constructively Place constitutes the free placement of the car; subsequent re-location of this car will be subject to tariff charges.

Car Released: See Released

D

Dedicated Switch Crew: See Special Switch Crew.

Demurrage: Charges for holding cars owned by a railroad beyond the 48-hour Free Time.

E

Empty Release Information: Instructions from consignee given to authorize railroad that car is available to be moved. Information given must include identity of consignee, car initial and number, date, time and the identification of the person providing such information.

Export: Export as applies in this Tariff is traffic that will be directly discharged or loaded to a barge from docks within the operating Terminals of SJR.

F

Forwarding instructions: (See Bill of Lading).

FRA: Federal Railroad Administration (U.S. Government).

Free Time: Is a 48-hour period that postpones the calculation of Demurrage Charges. Free Time begins when a car is placed prior to 0700 Hours and continues for 48 hours excluding Saturdays, Sundays and holidays. If the car is placed after 0700 Hours the 48 hour period does not begin until the next 0700 Hour. Once calculation of Demurrage begins, Saturdays, Sundays and holidays are added in as days to Demurrage Charges.

G

H

Hazardous Material: As used in this Tariff means a hazardous material or its residue as defined by the U.S. Department of Transportation or as found in the current Directory of Hazardous Materials Shipping Descriptions as issued by **RAILINC**.

I

Industry: A rail served location defined by track number and car spots locations (e.g.

For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.

warehouse, factories, docks, bulk facilities, etc.).

Intra-Plant Switch: A switching movement from one track to another within the same plant or Industry, or from one car spot on a given track to a different spot on the same track within the same plant or Industry.
NOTE 1: Leased track of Industry within the SJR Terminal is considered Industry track as if it was located on the Industry property.

Intra-Terminal: An Intra-Terminal switching movement is when a rail car is moved from one track or facility to another track or facility within the limits of the San Jacinto River & Rail Industrial Park (SJR&RIP). Movement from an Industry's Track to a Track being leased by Industry is not considered as an Intra-Terminal switch (See Definition "Intra-Plant Switch" Note 1).

J

K

L

Line Haul: Movement of rail cars beyond SJR to either UP or BNSF and beyond. This movement is covered by a "thru rate" charged for the movement. Included in this rate is the Industry receiving one free, origin or termination, switch.

M

N

O

O. P. S. L.: Official Railroad Station List.

P

Placement (Actual): Where a car is placed at a stipulated car spot as designated by the Industry served.

Placement (Constructive): (See Constructive Placement).

Q

R

Release: A rail car is consider released when SJR receives proper billing instructions (ITEM 100 and/or ITEM 302).

S

Shipping Instructions: (See Bill of Lading).

SJR: San Jacinto Transportation Company, Incorporated.

Special Switch Crew: An Industry can order a Special Freight Train and/or Switching crew to serve the Industry exclusively. See **ITEM 170** for specific restrictions and requirements.

T

Terminal (SJR) Territory: That track that lies within the San Jacinto River and Rail Industrial Park.

Turning of a Car: Upon instruction of Industry, railroad will remove a rail car to a wye (turning track), and, turn the car with the opposite side of the car available to the customer when replaced on Industry's track.

U

UP: Union Pacific RR

V

W

X

Y

Z

Exhibit

H

San Jacinto
Transportation
Company, Inc.

OPERATING
RULES

San Jacinto
Transportation
Company, Inc.
San Jacinto, Texas

Operating Rules for
the Government of
SJTC Employees Rule
Book Number 1

Issued: September 15, 2016

NOTICE

These rules:

- Are effective September 15, 2016.
- Govern conditions and actions on railroad property operated by the San Jacinto Transportation Company, Inc.
- Supersede all previous rules, as well as all other rules and instructions that may be inconsistent with them.
- Are issued under the authority of San Jacinto Transportation Company Board of Directors.

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1.0 GENERAL SAFETY INSTRUCTIONS

1.1 Safety is a job requirement.

1.2 Obeying rules is essential to personal safety and continued employment.

1.3 Safety Responsibilities

- Employees are responsible for their personal safety and accountable for their behavior.
- If an Employee is injured, regardless of the seriousness, they must report injury to their supervisor. Seek immediate medical attention if needed.
- Report violations to the company's Drug/Alcohol policy and of these rules.

1.4 Employees Must:

- Take every precaution to prevent injury to themselves, other employees, and the public.
- Comply with all rules, policies, and instructions.
- Report, correct or protect any unsafe conditions or practices.
- Be aware of and work within the limits of their physical capabilities and not use excessive force to accomplish tasks.
- Use good judgment in fulfilling job responsibilities safely.
- In case of doubt - stop; seek help - follow the safest course.

1.5 Job Briefing

Use the Job Briefing process:

- Before work begins, when all persons, including employees and contractors are present.
- After work begins, if person(s) arrive who missed the original job briefing.
- When changes occur to the work plan or conditions change.

1.6 Protection of Body Parts

The Red Zone

That area, within an arm's length of the track, or any

physical position, which places an employee in a LIFE-THREATENING situation.

Do not place hands, fingers, feet, legs or any part of your body in a position where they might be struck, caught, pinched or crushed.

STAY OUT OF THE RED ZONE.

1.7 Personal Protective Equipment

1.7.1 Hearing Protection

Wear approved hearing protection devices, as specified by the manufacturer, in areas designated by signs or outstanding instructions or as specified by a supervisor.

1.7.2 Hearing Protection on Locomotives

Hearing protection is recommended in a running locomotive's cab or walkway.

Hearing protection is required within 100 feet of a sounding locomotive horn or when flagging a grade crossing on foot.

1.7.3 Gloves

You must wear appropriate hand protection when hands are exposed to:

- skin absorption of harmful substances,
- cuts, lacerations or abrasions,
- punctures,
- chemicals,
- temperature extremes

1.7.4 Eye Protection

Safety Glasses. Wear spectacle type, 100 percent safety glasses with side shields when on duty. Employees requiring corrective lenses must wear either company approved prescription safety glasses or coverall-type safety goggles.

1.7.5 Proper Attire

DO NOT WEAR LOOSE OR RAGGED CLOTHING,

NECKTIES, FINGER RINGS OR JEWELRY WHILE OPERATING OR WORKING WITH MACHINERY, EVEN IF YOU WEAR GLOVES.

Wear clothing that allows you to perform your duties efficiently and safely. Clothing must not interfere with vision, hearing and free use of hands and feet.

Wear a suitable shirt that provides protection from sun, insects, abrasions, and scratches. Shirts must have at least quarter-length sleeves and cover the back, shoulders, chest, and abdomen. Shirts must not be unbuttoned, torn, or baggy. Wear trousers which cover the legs. Short trousers (cutoffs, shorts, etc.) are prohibited and must not be worn while on duty.

1.7.6 Footwear

Footwear must cover the ankle with a boot of 6 inches or more in height. Footwear must have hard (preferably steel) toes and soles that provide good traction and protection from punctures. Boots with laces or buckles must be laced, tied or buckled. When working on uneven terrain, on or near tracks, on cars, on engines or other equipment, footwear should afford support and protection.

All employees are required to wear footwear with a defined heel. A "defined heel" means that the back of the heel is at an approximate right angle from the sole of the shoe and from the ground when standing. The front of the heel must not be at an angle of less than 45 degrees from the sole of the shoe to the ground. Footwear with heels commonly calling "riding heels" are not appropriate footwear and do not satisfy this requirement.

1.8 Drugs and Alcohol

SAN JACINTO TRANSPORTATION HAS A STRICT POLICY AGAINST THE USE OF ALCOHOL AND/OR

DRUGS WHILE ON DUTY. Please refer to SJTC's drug & alcohol policy and procedures for SJTC employees (cfr219.23) effective September 15,2016, for clarity.

TO BE CLEAR, SJTC EMPLOYEES ARE PROHIBITED FROM HAVING ON THEIR PERSON, **IN THEIR VEHICLE OR PERSONAL PROPERTY, ANY ILLEGAL SUBSTANCE** AT ANY Time.

FOR EXAMPLE: If officials of SJTC find marijuana in your car or on your person while attending the San Jacinto Transportation Rules Class, you would be taken out of service and could lose your job with SJTC Rail.

USE OF CONTROLLED SUBSTANCES IS PROHIBITED AT ANY TIME ON OR OFF DUTY EXCEPT AS ALLOWED IN CFR 219.103 AND SJTC'S DRUG AND ALCOHOL POLICY.

Controlled substance means any drug: (a) not legally obtainable or (b) legally obtainable but not legally used. Legal drugs include prescribed and over-the-counter drugs legally obtained and being used for the purpose for which they were prescribed and/or manufactured.

1.8.1 WRITTEN NOTIFICATION FOR TESTING

WHENEVER A BREATH OR BODY FLUID TEST IS REQUIRED OF AN EMPLOYEE SAN JACINTO TRANSPORTATION RAILROAD WILL PROVIDE CLEAR, UNEQUIVICAL WRITTEN NOTICE OF THE BASIS UPON WHICH TEST IS REQUIRED.

1.8.2 BASIS FOR TESTING

BASIS FOR TEST WILL BE ONLY FOR ONLY ONE OF THE FOLLOWING:

- REASONABLE SUSPICION
- VIOLATION OF A SPECIFIED OPERATING/SAFETY RULE
- RANDOM SELECTION

- AN ACCIDENT RESULTING IN A FATALITY OF A SJTC EMPLOYEE
- RELEASE OF HAZARDOUS MATERIAL FROM RAILROAD EQUIPMENT
- DAMAGE TO RAILROAD PROPERTY IN EXCESS OF FEDERALLY STATED MONETARY LIMITS.

NO TEST MAY BE REQUIRED IN THE CASE OF A COLLISION BETWEEN RAILROAD ROLLING STOCK AND A MOTOR VEHICLE OR OTHER HIGHWAY CONVEYANCE AT A RAIL/HIGHWAY CROSSING.

1.8.3 ON DUTY OR ON COMPANY PROPERTY

The use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance while on duty or on company property is prohibited, except if prescribed by a physician, is prohibited.

1.8.4 INFORM YOUR PHYSICIAN

Employees must inform their physician of the nature of their work and the prohibition of any medication which could cause drowsiness. Medication that is prescribed specifically for the employee by a medical practitioner and used as prescribed is permitted.

For more information refer to the “SJTC’s Drug & Alcohol Policy and Procedures for SJTC Employees effective April 18, 2016.

1.9 Smoking Policy

Smoking is prohibited at the following locations:

- At company facilities including private offices and all common areas i.e., lobbies, hallways, stairways, restrooms.
- In or near building entrances.

- In locomotive cabs, company vehicles, and crew rooms.

1.10 Personal Electronic or Electrical Devices

Employees are prohibited from using personal electronic or electrical devices such as cell phones, electronic games, TV's, computers, media players (including wearing associated earpieces connected to same) or from having such devices turned on while performing any railroad work involving the movement of railcars and engines.

Employees are not to have personal cell phones on or in airplane mode while performing any railroad work involving the movement of railcars and engines.

Exceptions:

1. SJTC supplied Electronic Devices; Railroad operating employees may use SJTC railroad supplied electronic radio and/or cell phone with or without associated ear pieces to send or receive work related information:
 - To and from Railroad Supervisors
 - To and from Railroad Customers
 - A contact point for employee's families only for critical calls
 - Use a camera to document safety hazards, turned on only long enough to take the picture
 - Take pictures of state highway road crossing federal law violations
 - An electronic device may be used to determine train speed **if** it does not require any input from the engineer while the locomotive or train is moving.
2. Railroad operating employees must not use SJTC railroad supplied cellphones for purposes other than which it was intended **OR** while:
 - Operating the controls of a moving locomotive.
 - In the cab of a controlling locomotive
 - On the ground within 4 feet of any track.
 - On the ground and engaged in an active switching operation.
 - Riding rolling equipment, engine or cars, during a switching

operation.

3. Go-Pro type cameras may be used on the leading end of a shove movement or the leading end of a locomotive. Cameras should be placed in a position to record activity that occurs when rail equipment moves across a crossing.
4. Employees may use **any means of communication** necessary to respond to **an emergency** involving the operation of the railroad or encountered while performing a duty for the railroad.

1.11 Sleeping

Employees must not sleep while on duty. Employees reclined with their eyes closed, covered or concealed, will be in violation of this rule.

1.12 Weapons

While on duty or on railroad property, employees must not have firearms or other deadly weapons, including knives with a blade longer than 3 inches.

1.13 Tampering

Employees are prohibited from altering, nullifying or in any manner restricting or interfering with the normal intended function of any device or equipment on engines, cars or other railroad property, except when specifically authorized to do so.

Any employee who willfully disables a safety device will be subject to civil penalties and will be disqualified from performing any railroad operating functions.

1.14 Employee Conduct

Employees must not be:

- insubordinate,
- negligent,
- careless of the safety of themselves or others,
- quarrelsome,

- involved in physical altercations including horseplay, practical jokes, or fighting while on duty or on railroad property

In addition, employees must not:

- leave their assignment without proper authorization,
- receive a gift or reward from a customer in return for preferential service,
- divulge Bill Of Lading information, or any company information, which is protected by federal law, to anyone other than a San Jacinto Transportation Company employee,
- engage in sexual harassment

1.15 Complying with Instruction/Orders

Employees must comply with instructions or orders from authorized supervisors unless it is deemed by the employee to be unsafe for themselves, a customer or the general public.

- If an employee considers an activity unsafe; they are to contact any company manager and resolve the safety issues before complying with the instructions.
- No employee is to be intimidated when they approach a manager under the terms of this rule.

1.16 Hours of Service

Employees of SJTC Railroad are subject to the FRA Hours of Service Act, which limits time on duty, engaged in or connected with the movement of any train, to twelve (12) continuous hours. No employee is to work more than 12 continuous hours in a 24 hour period.

In addition, employees must have ten (10) hours of continuous rest upon completion of a tour of a duty. A standard tour of duty is eight (8) hours but can be up to twelve (12) hours in duration. An employee cannot be called to work without completing ten (10) consecutive hours of rest prior to the report time.

Employees called to perform train service for six (6) consecutive days are governed by FRA Waiver Docket Number FRA-2015-0005.

An employee called to report for service, who will not have completed legally required rest at the indicated time to commence duty, must inform their supervisor before reporting for duty.

1.17 Rules

Employees must have a copy and be familiar with and comply with all rules written or verbally issued by SJTC officials.

1.17.1 Operation Bulletins and Information Notices
Operating bulletins and information notices will be issued, modified or changed by the Terminal Manager.

Before beginning each day's work crew members must review operating bulletins and special notices and ask questions if information is not understood.

1.17.2 Operating bulletins will contain information or instruction pertaining to the movement of engines and cars, switching procedures, track and equipment conditions and safety instructions.

Operating bulletins will be dated and numbered consecutively beginning on the first day of the New Year. They will be posted on the wall outside the manager's office.

1.17.3 Information Notices will contain non-operating information relevant to employees.

2.0 ON OR ABOUT TRACKS

2.1 Walking on or Near Tracks

Do not stand or sit on rails. Do not walk fouling or between rails of a track unless required by assigned duties. When standing, walking or working near tracks keep a careful lookout in both directions for trains, locomotives, cars or other moving equipment and expect movement at any time on any track in either direction. Do not rely on hearing the approach of a train or equipment. This is a RED ZONE.

Watch out for cattle guards, unloading pits or other tripping hazards.

Be watchful for poisonous snakes especially in sunny, rocky areas, around tracks and switches and in high grass.

2.2 Crossing Tracks

Step over Rail

Step over rails, frogs, switches, derails, etc. when walking near or crossing tracks. Walk straight across tracks when possible.

Sufficient Distance

Maintain a safe distance from equipment and do not:

- cross or step foul of tracks closely in front of or behind moving equipment;
- go between standing equipment if the opening is less than 50 feet, a RED ZONE;
- cross tracks in front of or behind standing equipment unless there is at least 25 feet between the employee and the equipment, a RED ZONE.

2.3 Handling Switches and Derails

Equipment must not pass the following limits for switch operation:

- Trailing Point movement: Stop movement not less than 50 feet from switchpoints to prevent tension being placed on switch points and switch handle.

- Facing point movement: Stop movement a sufficient distance from switchpoints to prevent binding of switch points.

Facing point movement is moving into switch points or making movement from the switch points into the body of the switch. Trailing point movement is moving through the frog first.

2.3.1 Switch Operation

Switches have different physical operating characteristics. Be familiar with the procedures for properly lining each type of switch. Always remember that the ease with which a switch operates will change depending on weather, temperature, maintenance and other operating conditions.

Before operating a switch or derail:

- Look in both directions and be alert for moving equipment on adjacent tracks.
- Visually inspect it, and make sure it is not damaged, locked, tagged or spiked and the points are not obstructed by ballast, ice, snow or other material which may interfere with the normal movement of switch points.
- If necessary to remove foreign material between the switch points and stock rail, use a broom, stick or similar object. Do not use your hand or foot for this purpose. Be watchful for snakes and spiders. If the switch is spiked, do not attempt to operate it.
- Always take a firm stance and be alert for conditions which may cause loose footing.
- While handling a switch or derail keep hands and feet clear to avoid being caught or struck by the switch lever handle or ball.
 - o Note: See Rule 2.3.3 on Position of Switches.

2.3.2 Operation Lever-action Switches

When operating a lever-action (flop over) switch:

- Unlock the switch and place the lock in a conspicuous place.
- Take a firm stance and be alert for conditions that might cause loss of footing.
- Stand parallel to handle movement, with your stance centered over the lever arm handle. If the switch is equipped with a foot latch, keep your foot on the latch until you move the lever toward the one-half position.
- Hand or other objects must not be used to release latch. The switch lever may be under compression and could fly up when released from the latch or keeper.
- Stand as close as possible to the lever arm, placing one hand on your knee or on top of the switch staff for support.
- Place your hand on the handle and lift up slowly and smoothly.
- Once the lever has traveled at least to the straight up position, reposition your feet and hands so that lever movement may be completed with a pushing motion.
- If necessary, complete the last 6 inches of movement by placing one foot near the end of the lever and stepping down until the lever arm is latched.
- Replace the lock into the hasp. Lock may remain unlocked until the end of the work assignment.
- **Relock the switch at the end of the day.**

CAUTION: Avoid using your feet to push the lever arm down during wet, ice, or snow conditions, or if oil, grease or other such contaminants are present.

2.3.3 Position of Switches

The employee handling the switch or derail is responsible for the position of the switch or derail in use.

Employees handling switches and derails must make sure:

- The switches and derails are properly lined for the intended route.
- The points fit properly and target, if so equipped, corresponds with the switch's position.
- When the operation lever is equipped with a latch,

do not step on the latch to release the lever except when throwing the switch.

- After locking a switch or derail, test the lock to ensure it is secured.

When possible, crew members on the engine must see that the switches and derails near the engine are properly lined.

2.3.4 Normal Position of Switches and Derails

The normal position of Air Park Lead track switches is lined for Air Park Lead **and locked** in that position.

The normal position of derails is in the **derail (on) position and locked in that position**. All derails must be returned to the normal position when the crews have finished their repetitive moves over the derail or at the very least, at the end of their work shift.

When derails are in the off position in order to allow movement over the track **the derail must be locked in the off position**.

2.3.5 Switches Run Through

Do not run through switches lined against the direction of movement. If a rigid type switch is run through, it is unsafe and must be protected by spiking the switch and notifying management immediately.

An engine or car that partially runs through a switch, improperly aligned, must continue movement over the switch. The engine or car must not change direction over a damaged switch until it has been spiked or repaired.

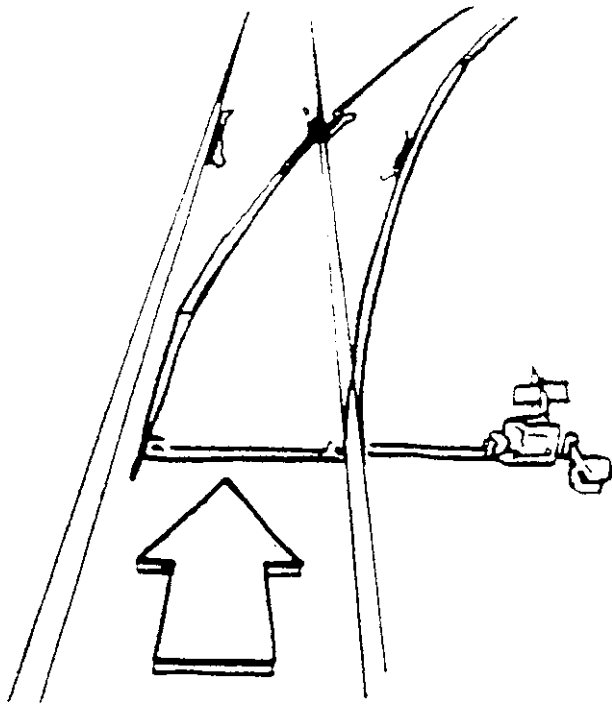
2.4 Repair and Maintenance of Engines and Rail Cars.

When workers are on, under or between rolling equipment for the purpose of repairing or maintaining such equipment, track protection shall be provided as follows:

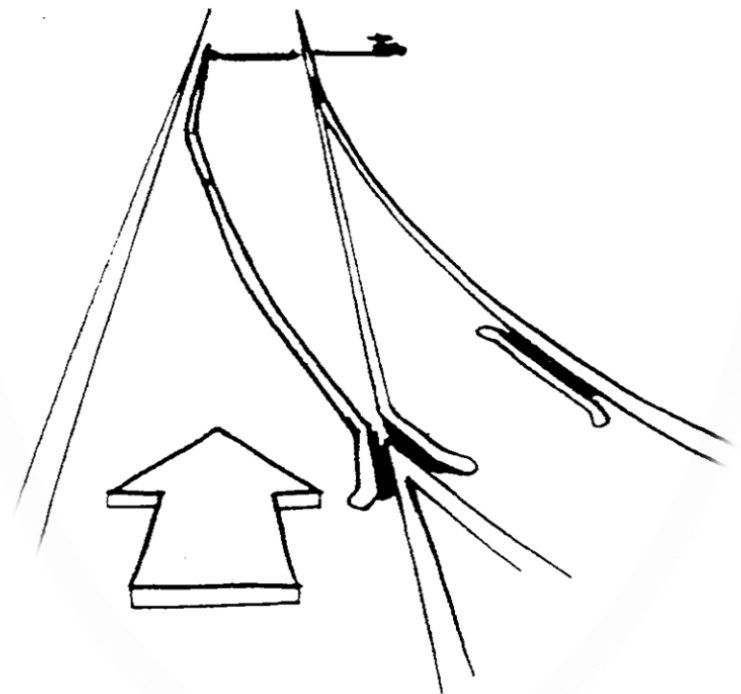
- Each switch providing access to the track containing

equipment to be worked must be lined against movement to that track. Switch shall be locked with a blue lock.

- A blue sign or blue light shall be placed in close proximate to all switches providing access.
- The yard manager will issue a Bulletin Order placing a temporary speed restriction of 5 mph or less on the work area track. This bulletin is to stay in effect until work has ceased and new Bulletin Order is issued.
- If no speed restricting Bulletin Order is issued, derail(s) must be placed on the work area track between the equipment and the switch(s) providing access.
- If an engine is part of the maintenance or work being performed, a blue flag must be hung on the cab window or a blue sign or blue light placed on the operating controls of the locomotive.



FACING POINT MOVE



TRAILING POINT MOVE

Illustration A

3.0 ON OR ABOUT EQUIPMENT

Do not stand on top of a freight car for any reason.

Care should be used when getting on top of the locomotive (when supplying engine with sand).

Do not stand on the lower step of a locomotive or on the stirrup of a freight car as it proceeds across a road crossing.

3.1 Getting on or Off Equipment

Do not get on or off cars and engines (whether standing or moving) except when required in the performance of duties and only when it can be done safely.

The following precautions must be taken when getting on or off standing equipment:

- Always use the provided appliances (steps, ladders and hand hold) for getting on and off equipment. Be aware of and take necessary precautions to prevent injury from the buildup of snow, ice, water, mud, grease and oil on footwear, sill steps and side ladders.
- Keep hand free of all objects that may hinder a secure handhold. Always maintain a secure grip on the handholds on engine platforms or while using appliances on the equipment. Be prepared for sudden movement.
- When getting on equipment, face the equipment and use the side ladder or steps, maintaining a three-point contact (two feet and one hand or two hands and one foot). Feet must be securely placed.
- Observe surface conditions and activity in the area before getting off.
- When getting off, retain a grip on the hand hold until one foot is firmly placed on the ground or other support.
- Use extreme care during wet, muddy, snowy or icy conditions and at night in unlit areas.
- Pay special attention when climbing tank cars.

- Use side ladder
- You may stand on the end platform so long as you remain outside the plane of the tank car wheels.

3.2 Moving Equipment

Employees are prohibited from getting on or off moving equipment except as required in the performance of their duties.

When getting on or off moving equipment employees, who have been authorized to do so, must observe all of the precautions required for getting on standing equipment. In addition, the following precautions must also be taken:

- Speed getting on or off must not exceed 4 MPH (walking speed).
- When boarding covered hoppers or similar equipment, grasp the leading grab iron with leading hand in direction of movement, then step up with trailing foot as you grasp trailing grab iron, putting trailing foot in trailing corner of step letting movement lift you off the ground.
- Get on the leading end of moving cars of the last car of the cut (based on direction of movement).
- When dismounting moving equipment choose a landing area free of obstacles or tripping hazards.
- Look in the direction of movement and use your trailing foot to touch the ground first.
- Release your leading hand and swing away from the rail car.

3.3 Impaired (Close) Clearances

Do not ride on the side of a moving car, engine or other equipment under any of the following conditions:

- Next to a building, platform or structure,
- Through gates or doorways,
- Into, out of, or within enclosed buildings,
- Over road crossings,
- In addition, be looking out for temporary clearance obstructions such as parked autos, stored material, and

- unloading machinery, natural or manmade,
- These are RED ZONES

3.4 Crossing Through or Fouling Equipment

Do not get on, cross through, crawl, sit or lie under cars regardless of whether cars are standing or moving, unless duties require. When duties require, conduct a job briefing that include all involved, assuring that all movement has stopped and that no unexpected movement will occur.

3.4.1 Working between, crossing through or fouling equipment (without locomotive attached):

Do not get on, cross through, crawl, sit or lie under cars regardless of whether cars are standing or moving, unless duties require.

If duties require crossing over, conduct a job briefing that includes all involved.

- Use railing, ladders and crossover platforms where provided.
- Always keep a handhold on equipment as you crossover.
- Never step on the bell housing, drawbar or knuckle on equipment.

3.4.2 Working Between or Crossing Through Equipment (with Locomotive Attached):

REQUIRES “3 Step Protection”

When equipment is coupled to an occupied engine, before an employee steps foul of a track to work on or make adjustments to equipment or cross through cars, the following **3 STEP PROTECTION** is required.

- The ground employee must notify all crew members. Notification will be made by radio communications or hand signals.
- The engineer must:
 - apply locomotive air brakes,
 - center the reverser, and
 - open the field generator switch.
- The engineer must notify the ground employee

that **3 step protection has been applied.**

- When the employee is clear of the track, the employee will notify all crew members they are clear of the track. Engine settings must not be changed until acknowledgment is completed between employee controlling the engine and employee reporting clear of track.
- 3 step protection must stay in effect while employee(s) performs numerous tasks such as coupling air hoses, releasing or setting a number of hand brakes, etc.
- 3 step protection can only be released after all ground employees have reported clear of the rail equipment.

3.5 Hand Brakes

When operating hand brake, inspect for defects. Do not operate a defective hand brake. Use the following good body mechanics. Have a firm footing and hand hold to prevent slipping, falling or injuries. When applying or releasing wheel type brake, thumb must be positioned on the outside of the wheel to prevent thumb injury in case of unintended release.

End-mounted brakes: On equipment equipped with a brake step or platform the

hand brake must be applied or released from a position on the equipment. When climbing on equipment use the side ladder and maintain three-point contact. Three-point contact consists of both feet and one hand or both hands and one foot touching the equipment. When in position to apply or release an end-mounted brake with platform, place your left foot on the end ladder rung and your right foot on the brake platform. Grasp the end ladder rung or the top hand hold with your left hand and operate the brake with your right hand. Do not place both hands on the brake wheel.

Releasing hand brake: Use caution when releasing hand brakes. Obtain help when necessary. Avoid being struck by the brake wheel when the pawl is released. Avoid

having clothing or hand caught in a spinning brake wheel.

When unable to release the hand brake that has been set after an air brake application, follow this procedure;

- Recharge train line pressure of the car.
- Reapply air brake (to relieve tension on the hand brake chain).
- Release the hand brake by hand.

3.5.1 Using a Brake Stick

A Brake Stick may be used if available, to apply or release wheel type handbrakes. The following procedures must be followed:

1. Extend the brake stick to a length that will allow you to reach the brakewheel while standing clear of the rail car.
 - a. Request **3 Step Protection**
2. To apply hand brake, insert hook of brake stick into lower half of the wheel and with a secure stance, pull the wheel toward your body. Do this as the chain tightens and continue until brakes are firmly applied.
3. To release hand brake, insert hook of brake stick into the upper half of the wheel and with a secure stance, pull the wheel toward your body. Do this as the chain loosens and continue until brakes are completely off.
4. **REMEMBER: CLOCKWISE APPLIES THE BRAKES, COUNTERCLOCKWISE RELEASES BRAKES.**
5. Care must be used when releasing breaks using the quick release lever. If this cannot be accomplished safely, unwind the hand brake.
6. When transporting the brake stick, care must be taken to hold the brake stick upright or horizontal to the ground in order to avoid striking something or someone or injuring yourself.

4.0 MOVEMENT OF TRAINS AND ENGINES

4.1 Inspections

Before the initial movement of any cars or engines the following safety inspections must be performed.

4.1.1 Freight Cars

Cars picked up at interchange point or pulled from unloading positions must be checked for:

- Leaning,
- Sagging,
- Improper position on the truck,
- Objects hanging or dragging from the car or extending from the side,
- Insecurely attached doors or hatches,
- Broken, bent or missing safety appliances (example of safety appliances are ladders, hand brakes, cut levers, etc.),
- Broken air hoses,
- Leaking contents,
- Insecure coupling devices,
- Overheated or discolored wheels or journal,
- Broken or cracked wheel,
- Brake that fails to release,
- Any apparent hazard that could cause an accident.

4.1.2 Tank Cars

- All of 4.1.1 plus checking before pulling that customer has:
 1. Nozzle cap attached,
 2. Top valve covers closed,
 3. Tank not leaking and all hoses and or unloading devices disconnected,
 4. All appropriate placards in place and legible.

4.1.3 Covered Hoppers - Slide Gates

Be sure that customer has slide gates closed after a load is dumped before repositioning or staging for empty return move.

4.2 Engines

Before taking control of an engine the engineer must perform the following inspections and complete the Daily Locomotive Inspection Report form:

From the ground:

- Inspect brake shoes and replace when worn to a thickness of 1/2 inch at any point of the shoe.
- Brake shoes must be properly aligned with the wheels.
- Check wheels for cracks.
- Check fuel level and schedule fill if necessary.
- Check railings and catwalk chains for damage and proper position.
- Drain condensation from all main reservoirs by slowly opening the drains just enough to establish a discharge. Drain until completely free of water.
 1. Return all manual drains valves to the "closed" position.
 2. Return all automatic drain valves to the automatic position. Ensure "spitter" type valves are operational.

When both sides of the locomotive have been inspected move to the cab of the engine.

- Check the condition of the cab.
- Check windows, doors, engineer's seat, etc.
- Check for current fire extinguisher.
- Operate the bell and horn. **WARNING:** do not operate horn when any person is within close proximity to the engine.
- Check all lights in cab and headlights.

Move to the catwalks of the locomotive and inspect fluid levels.

- Check the cooling water sight glass. With the engine idling (no load and water temperature below 170 degrees F) the water level must not be more than two inches below the "RUNNING FULL" mark. Add water through the water fill pipeto restore water to proper level.
- If cooling water is added, water treatment must also be added.
- Check engine crankcase oil level with the engine idling. If the oil level is more than two inches below the "FULL" mark on the dipstick it must be filled to the full mark using proper engine oil.
- Check governor oil through the sight glass. Ensure the oil level is between the two black lines on the sight glass with the engine idling. The governor will be filled only with approved governor oil.
- Visually inspect external engine components throughout the entire engine compartment for leaks or any sign of leaks.
- Check level in sand box and fill if necessary. See 4.2.1 for filling the sand box.

4.2.1 Filling the Sand Box:

- Filling requires two people.
- Each member is to wear mask and eye protection equipment.
- A ground person hands sandbags to second person located on the engine catwalk.
- Once the sand is on the catwalk, the process is repeated by moving the sand from the catwalk to the top of the engine, at the sand box opening.
- Open the sand box with two hands and pour sand into box using appropriate tool.
- Once filled, close sand box door securely to prevent water and moisture from entering.

Any defects or deficiencies not corrected by train personal must be reported to management AND RECORDED ON FORM F.

4.3 Starting the Engine

Do not start engine until all inspections are complete.

To start engine:

1. Close battery switch located in electrical cabinet of cab.
2. Place isolation switch in isolate.
3. Push Lay shaft and turn starter switch to the right.

Both of these items are under the left hood halfway down the walkway.

DO NOT TURN THE ENGINE OVER (GRIND) FOR MORE THAN 7 SECONDS. IF ENGINE DOES NOT START, CHECK STARTING PROCEDURES AND TRY AGAIN.

4.4 Air Brake Tests

4.4.1 Locomotive Air Brake Test

An initial standing locomotive air brake test is required when initially taking charge of a locomotive.

Conducting the test

- Apply the independent brake fully.
- Inspect the extension of each piston and brake shoes. Assure that the brake piston extension is 6 inches or less and the brake shoes do not extend beyond wheel.
- Release the independent brake and apply the automatic brake.
- Check that all the pistons are extended again.
- Depress the independent brake handle to initiate the actuation feature and verify brakes are released.
- With the hand brake applied, the reverser in forward, place throttle in position #1, ring the bell and determine how well the hand brake holds.

If the locomotive moves and the test reveals holding power ineffective:

- Place the throttle in the idle position, center reverser.
- Report failure of test.

4.4.2 Running Locomotive Air Brake Test:

- Begin moving the locomotive.
- Place the independent brake to a point in the application zone that creates a retarding effect.
- Verify brake cylinder pressure and retarding of the locomotive.
- Place the independent brake in the release position.
- Verify that the brake cylinder pressure reduces to zero and the retarding effect is eliminated.
- Make a 15 - PSI brake pipe reduction.
- Verify brake cylinder pressure and retarding of the locomotive.
- Actuate the brake cylinder pressure by depressing the independent brake handle for 3 - 5 seconds.
- Verify that the brake cylinder pressure reduces to zero and the retarding effect is eliminated.
- If a retarding effect is not developed test is complete. Position air brake controls as required.

4.4.3 Locomotive Air Brake Test with Cars Attached

After coupling is complete, and all air hoses are coupled and angle cocks are in the correct position, a **Transfer Train Air Brake Test** is required. A Transfer Train Air Brake Test is to be required anytime cars – either pulled or shoved.

Conduct a **Transfer Train Air Brake Test** as follows:

- Cars received on the interchange track may be moved a short distance in order to safely complete this test.
- Charge brake system to within 15 pounds of the setting of the regulation valve.
- To determine state of charge of brake system, in the absence of a rear car gauge or device.
 1. Allow time for brake system to charge.
 2. Cut out the pressure-maintaining feature. Wait an additional 60 seconds for brake pipe pressure to settle throughout the train.
 3. Check brake pipe gauge on locomotive. If pressure indicated on gauge is within 15

pounds of the setting of the regulation valve, the system is charged. Cut-in pressure maintaining feature and continue.

- Make a 20 pound brake service brake pipe reduction.
- Determine that brakes apply on each car. This requires a visual inspection of each car by walking the train.
- Brake cylinder piston travel must not exceed 9 inches for freight cars and 6 inches for locomotives.
- If brake cylinder piston travel exceeds 9 inches or brakes fail to release (check hand brake) cut car out and report on daily incident report.

4.5 Switching

Switching Safely and Efficiently

While switching, employees must work safely and efficiently and avoid damage to contents of cars, equipment, structures, or other property. Do not leave equipment standing where it will foul equipment on adjacent tracks or cause injury to employees riding on the side of a car or engine. On tracks where clearance point is indicated, an orange line painted on the ties/rails, leave equipment behind the clearance point. If the clearance point is not indicated or visible, determine the clearance point by standing outside the rail of adjacent track and extend arm towards the equipment. **Note: do not measure for clearance from or around moving equipment.** When unable to touch the equipment, leave equipment at least an additional 50 feet into the track to ensure equipment is inside the clearance point.

Use of Retainer Valve: Freight car retainer valves may be used at the discretion of the crew switching cars when greater control of the car movement is required.

- Couple engine to cars to be switched, couple air hoses and release air brakes.
- Place the retainer valve on a number of cars deemed

sufficient by turning the valve to the SD (Slow Direct Exhaust) position.

- Complete the movement / switching of the effected cars.
- Return the retainer valve to the EX (Exhaust) position.

ALL CARS FOR OUTBOUND DELIVERY TO THE INTERCHANGE MUST HAVE THE RETAINER VALVE IN THE “EX” POSITION.

Equipment may be left on:

- Air Park Lead track, fouling a siding switch, when the switch is lined for Air Park Lead track.
- Siding, fouling Air Park Lead track switch, when the switch is lined for the siding and a car occupies the siding switch.

4.6 Shoving Movements

Equipment must not be shoved until the engineer and the conductor have completed a job briefing concerning how protection will be provided. Employee must proceed the movement either by riding the head car or walking on the ground, provide visual protection of the equipment being shoved and must not engage in unrelated tasks while providing protection.

Equipment must not be shoved until it is visually determined that:

- Portion of track to be used is clear of equipment or conflicting movements.
- The track will remain clear to the location where movement will be stopped.
- Switches and derails are properly lined.

Shoving movements over road crossings must be made in accordance with rule **6.3 Public Road Crossings**.

4.7 MU Connection of Locomotives

- Couple locomotives, stretch to ensure coupling is complete.
- Apply Independent Brake on both units.
- Check pins within the 27 point jumper cables to make sure pins are not bent or missing, securely insert into the receptacle.

- Connect jumper cables between both locomotives.
- Jumper cables not in use should be stored in dummy receptacles (if equipped) on the locomotive.
- Connect brake pipe, main reservoir, and actuating and independent air hoses. Open all valves on both locomotives.
- Lower walkway (if not already in the down position) and connect walkway chains allowing no more than a four-inch sag.

Trailing Locomotive

- Move automatic brake valve to the handle off position and cut out brake valve. Remove automatic brake valve handle.
- Place independent brake in the release position. DO NOT BAIL OFF. Remove independent brake handle.
- Set M-2A valve to "Trail".
- Turn off generator field, control and fuel pump switches. EXCEPTION: Unit 1511 fuel pump switch remains ON.

5.0 SIGNALS AND THEIR USE

Radio communication and hand signals, except stop signals, must not be used simultaneously to direct equipment movements.

The following hand signals are to be used with a lantern at night and a lantern or hand only by day. Additional hand signals may be employed if all crew members agree to and understand their meaning. The following signals are standard signals for San Jacinto Transportation Railroad. However, there may be an occasion when crew members see a person(s), not part of the crew, waving wildly or giving a signal you've never seen before. If this happens, stop the movement. Conductors; give the stop signal, engineer stop the train using good train handling techniques. Crew members must perform a job briefing to determine the reason for the unusual occurrence. If at any time a crew member, conductor, engineer, utility man, switch tender etc. observes a train performing in an unusual manner, stop the movement or give the signal to stop the movement. Perform a job briefing to determine the cause.

The following hand signals are standard and may not be modified or changed.

5.1 Signals Given By Hand, Flag and/or Lantern





PROCEED

Raised and lowered vertically



BACK

Swung vertically in a circle at half-arm's length at right angle to the track.





APPLY AIR BRAKES

Swung horizontally above the head at right angle to the track, when equipment is standing.



RELEASE AIR BRAKES

Held at arm's length above the head when equipment is standing.





EASE OFF

When moving an extended arm indicates you are getting close, prepare to stop.



Apply 3 STEP PROTECTION

Three fingers extended overhead indicate a request for **3 STEP PROTECTION** from the engineer.



Release 3 STEP PROTECTION.

Arms crossed indicate a request to release **3 STEP PROTECTION**.

If a crew member using hand signals goes out of sight of the person at the controls of the locomotive, the movement must be stopped immediately. Movement may not resume until line of sight is reestablished or a job briefing is conducted to switch to radio communications. When anticipating changing from one mode of signaling to another, all involved must be notified. Conduct a job briefing.

Remember that backing or forwarding moves are determined by the front of the engine as indicated by the letter "F" on the frame of the locomotive.

5.2 Radio Rules

5.2.1 General Radio rules

- Only company issued radios with or without associated earpieces are to be used.
- Radio communications must be brief and messages to the point.
- Radio communications should pertain to railroad operations and not personal communications.
- Employees will refrain from using obscene, indecent, or profane remarks.

5.2.2 Testing Radios

Each radio used in connection with these rules must be tested as soon as practicable prior to beginning the work assignment.

The test of a radio shall consist of an exchange of voice transmissions with another radio. The employee receiving the transmission will advise of the clarity of the transmission.

5.2.3 Radio Monitoring

Employees must keep:

- radio in the ON position,

- the selector switch set for proper channel,
- the volume adjusted to receive communications.

5.2.4 Initiating or receiving a radio transmission

Before transmitting the radio, an employee must:

1. listen to ensure the channel is not being used;
2. use locomotive initials and number (positive identification) procedures
to identify the station calling from (for example:
"This is engine SJTC1511 calling...");
3. use positive identification procedures to identify
the station or person being called (for example:
"Calling SJTC conductor...");
4. be brief and to the point.
5. an employee who receives the transmission
must repeat the major points of the original
transmission to the person transmitting the
message before movement can begin. Example:
"SJTC conductor to SJTC1511; shove
ahead 8 car lengths)"
Response: "SJTC1511 to SJTC
conductor, ahead 8 cars".
6. All car movement information must be given in car
lengths. For example: SJTC engine 1511 shove 10
car lengths to a coupling, repeated by the engineer
"10 cars to a coupling".
7. If the engineer does not hear additional instruction
after moving half the distance originally indicated (5
car lengths in the above example) **the movement
must stop immediately** and a job briefing held with
all crew members.
8. Once positive identification has been established,
crew members can use a shorter agreed upon
communication message (e.g. Engine 1511 to
conductor 21).

5.2.5 Repetition

An employee who receives a transmission must
repeat it to the person transmitting the message,

except when the communication:

- Concerns yard switching operations.
- Is general and does not contain any information, instruction, or advice that could affect the safety of a railroad operation.

5.2.6 Ending Transmissions

Employees using a radio for transmissions must state to the employee receiving the transmission the following as it applies to indicate the communication has ended or is completed:

“OVER” — when a response is expected Or

“OUT” preceded by required identification —
when no response is expected.

However, these requirements do not apply when ground personnel are calling out car-lengths before coupling.

EXAMPLES:

Initial radio call: SJTC engine 5731 calling utility man / over

This is utility man answering SJTC engine 5731
/over

Continuing call 5731 to utility man line switch to

HI Crush 4 / over utility man to

5731 lining switch to HI Crush 4/

out

utility man to 5731 switch to HI

Crush 4 is lined proceed 10 cars / over

5733 to utility man proceeding 10 cars / out

5.2.7 Communication Not Understood or Incomplete

An employee who does not understand a radio communication or who receives a communication that is incomplete must not act upon the communication and must treat it as if it was not sent.

CLARIFICATION: An employee who receives information that may affect the safety of employees or the public or cause damage to property must take the safe course. When necessary, stop movement until the communication is understood.

5.2.8 Reporting Emergencies

An emergency call must be preceded by the word "EMERGENCY" repeated three times (EMERGENCY, EMERGENCY, EMERGENCY). Such calls must be made immediately and must describe the nature, degree and location of the emergency. They are to be used to cover the initial reports of:

- derailments
- collisions
- washouts
- fires
- storms
- obstructions to track
- personal injury railroad or not railroad related
- other hazardous conditions that could cause damage to property, injury to employees or the traveling public and or serious disruption to railroad operations.

5.3 Shoving or Backing Movements

1. These instructions must specify:
 - a) The distance of the movement to be made or

the sight distance available, whichever is less,
in 50 ft. car-lengths.

- b) The position of any switches involved with the move.
 - c) That the employee directing the movement is in the clear.
2. The movement must be stopped in one-half the specified distance, unless additional instructions, signals or communications, are received.
 3. The movement must be stopped if there is doubt as to:
 - a) The meaning of the instructions, or
 - b) For whom such instructions are intended.
 4. When stop is made in accordance with Paragraph 2 or 3, the movement will not resume until:
 - a) An additional job-briefing is conducted.
 - b) All concerned understand the move to be made.

5.4 Blue Signal

A Blue Signal (light or sign) signifies that workmen are on, under, or between rolling equipment and requires that:

1. Rolling equipment must not be coupled to or moved.
2. Rolling equipment must not pass a blue signal on a track protected by the signal.
3. Other rolling equipment must not be placed on the same track so as to block or reduce the view of the blue signal.
4. Rolling equipment must not enter a track when a blue signal is displayed at the entrance to the track.

5.4.1 Blue Signal Protection Removal

Blue signals may be removed only by the work group who placed them.

Customers are encouraged to apply and lock with their own locks blue signal protection on their tracks.

5.5 Signs

Placed strategically on the property are railway signs that signify the following:

5.5.1 Whistle Post

Located on the engineer's side, this post indicates the

approach to a highway crossing. Engine horn must be sounded in accordance with rule 6.3 for Public Road Crossings.

5.5.2 Derails

All permanent derails are indicated by a purple disk marked with a 'D'.

5.5.3 Bell

The bell is to be used:

1. When crossing a public road in conjunction with the horn.
2. When starting to move with railroad and/or non-railroad personnel are close to the locomotive. In cases where just the conductor who is ordering the movement of the locomotive is the only one present - the bell does not have to be used.

5.5.4 Turnout Clearance Point - Orange paint

The clearance point for each turnout will be indicated by orange paint on the rail within the gauge of the track. Be sure that cars are placed behind the paint mark. If mark is missing or not visible follow rule 4.5.

6.0 OPERATIONS

6.1 Authority

Yard limits authorize all movement on San Jacinto Transportation. The Terminal Manager controls the movement of equipment. He may begin each day with instructions and additional duties for the crew to perform. He may change these duties throughout the day. The Terminal Manager can withdraw permission for the crew to operate on any and all of the tracks. He may verbally instruct crews where to 'clear' the locomotive and equipment.

The Terminal Manager will issue Operating bulletins and Information notices. (See rules 1.17.1, 1.17.2 and 1.17.3)

6.2 Speed

**THE MAXIMUM SPEED ON SAN JACINTO
TRANSPORTATION RAILROAD TRACK IS 10 MPH -
WITH OR WITHOUT CARS**

On any track, movement must be at a speed that allows stopping within half the range of vision short of:

- railroad car,
- stop signal,
- derail or switch lined improperly,
- broken rail,
- people or livestock,
- other rail obstructions (cars, tree limbs etc.).

6.3 Public Road Crossings

**WHEN A MOVEMENT (PULLING OR SHOVING) IS
ACROSS A RAIL-HIGHWAY CROSSING, EMPLOYEES
ARE PROHIBITED FROM RIDING ON THE LOWER
STEPS OF THE LOCOMOTIVE OR ON FREIGHT
EQUIPMENT ON THE LOWEST RUNG OF THE CAR**

LADDER, NOT ON ANY PART OF THE STIRRUP.

6.3.1 Unprotected Public Crossings

When pulling or shoving across a rail-highway crossing that does not have automatic crossing protection, the leading equipment (locomotive or cars) must stop clear of the crossing and a flagger or member of the crew, equipped with flagging equipment (high visibility vest; flag; [night] light)) must proceed the movement and determine or cause all highway and or pedestrian traffic to be stopped clear of the crossing. Only then may the flagger (or crew member protecting the movement) give the engineer the signal to proceed. The engineer must ring the bell through the crossing but does not need to sound the horn. **However**, horn must be sounded in cases of emergency.

6.3.2 Protected Public Crossing

PULLING MOVEMENTS: When pulling across a rail-highway crossing protected by a stationary warning device, a crew member needs to determine that the flashers/warning device is operating. When working properly warning devices have a red light flashing on their side. If they are functioning properly, the locomotive will blow its horn (two longs, a short and a long), ring bell and advance across the crossing.

If the warning device (flashers) are not operating properly, this crossing is to be treated as an UNPROTECTED PUBLIC CROSSING.

SHOVING MOVEMENTS: When shoving across a protected rail-highway crossing the crew member protecting the head end of the shove, must determine that the stationary warning device (flashers) are working properly (red light on side of device). In addition, crew member will not enter or foul the crossing until it is clearly seen that no

traffic is approaching the crossing and or all traffic has stopped.

LOCOMOTIVE WARNING DEVICES: Pulling movements approaching crossing will sound the horn for a minimum of 15 seconds prior to the locomotive entering the crossing. This is a protected public crossing and all rules for that type of crossing apply. The locomotive horn will continue to sound until the entire crossing is occupied by the locomotive and cars. The correct horn signal at crossings is two longs a short and one long. The locomotive bell should always be used going over this crossing.

6.3.3 Trains Blocking Public Road Crossings

Public road crossings at grade must not be blocked by railroad cars or locomotives for a continuous period of longer than 10 minutes. If the crossing would be blocked for over 10 minutes the crossing must be cleared by either pulling all cars or cutting the cars to allow traffic to pass. Refer to rule 6.8 for number of hand brakes to apply.

6.4 Engine Bell, Horn Signals and Head Lights

6.4.1 Engine bell is a warning device and must be rung when an engine is about to move, except after momentary stops in continuous switching movements. It must be rung while:

- Approaching and passing stations,
- Approaching and passing public crossings at grade,
- When approaching persons on or around the track structure.
- When approaching Roadway Workers on or about tracks.

6.4.2 Engine horn must be sounded at all places required by rule or law or to prevent accidents.

0000 Request for signal

00 Begin forward movement -
acknowledgement of signal

000	Begin backward movement - acknowledgement of signal
-- -- O --	Approaching and moving over a public road crossing at grade

(Where: O is short; -- is long)

6.4.3 Engine Head Lights When moving a light locomotive front and rear headlights must be on bright designation.

Exception: A locomotive coupled to cars, may have the head light facing the cars placed on dim designation.

6.4.3.1 Headlight Failure If the headlight fails, a white light must be displayed at the leading side of the locomotive and the bulb replaced as soon as possible.

6.5 Lighting Fusees

When lighting fusees, hold the end to be lighted down and away from your body, striking away from the body to prevent burns to hands, feet or clothing.

Do not place lighted fusees on open bridge decks, trestles or approaches or use them near flammable or combustible material.

Never look directly into fusee

flame. Extinguish the fusee

after giving hand signals.

6.6 Coupling and Uncoupling

When couplings are being made, do not ride the side of cars to point of impact. Make a safety stop short of coupling, dismount the equipment if riding.

Assure that one or both couplers are open and the two couplers are aligned. **(If couplers are not aligned or if a bypass occurs see rule 6.7)** In addition, determine that the car or cars are secure and will not roll away if the coupler does not mate. Stand in the clear when a coupling or uncoupling is being made. After a coupling has been made, have the engine pull the car slightly to insure a secure coupling.

Operate the uncoupling lever with hand next to equipment and face direction of movement. Do not use feet to operate the uncoupling lever.

Do not use excessive force or jerk on the uncoupling lever which may cause physical injury. Do not operate an uncoupling lever on a car or engine while riding on another car or engine.

Be alert for pinch points. Always place your hand on portion of uncoupling lever that is designed as the handle. Use the uncoupling lever to open knuckles when possible. If you must use hands to open the knuckle on standing equipment, keep both feet from between the rails if possible. This is a RED ZONE.

During coupling operations, separate equipment at least 50 feet and stop equipment before reaching in. Make sure the knuckle pin is in place before putting your hand on the knuckle.

A brake stick may also be used to open a knuckle by using the hook end of the brake stick to pull the knuckle open.

When uncoupling cars with air hose charged, close the angle cock closest to the locomotive, turn your face away from the air hose while uncoupling. The act of uncoupling the cars will separate the air hoses.

6.6.1 Coupling or Moving Cars on Tracks Where Cars are Being Loaded or Unloaded

All blue flags must be removed, by the person who placed it, before entering track to be pulled.

Before coupling to or moving cars on tracks where cars are being loaded or unloaded, crew members must be sure that all of the following have been removed or cleared:

- Persons in, on, or about cars.
- Platforms.
- Boards.
- Tank car couplings and connections.
- Conveyors.
- Loading or unloading spouts and similar appliances or connections.
- Vehicles.
- Other obstructions.

In addition:

- Prior to moving a partially loaded car ensure that the car is not leaning, and the lading is secure.
- Return any car placed for loading or unloading to the location it was found if it has not been released for movement.
- Ensure unloading gates are closed and secure.

6.7 Coupler Adjustment

When necessary to make a coupler adjustment:

- separate equipment at least 50 feet and equipment must be stopped
- when manually adjusting coupler;
 1. ensure secure footing and a good grip on the coupler
 2. check that the knuckle pin is in place
 3. keep the coupler close to your body
 4. keep your upper body erect
 5. lift smoothly - do not use jerky motions
 6. do not lift and twist at the same time
- avoid lifting the full weight of couplers
- do not kick or use your foot to make a coupler adjustment

- coupler must move without applying excessive force
- **USE A KNUCKLE MATE OR COUPLER ADJUSTMENT STRAP IF AVAILABLE**

6.7.1 Using a Knuckle Mate

When using a Knuckle Mate to adjust a mismatched coupler, the following procedure must be used:

1. Separate the mismatched coupler at least 50 feet then close the knuckle of the coupler or couplers that need adjustment.
2. Place the Knuckle Mate over the top of the knuckle, making sure the central pin is securely in the hole of the knuckle (pin may be adjusted by loosening the levered nut).
3. Assume a braced position with both hands on the handle.
4. Exert a steady pull on the handle, being careful that an unexpected movement of the coupler does not cause overbalance.
5. When couplers are properly aligned, remove the Knuckle Mate, open at least one knuckle, stand clear of the equipment and proceed with the coupling.
6. Return the Knuckle Mate to its assigned location.

6.7.2 Using a Coupler Alignment Strap

When using a coupler alignment strap to adjust misaligned couplers, the following procedure must be used.

1. Separate the cars with misaligned coupler(s) by at least 50 feet.
2. Apply sufficient hand brakes to secure the car(s) not coupled to the engine.
3. Close knuckles on both cars and check that the locking pins have dropped.
4. Place one loop on the strap over the closed knuckle on the misaligned coupler. Lay the remaining strap material on the top of the coupler shank.
5. Move the equipment together until the couplers are about three feet apart.
6. Instruct engineer to apply **THREE STEP PROTECTION**.

7. Keeping one foot outside the rail, place the remaining strap loop over the closed knuckle of the coupler to be used for pulling.
8. Stand clear of the track and the alignment strap.
9. Move the engine very slowly in the direction that tightens the strap until the coupler is centered.
10. Move the engine in the direction that puts slack back into the strap, until about three feet separates the equipment.
11. Keep one foot outside the rail. Lift the uncoupling lever to open the knuckle and remove the strap.
12. Remove the strap from the other knuckle.

6.8 Securing Cars - Handbrake Application

Airbrakes alone are NEVER to be used to hold cars and/or locomotive that are being left unattended.

In addition to applying handbrakes on each car, skates (wheel chock) will be applied to the rail car that is first out on the above identified tracks.

INTERCHANGE TRACK:

Rail cars placed on the SJTC's interchange track will have 1 car's handbrake applied for every 5 rail cars placed at this location.

ALL OTHER LOCATIONS:

Depending on the grade, a minimum of 20% of any cut of up to 20 cars left standing unattended and 10% of an unattended cut of more than 21 cars must have hand brakes applied. Always apply hand brakes to cars on the lower part of a grade.

Example:

2 - 10 cars	2 handbrakes
11 - 20 cars	4 handbrakes

21 - 40 cars 4 handbrakes

41 - 60 cars 6 handbrakes

Note: This table represents the minimum number of handbrakes required on cars left standing. Other factors, such as grade, rail conditions and weather conditions must be considered. Additional hand brakes and/or wheel chocks may be required.

6.9 Locomotives Left Unattended

Locomotives left unattended must have hand brakes applied, the generator field switch opened or pulled and all operating tools removed. When entire train is left standing, the locomotive must be secured with hand brakes and not counted as cars with handbrakes applied in compliance with this requirement. (Rule 6.8)

If a locomotive is to be left unattended for 8 or more hours, the L-3 wheel must be secured with a chain and locked. The chain is to be positioned in such a way as to prevent movement in either direction.

6.10 Locomotive Shutdown Policy

Locomotive is to be shut down if left unattended for more than 8 hours.

6.11 Unexpected Emergency Application of the Air Brakes

If a train crew experiences an unexpected emergency application of the trains airbrakes, or severe slack action, a crew member must walk the entire train on the lookout for a possible derailment.

6.12 High Water

Do not operate engines or trains over rail that is under water or when water is to the top of the rail. All flooded rail must be inspected prior to movement and deemed safe. First movement over such rail must be at a speed no greater than 5 MPH.

7.0 HAZARDOUS MATERIALS (HAZMAT)

7.1 General

Employees who transport hazardous materials must have a copy of the Emergency Response Guidebook (ERG) readily accessible while on duty.

Hazardous materials are defined as “a substance or material which the Secretary of Transportation has determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce,” to include hazardous substances, hazardous wastes, elevated or reduced temperature materials, and marine pollutants; and are listed alphabetically by proper shipping name, along with vital characteristics such as Hazard Class and Packing Group, in Title 49 of the Code of Federal Regulations, Section 172.101, Hazardous Materials Table (49 CFR 172.101).

No person may offer, accept, or transport a hazardous material unless the material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized the Department of Transportation (DOT).

All hazmat shipments (both loads and those containing a residue) must be forwarded either (a) within 48 hours (excluding Saturdays Sundays, and holidays) after accepting them at the shipper’s facility or transfer station or interchange point, or (b) on the first available train when only bi-weekly or weekly service is performed.

7.2 Required Documentation

Hazmat may only be moved by rail when a member of the crew has in his/her possession (a) position-in-train document(s), (b) appropriate emergency response

information, and (c) acceptable shipping papers.¹ Note: properly discard superseded documents to eliminate the possibility of confusing or inconsistent information.

7.2.1 Position in train document

The position-in-train document consists of a switch list or similar written enumeration of the order of cars being transported by car initial and number. Such documentation must be updated before proceeding if the length or order of cars is changed.

7.2.2 Emergency Response Information

Appropriate emergency response information includes the ERG and any supplemental information that may be provided by the customer, such as a Material Safety Data Sheet (MSDS).

7.2.3 Acceptable Shipping Papers

Acceptable shipping papers must contain the following entries:

- A. Car initial and number,
- B. A notation specifying the total quantity of loaded cars (for example: 1/TC for “one tank car”), and Residue: last Contained (Name of substance) for empties.
- C. The proper shipping name of the hazardous material as specified in the Hazardous Material Table of the (49 CFR 172.101). When N.O.S. [not otherwise specified] appears, the shipping names may include the technical name of the product in parentheses immediately after the N.O.S. in the shipping name; for example, “Corrosive Liquid, N.O.S. (Capryl Chloride)”. For waste shipments the word "Waste" will precede the proper shipping name of the material.
- D. The Hazard Class, which can be either a number or worded description (such as “COMBUSTIBLE LIQUID, N.O.S.”),

¹ Exception: moving the residue of an Elevated Temperature Material that is no longer HOT, even if still placarded

- E. The Identification Number, which is either the prefix “UN” (United Nations) or “NA” (North America) followed by a 4-digit number,
- F. The Packing Group, which are Roman numerals that may or may not be preceding by the letters “PG,”² and
- G. A 24-hour emergency response telephone number, including area code³.
- H. When applicable, shipping papers must also contain these additional description entries,
 1. "Residue: Last Contained (for containers emptied to the maximum extent possible),
 2. "HOT" notation added before a proper shipping name for elevated temperature materials,
 3. “LIMITED QUANTITY” or “LTD QTY” notation
 4. “RQ” for a Reportable Quantity notation of a hazardous substance,
 5. “POISON-INHALATION HAZARD” (PIH), “TOXIC-INHALATION HAZARD” notation,
 6. Hazardous Materials Response Code (STCC “48xxxxx” or “49xxxxx”),
 7. “DO NOT HUMP” notation,
 8. “OIL” notation.

The following documents, whether mechanically prepared or hand-written are considered to be acceptable shipping papers: (a) customer-produced document, (b) document produced by a connecting railroad, (c) document produced by SJTC, or (d) a hazardous waste manifest.

7.2.4 Hazardous Waste

Shipping papers for **hazardous waste** must contain the following additional entries: (a) proper shipping description (in addition to proper shipping name), (b) name, address, and telephone number of the hazardous waste generator, (c) name and address of the hazardous waste disposal facility,

² Exceptions to the requirement for a Packing Group number: Hazard Classes 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 2.1, 2.2, 2.3, 4.1 (self-reactive liquids or solids, types B-F), 5.2, 6.2, 7, and ORM-D; and the following identification numbers from Classes 3, 4.2, 4.3, 5.1 8, and 9: NA1365, UN2426, UN2990, UN3072, UN3121, UN3127, UN3166, UN3171, UN3269, UN3316, UN3334, UN3335, UN3343, UN3363, UN3473, UN3476, and UN3477

³ Exception to the 24-hour emergency response telephone number: LIMITED QUANTITY shipments.

(d) name of transporter (usually a service separate from the hazardous waste generator or disposal facility), (e) waste manifest number, and (f) special handling instructions.

7.3 Inspection

All hazmat shipments, whether loaded or containing a residue, must be inspected before accepting them from the shipper or in interchange from another carrier. Cars may proceed in transportation only when the inspection indicates that the cars are in safe condition for transportation and conform to DOT specifications. Otherwise, do not accept the car and consult with the customer or SJTC supervisor.

In addition to standard inspections of mechanical condition, (see rule 4.1) the following should be checked **from ground level**:

- a. Removal of all blue flags, derails, loading and unloading lines, chocks, and lowered platforms.
- b. Presence of legible placards, on all four sides, with DOT identification number.
- c. Signs of tampering.
- d. Signs of dripping contents, wetness on the ground under cars, material on the ground, vapor clouds, or hissing sounds from escaping contents.
- e. For tank cars: presence of “double shelf couplers” and closure of protective housing covers with swing bolts up and in place; with all valves, fittings, plugs, and caps appearing to be closed and secure.⁴
- f. For hopper cars: closure of discharge gates.

7.4 Placards and Markings

Hazmat cars, for both loaded and residue movement, must be properly placarded and marked (including stencils). Residue placards are no longer authorized in the United States and may be used only on hazmat cars moving to or

⁴ Exception: heater coil pipes may be left open to drain on residue tank cars

from Canada. Do not accept cars until correct and serviceable placards are in place.

Placards are not required for:

- (a) Class 9 materials that display the UN/NA identification number on an orange panel or a white square-on-point configuration,
- (b) Limited Quantity (LTD QTY) shipments when identified as such on shipping papers,
- (c) ORM-D (Other Regulated Materials—D),
- (d) Class 6.2 (Infectious Substances),
- (e) cryogenic atmospheric gases, other than oxygen,
- (f) shipments marked “MOLTEN SULFUR” on all four car sides and moving to or from Canada, or
- (g) cars which have been purged and cleaned.

Certain Hazard Classes are required to display the primary placard on a white square background: Hazard Class 1.1, 1.2, 2.1 flammable gases in DOT-113 tank cars, 2.3, or 6.1 require this placard.

Make sure that required placards are consistent with shipping papers; securely placed on both sides and both ends of cars; not damaged, faded or obscured by dirt or car part; and oriented horizontally so read from left to right.

Make sure that tank cars are stenciled legibly with car specification and test date that does not have an expired month/year.

7.5 Coupling to Hazmat Cars

When coupling to a placarded tank car, the crewmember on the ground should be positioned toward the end of the tank car, at least fifteen (15) feet, more if possible, from the manway and valves prior to coupling. Contents of tank cars may splash during or immediately following coupling due to improperly secured closures or the impact of coupling.

Cars containing Hazard Class 1.1 and 1.2 (explosives) must be separated from an engine by at least one non-placarded buffer car.

Hazmat cars must not be (a) cut off in motion, (b) struck by any free-rolling car, (c) coupled into with more force than necessary to make the coupling.

7.6 Emergency Response for Hazmat Incidents

In case of a hazardous materials incident, safety is the first consideration. Crewmembers must determine the status of the incident and act immediately to mitigate danger to themselves and others and report the incident to proper authorities. In cases where a vapor cloud is observed, assume that the cloud could be ignited and remove all persons to the farthest distance recommended in the Evacuation Section of the emergency response information accompanying the shipping papers, or as stated in the ERG. Remove all ignition sources, as practicable.

When reporting a hazmat incident, crewmembers should try to relate information about: (a) the status of all crewmembers, (b) which specific car numbers are involved, (c) the surroundings, (d) suggested resources required to handle the situation (for example, fire, ambulance, or law enforcement agencies), (e) location where a crewmember with shipping papers will meet arriving emergency response personnel.

The following constitute reportable hazmat incidents: (a) all unintentional or accidental releases of hazmat in transportation, (b) all derailments and accidents involving rail cars containing hazardous material, (c) all releases of any petroleum product (including oil or diesel fuel) or other materials that can cause environmental damage. When in doubt, report a hazmat incident.

Cooperate with local emergency responders by sharing requested information from the shipping papers, position-in-train documents, and any other available emergency response information such as the ERG. Note times and names/titles of emergency responders provided with information. Make reports to SJTC headquarters personnel as practicable.

Do not move a leaking rail car containing hazmat unless it is necessary to reduce or eliminate an immediate threat of harm to human health or the environment and can be done so without undue risk.

Effective Date: Sept 15, 2016

SJTC's Drug & Alcohol Policy and Procedures for SJTC EMPLOYEES

(CFR 2119.23)

The purpose of this Section of the Operating Rule Book is to inform each employee who performs service under the Hours of Service (HOS) or not, the expectations, rules, policy and federal regulations governing the use of drugs and/or alcohol while on San Jacinto Transportation Rail or property.

San Jacinto Transportation Policy

San Jacinto Transportation Company recognizes that there is a problem of substance abuse, both in drugs and alcohol, in today's society. As an employer who is subject to governmental regulations and seeks to promote the safety of its employees and the public, SJTC willingly complies with federal regulations that are designed to restrict and prohibit the *unauthorized* use of drugs and alcohol on its property. This company will comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations and all statutes and regulations administered by the FRA in implementing the required in CFR 49; Part 219 Drug and Alcohol Program.

In some cases, in order to protect employees, San Jacinto Transportation Rail may use procedures that are those of SJTC solely. These procedures may include, but are not limited to, questioning abnormal behavior, acting on employee and/or coworker's request for assistance with substance abuse. Supervisors of San Jacinto Transportation Rail are required to act upon their training and their best judgment of any given situation. Although, not able to provide, SJTC will work with any employee seeking assistance to address drug or alcohol abuse.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work covered by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) from being under the influence and/or possession of *illegal* substance and/or under the influence of alcohol while on duty or within four hours of reporting for covered service. Additionally, controlled substance use is prohibited at any time **on or off duty**, except as allowed in CFR 219.103

This program applies to all employees who are subject to the federal hours of service laws (i.e. operating employees or covered service employees, and includes contractors and volunteers). Covered service employees are required

to be in compliance with the applicable sections of Part 219 when they are on duty and are required to perform or are available to perform covered service.

SJTC's Policy Application

The San Jacinto Transportation Rail Drug & Alcohol Policy applies to:

- Any positions that is covered by the Hours of Service law
- All DSLE, Engineer Instructors, Rules/Safety Instructors, Mechanical and Engineering Instructors, who in a contracting capacity, performs or instruct those who are involved in duties on, about, or are operating rail equipment.
- All personnel from foreign railroads when on San Jacinto Transportation Rail tracks.

Drug and Alcohol Use Prohibited

The following or behaviors are prohibited on San Jacinto Transportation Rail Property:

- Possession or use of alcohol or any controlled substances
- No employee will report for an Hour of Service position or remain on SJTC property while:
 - Impaired or under the influence of alcohol
 - Having 0.02 or more alcohol concentration in the breath or blood
 - Under the influence of or impaired by any controlled substance
- No employee can use alcohol for whichever is the lesser of the following:
 - Within 4 hours of reporting for a position covered by Hours of Service
 - After receiving notice to report for a position covered by Hours of Service
- No employee can use a controlled substance – unless under a medical professional's authorization and direction – at any time ON or OFF Duty.

Administration of Drug & Alcohol Test:

Federal Regulations stipulate those events that require a drug and alcohol test to be administered to a San Jacinto Transportation Rail employee.

- Post – Accident Testing will be required if:

- 1) Major Train Accident: This is an accident that exceeds a dollar value for damage to the locomotive(s), rail equipment, track and structures that exceeds the FRA reporting threshold. (Re-railing cost is NOT included.)

Plus one of the following:

- a) A fatality results
[FRA required test does not include a rail/highway collision with a vehicle; natural causes (i.e. floods; tornado); vandalism.]
 - b) A release of hazardous material causing an evacuation; or a reportable injury caused by the release of the hazardous material.
 - c) Damage to railroad property of \$1,000,000 or more
- 2) Impact accident that involves damage in equipment exceeding the FRA threshold for reporting.
- Plus one of the following:
- a) A reportable injury occurred.
 - b) Damage to railroad property
of \$150,000 or more
- 3) Fatal train incident to any on-duty railroad employee.
- 4) Passenger train accident with a reportable injury or damage in excess of the currently reportable limits.

San Jacinto Transportation Rail has two events in which testing will be conducted as follows:

- New Employee Testing:

All new employees, as a final step, *prior* to being offered a position will be required to take and pass both a drug and alcohol test.

Those employees who indicate on their employment application, that they held a position that places them under the U.S. Department of Transportation Drug and Alcohol policy will also be required to sign a release for their previous (DOT) employer verification of their past drug and alcohol record.

- Random Drug & Alcohol Testing

San Jacinto Transportation Rail also includes all employees in a pool where an independent company selects random names from this pool to be tested for either:

- Alcohol
- Drugs
- Alcohol and Drugs

When notified to take this test, you are to stop what you are doing and go directly to the testing location.

When you take a Drug and/or Alcohol Test

Some points to remember when you take a test the following points should be understood:

- Recognize that testing is part of your and SJTC's responsibility to insure everyone has a safe work environment.
- By accepting your position with San Jacinto Transportation Rail you have, as a condition of employment, agreed to participate in all drug and alcohol testing.
- All employees required to have test(s) should conduct yourself in a professional manner and do not joke or make fun of the collector or the collections process.
- Your collector is a professional and you are to follow the specimen collector's instructions without argument.
- Be alert during the collection process and save the copies of the forms that are given to you. These are records that show the "chain of custody" – after the test, these records will show when, where and who had access to your sample.
- For drugs the test uses a urine sample and the results can be:
 - Negative
 - Positive
 - Adulterated
 - Invalid
- For Alcohol, as tested with a breathalyzer, the results can be:
 - 0.02 for San Jacinto Transportation's purpose
 - 0.04 or greater a *Positive result*

What if...

You REFUSE to submit to a test?

Under San Jacinto Transportation Rail and the FRA, refusal to submit to a test will result in a harsher penalty than a positive test result. **Never** refuse to cooperate with the testing requirement, or the instructions of the Collection person.

Take the test and if needed you can address any issues you have later with a SJTC supervisor or call directly to the Division Office and speak with someone there.

A refusal is defined as:

- Failure to appear for a test or remain at the testing site
- Failure to cooperate with the testing process.
- Failure to provide a sufficient amount of breath or urine (without an

adequate medical explanation as determined by a physician through a required medical evaluation)

- Adulteration or substitution of your urine specimen.
- Failure to participate in any part of the “direct observation” procedure if required.

What if you have a “SHY BLADDER”?

Let’s say you have tried to provide a urine sample, but for some reason you either have not been able to provide anything or the amount provided is unacceptable.

You will be given 3 HOURS to produce a single specimen of sufficient volume (but you cannot add to the amount you previously provided).

You can drink up to 40 ounces of fluid

If you do not provide a specimen within the 3 HOURS allotted – you will be required to undergo a medical evaluation to determine if there was a medical reason for your inability to provide the sample. It the physician determines that there was no medical reason for your failure to provide a urine specimen, you will be charged with REFUSING to take an authorized drug test.

What if a doctor prescribes a drug or drugs for me and I am tested by SJTC?

Prior to participating in the SJTC drug test you will be asked if you are taking any medicine and what is the name. (If they don’t ask, offer the information to the collector).

But assume, you forgot to provide this information and your test came out positive. As part of the drug test policy, you will be notified by the Medical Review Officer (MRO) who will review your test results. He will ask you a number of questions including are you taking any drugs under the direction of a doctor. He may want to check with your doctor to verify the information you provided.

It is acceptable to be taking drugs under a doctor’s care and still perform service on San Jacinto Transportation Rail. **BUT**, there are some things *that only you can do* – to remain in compliance.

1. You need to tell the doctor what your job is on SJTC and the duties you perform. (If you want, there are printed statements as to some of your duties in both the position of Conductor and Engineer. Just ask for one and show it to the doctor.).
2. Ask the doctor if you take this medicine as prescribed does he see a problem with you performing your duties on the job. Then take the medicine as prescribed.
3. If you are seeing multiple doctors and each is prescribing drugs, then

you need to MAKE SURE at least one of these doctors is aware of ALL the drugs you are taking. Not only is this important to operating on SJTC, but it is important to your personal health.

What if my test is positive?

If your test results for drug or alcohol comes back “positive” (non-negative) then you are in violation of Federal regulations while performing duties covered by the hours of service regulations.

If your results are non-negative, the Medical Review Officer (MRO) will interview you to determine whether you have a legitimate medical explanation for this test result.

The MRO will also inform you of your right to request a test of your “split” (Each sample taken is split into two separate samples. Only one of the samples is used for the initial drug test – if you request a second test, they will analyze the remaining split.) This second look must be made **within 72 hours of notification** by the MRO and will be performed at a different laboratory.

You should know that San Jacinto Transportation Rail will charge the cost of testing to you – if the results of the second test are not different than the first.

What if my test is positive or the second test is also positive?

Because you are in violation of the Federal regulations you will officially be removed from service. You will remain in this status until you are in a position and qualified for the Federal return-to-duty requirements, including any recommended education and/or treatment; and an evaluation and recommendation by a Substance Abuse Professional followed by Federal return-to-duty drug test.

Because you have been found to be in violation of the Federal regulation concerning drugs and alcohol you should know that, *you will be required to participate in frequent follow up testing for a period of 5 years with a **minimum of 6 follow-up tests within 12 months from your having been returned to duty.***

The regulations also require because of your previous non-negative results, the previous noted drug test you will be required to take, under the conditions of **DIRECT OBSERVATION**.

What if I have to be tested under Direct Observation?

Direct observation is stipulated by regulations and is invoked when:

-If you were taking a return to service test (having been removed from service for drug or alcohol);

-The temperature range of your previous urine specimen was outside from the “normal” temperature range;

-The collector previously observed you attempting to tamper or substitute a specimen; or your previous test results was invalid due to an interfering substance and you did not have a legitimate medicine explanation;

- Your split specimen could not be tested following a non-negative test result.

Direct observation is a process wherein a collector – of the same gender- **must** observe you checking for prosthetic or other devices designed to carry “clean” urine and urine substitutes; as well as, watching you urinate into the collection container.

Any devices found, will stop the test and be

treated as a Refusal to Test What if I am charged

with Refusal to Test?

Refusal to test is considered the same as a positive test and is a violation of a Federal regulation. Once charged with Refusal to Test, you will be suspended from active service on SJTC for a **minimum period of 9 months** as required by regulations.

What if my test registers alcohol?

A test result of **greater than 0.04** - or a **refusal to take an alcohol test** - will constitute a violation the Federal drug regulations.

SJTC will immediately notify the individual in writing that they have been removed in all capacities from San Jacinto Transportation Rail.

A test result of **0.02 but less than 0.04** will be considered a non-Federal violation and the employee will be removed from service until the next scheduled tour of duty. The employee will not receive pay for the time lost as this would be considered a violation of SJTC's Operating Rules. Consistent violation of SJTC rules pertaining to alcohol could result in termination.

What if I am over 0.04?

This is a violation of Federal regulations. You will be notified in writing that you have been removed from performing service for SJTC due to your violation of Federal regulation pertaining to drug and alcohol.

If you request or reject the results from the test, you can request a meeting with C.F. Oschman, V.P. Administration and Personnel – under no circumstances will SJTC refuse to conduct such a meeting. In this meeting SJTC will listen to your comments, provide you with a strict interpretation of regulations and offer you a list of qualified Substance Abuse Professionals (SAP) located in the San Jacinto Transportation area.

Prior to being considered for returned to your previous position with SJTC, you will be required to pass a return to service alcohol test AND an evaluation by your treating or a designated SAP. If reinstated, you will be subject to all recommendations and aftercare or follow-up treatment which may be recommended or required. In addition you will be subject to additional unannounced follow-up Federal testing for a maximum period of 60 months with a minimum of 6 tests being performed in the first 12 months from the time you were returned to service

All Federal test conducted for return to work or for follow-up must be collected under Direct Observation protocol.

What if at a Grade Crossing Accident a police officer requires an Alcohol test?

Federal regulations do NOT require you to take a drug / alcohol test

If an Officer at the scene requires you to be tested – you should comply.

Cooperate in the fullest and keep records as to what happens so this can be addressed later.

What if I or my co-worker has alcohol or drug problems?

San Jacinto Transportation rail does not have an employee assistance program, but we are concerned about the wellbeing of our members. If you come forward or if you tell us about a coworker AND do so when you are off duty, we will promise 4 things:

1. Everything will be held on a confidential basis
2. We will do whatever we can to get you in contact for the help you or your co-worker needs.
3. We will hold your or your co-workers job open until that time as you or they can return to active duty.
4. SJTC is required that upon successful completion of drug or alcohol treatment to conduct the same return to work procedures as explained prior for those who failed drug or alcohol test.

There is one exception to this consequence, if you come to us, SJTC will treat it as a non-on duty occurrence and no personal record will be made of it for the first occurrence.

What if I am ordered to take a test, am on duty, but running short on remaining time to work?

All testing is to occur when you are on duty. Unless the supervisor is absolutely certain you had no actionable role in the incident for which the testing is being done, you “might” be excused, but this is handled on a case by case basis.

When sent for testing, you will be considered “on duty” and you are to remain

regardless if you exceed the hours of service regulations.

Only in cases in which you are injured – which injuries are to be addressed first – will the testing for drugs or alcohol be postponed. But when treatment of your injuries is cared for, drug testing will then commence.

“Outlawing” under the hours of service regulations is not grounds to avoid drug or alcohol testing.

Glossary

Air Brake

A system of compressed air devices, controlled manually, electronically or pneumatically, that make the car or locomotive slow down or stop.

Air Brake Equipment

The equipment that supplies and exhausts air to and from the brake cylinders but does not include foundation brake gear and hand brakes.

Air Brake Hose

A reinforced tubing. On each car or engine, the tubing is attached to a nipple that screws into the angle cock at the end of the brake pipe. The other end of the hose includes a coupling (glad hand) that fits into an identical coupling on the adjoining car. The complete arrangement connects air between the brake pipes of the cars and the locomotives throughout the train.

Air Flow Indicator (AFI)

An instrument that indicates the volume of the air flowing through the automatic brake valve into the brake pipe.

Angle Cock

A manually operated device located at each end of the brake pipe on locomotives and cars to permit or prevent air flow.

"B" End (of car)

The end where the hand brake is located unless otherwise identified.

Bad Order

Railroad term used when something is in need of repair or out of order ("BO").

Bleed (Bleed-off)

Venting air pressure to the atmosphere, such as venting air pressure from the brake cylinder of individual cars, by using the release valve, or "bleed rod" generally located under the center of the car.

Brake Cylinder

A metallic cylinder containing a piston. Compressed air forces the piston outward to apply the brakes. When the air pressure is released, the piston returns to its normal position by a release spring coiled around the piston rod inside the cylinder.

Brake Pipe Gradient

The difference in brake pipe pressure between the locomotive and the rear car of the train. Brake pipe gradients may be:

Normal Gradient

The gradient that exists when the system is fully charged.

False gradient

The temporary gradient that exists when the system is less than fully charged (for example, the exaggerated difference between the head end and rear end after a release).

Inverse Gradient

The temporary condition when the brake pipe pressure is higher at the rear of the train than at the head end of the train (for example, during a service brake application).

Branch Pipe Cutout Cock

A device on locomotives and cars that isolates the control valve from the brake pipe.

Cars

Railroad cars.

Cars, Cut of

Two or more cars coupled together.

Car Length

Approximately 50 feet in distance, a reference used in switching, as in: "two car lengths to a coupling".

Chock

A piece of wood or other material under a car's wheels to prevent it from rolling.

Clearance Point

The location closest to a switch where it is safe for equipment, and a person riding the side of equipment to pass equipment on an adjacent track.

Conductor

Employee in charge of train or yard movement.

Consist

A detailed list of cars in a train.

Control Valve

A device on locomotives or cars that charges the reservoirs and applies or releases brake cylinder pressure when brake pipe pressure reduces or increases.

Double

To take cars from one track to another track and then coupling the two lengths of cars together ("double over").

Dynamic Brake

An electrical device that converts some of the energy developed by a moving locomotive into an effective retarding force.

Emergency/ Auxiliary Reservoir

A storage volume, charged from the brake pipe, to receive and store air used for the application and release of freight car air brakes and during emergency brake applications. In freight car equipment, the emergency reservoir and the auxiliary reservoir are combined in one structure.

Engine

A unit propelled by any form of energy or more than one of these units operated from a single control. Engines are used in train or yard service. Rules that apply to engines also apply to cab control cars.

Engineer

Also includes student engineers, firemen, hostlers, and remote-control operators.

Equipment

Railroad equipment.

Equipment Fouling a Track

The end of rolling equipment or on-track maintenance-of-way equipment left between the clearance point and the switch points leading to the track on which the equipment is standing.

Federal Hours of Service Law

The Federal Law stipulating that railroad operating personnel—engineers, switchmen, conductors, etc.—can perform service for a maximum of 12 hours. If a crew or individual has worked the maximum 12 hours permitted, then they are said to be "dead on the law" and cannot do anything that is considered work.

Fouling a Track

Placement of an individual or a piece of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or car, or in any case is within 4 feet of the field side of the nearest running rail.

Gauge

The distance between the rails. On U.S. railroads this distance is 4 feet 8 1/2 inches.

Hand Brake

A mechanical arrangement, applied manually by wheel or lever to force the brakeshoes against the wheel tread to hold cars or locomotives at a state of rest.

Head Out

Beginning or forward portion of any freight train.

Interchange

A location where railroads exchange rolling equipment.

Main Reservoir

An air reservoir on the locomotive for storing and cooling compressed air.

Placard

A sign attached to a car that gives information about special concerns for that car. All cars carrying hazardous materials must be placarded.

Prohibited Substance

Any chemical, drugs or alcohol which when taken into a human body may alter the person's ability to perform railroad service.

Red Zone

That area, within an arm's length of the track, or any physical position, which places an employee in a LIFE-THREATENING situation.

Regulating Valve

A valve that reduces air pressure from the locomotive's main reservoir to the desired pressure in the brake pipe. The regulating valve will automatically maintain the pressure when the automatic brake valve is in the RELEASE position.

Retainer Valve

A valve used to retard the air release from rail car brake cylinder.

Siding

A track connected to the main track and used for meeting or passing trains.

Train

One or more engines coupled, with or without cars, displaying a marker, and authorized to operate on a main track. A term that when used in connection with speed restrictions, flag protection, and the observance of all signals and signal rules also applies to engines.

Trainman

A train service employee of SJTC who has been certified in accordance with FRA regulations to perform the functions of locomotive engineer and train conductor on SJTC. A Trainman will also perform related activities as necessary and in accordance with SJTC training, such as customer communication, data entry, equipment maintenance, property maintenance, and infrastructure betterment.

Trainmaster

The SJTC Trainman who reports to the General Manager and is his representative to be in charge of SJTC operations in his absence.

Yard

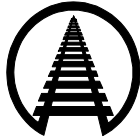
A system of tracks, other than main tracks and sidings, used for making up trains, storing cars, and other purposes.

Yard Limits

The term used for authorization of all trains to operate on all track of San Jacinto Transportation Rail.

Exhibit

I



ASSOCIATION OF AMERICAN RAILROADS

Safety and Operations

Jeffrey J. Usher

Assistant Vice President-Business Services and
Regional and Short Line Railroad Liaison

May 11, 2016
San Jacinto Transportation Company, Incorporated
SJR – 123

Baxter Wellman
Board Member
1554 Paoli Pike, #179
West Chester, PA 19380

Dear Mr. Wellman:

Reporting mark SJR and AAR Accounting Rule 260 code number 123 are hereby assigned with the effective date and SCAC inception date of June 1, 2016 to San Jacinto Transportation Company, Incorporated, a Class III Road. Those codes should be shown, as applicable, in all tariffs in which the new railroad participates.

We have also received the following documents:

- AAR Interchange Agreement.
- Car Service and Car Hire Agreement.
- Section 10706 Agreement.
- Copy of your Railway Surface Transportation Board Docket Number FD 35996.
- **Operating address and telephone number of an officer of the new railroad who will be the contact for other railroads and for placing on our mailing list.**

You have requested that the following person be added to our mailing list and be the contact person for inquiries from railroads:

Charlotte Oschman
Administration/Treasurer/Corporate Secretary
1554 Paoli Pike, #179
West Chester, PA 19380

Tel: (610) 701-0269

Fax: (610) 701-0659
Email: cfoschman@gmail.com

- **Approximate miles of track to be operated.**
Total mileage is 6 miles including all branches: Houston, TX
- **Name of any interchange carrier(s) that the new railroad has entered into agreement with for the interline receipt, delivery of equipment and the point(s) of interchange:**
 - SJR will interchange at: Houston, TX with UP and BNSF
- **Date or approximate date that the new railroad will begin operating.**
 - Railroad start-up is on June 1, 2016.

Please add your contact information to FindUs.Rail. Instructions for doing so can be found at: <https://www.railinc.com/rportal/web/guest/findus>. By doing so, you will be added to our mailing list. It is important to keep this information up to date, both as a means to receive updates from Railinc as well as for inquiries from members of the railroad industry.

The reporting of your company's contact information to FindUs.Rail is a mandatory requirement prescribed under AAR Interchange Rule 114. Please comply in a timely manner.

Any questions or problems getting set up in FindUs.Rail should be directed to our Railinc Customer Support Center at csc@railinc.com or (877) 724-5462.

As information for those receiving copies of this letter, AAR Accounting Rule 260 code number 123 previously assigned (coupled) with reporting mark BR.

The assignment of this reporting mark is based in part on your Notice of Exemption filed with the Surface Transportation Board on behalf of San Jacinto Transportation Company, Incorporated. If at any time your authority to operate is denied or revoked by the STB, the AAR will cancel the assignment of the mark.

Sincerely,



CC: Paul Levine-National Motor Freight Traffic Assn.
Fred Forstall -Surface Transportation Board
Judy Cox-Federal Railroad Administration
Erich Kaiser-Official Railway Equipment Register
K. M. Cassidy-American Short Line and Regional Railroad Association
K. T. Borman-American Short Line and Regional Railroad Association
JR Gelnar-American Short Line and Regional Railroad Association
Robert M. Perbohrner-U.S. Railroad Retirement Board

Exhibit

J



San Jacinto River & Rail Park

July 22, 2015

Transport Handling Specialists, LLC

1554 Paoli Pike, #179

West Chester, PA 19380

610-701-0629

www.thsrail.com

***T
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S***

Who We Are

- **Baxter Wellmon:**

- Over 40 years with Class I Railroad
- G.M. Operations
- Treasury/Finance
- Special Assignment to Handle Northeast Railroad Bankruptcies

- **Ron Bowes:**

- Over 40 years with Class I Railroad
- Marketing
- Division Superintendent
- Strategic Planning

- **David Lee:**

- Over 40 years with Class I Railroad
- Transportation Management
- Sales
- Received Chairman's Award (CSXT RR): recognition for rail plastic storage plan

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S**

*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

Our Successes

- Formed QEM and THS rail consulting groups
- Assisted 20 Class I, II, and III railroads, providing solutions to problems they were experiencing
- Consultants to the gas and oil industry, assisting in creating strategic transportation plans
- Consultants to a number of chemical companies in establishing fleet management process for their rail cars

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*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

Our Successes

- Provided storage for utilities' rail cars during non-peak energy production
- Performed market research and plan development for the National Railroad Passenger Corporation (AMTRAK), including defining market potential, suggested price, schedules, and recommended ISO Level 3 Certification
- Worked with various industries to assist in solving their rail related product storage, rail facility development and marketing

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*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

Our Successes

- Created Big Spring Railroad (BSR)
 - Established a co-operative arrangement with the City of Big Spring
 - Hired, trained and manage all BSR employees
 - Arrange and provide all locomotive power to operation and essential equipment
- Excellent:
 - safety record
 - customer service
 - revenue growth
 - relations with regulating authorities



*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

THS Proposal for San Jacinto River & Rail Park

- THS for no charge will:
 - Provide, inspect and maintain necessary railroad/locomotive equipment
 - Interview, train, certify and manage all rail employees
 - Inspect and maintain all rail track
 - Provide all terminal rail service to San Jacinto's tenant clients once per day
 - Place or pull storage clients' cars to or from storage yard

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*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

THS Proposal for San Jacinto River & Rail Park

- THS will charge tenant and storage clients of San Jacinto R&R Park for:
 - Multiple same day service
 - Pulling storage client's cars to or from storage yard by specific car number
- THS receives its revenue as part of the "line haul"

**T
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*Transportation Handling Specialists, Inc. — We make your
transportation services more efficient*

Railroad Operating Economics

San Jacinto River & Rail will:

- pay \$0 to THS for operating services
- attract bulk commodity customers with land leases requiring rail
- attract tenant customers who use railroad transportation in their operation
- become part of Houston's railroad storage market
 - Current market rate ranges:
 - Loaded car/day -- \$50-\$75
 - Empty car/day -- \$15-\$25

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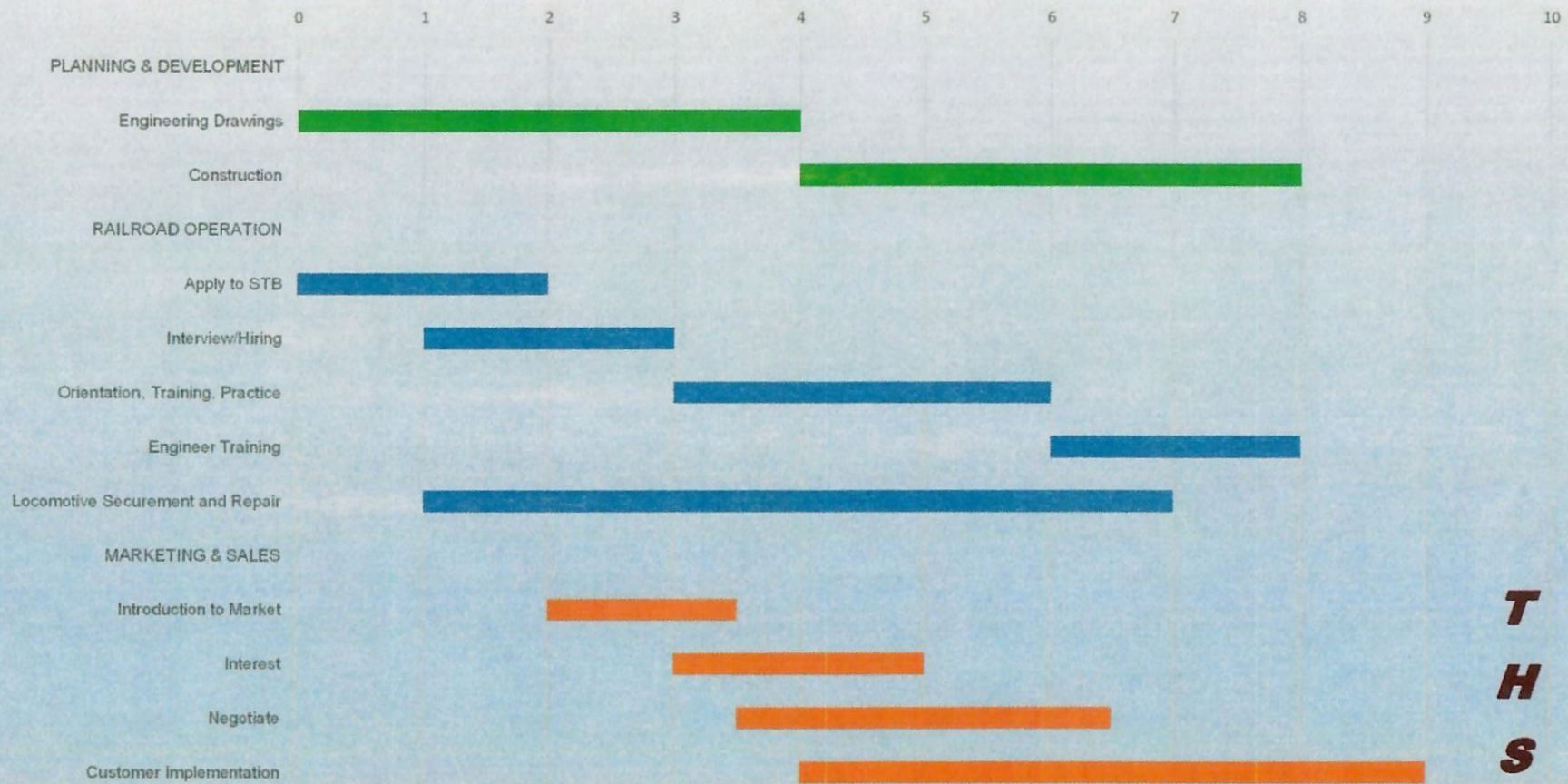
*Transportation Handling Specialists, Inc.—We make your
transportation services more efficient*

Railroad Operating Economics

Number of Cars	500		
80% Capacity	400		
Per Day		Per Year	
Loaded Cars - 75% of Capacity = 300 cars	300	Loaded Cars - 75% of Capacity	
Per Car Per Day \$50 - Low	\$15,000	Annual Revenue Per Car Per Day \$50 - Low	\$5,475,000
Per Car Per Day \$75 - High	\$22,500	Annual Revenue Per Car Per Day \$75 - High	\$8,212,500
Empty Cars- 25% of Capacity= 100 cars	100	Empty Cars- 25% of Capacity	
Per Car Per Day \$15 - Low	\$1,500	Annual Revenue Per Car Per Day \$15 - Low	\$547,500
Per Car Per Day \$25 - High	\$2,500	Annual Revenue Per Car Per Day \$25 - High	\$912,500
Annual Total Revenue at Lowest Storage Rates: \$6,022,500			T
Annual Total Revenue at Highest Storage Rates: \$9,125,000			H
			S

*Transportation Handling Specialists, Inc. — We make your
transportation services more efficient*

Timeline



***T
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Exhibit

K

	SJR C	BSR C	TRS LLC	THS S	QEM S	QTS S	HCM S
Baxter Wellmon	28.0000	23.5000	31.3330	100.0000	100.0000	100.0000	100.0000
Team HQ, LLC	28.0000	23.5000	31.3330				
D&S Logistics, LLC	28.0000	23.5000	31.3330				
Charlotte Oschman	5.0000	6.0000	6.0010				
Treasury Stock	11.0000						
Rail Cents Enterprises, Inc.		23.5000					
	100.0000	100.0000	100.0000	100.0000	100.0000	100.0000	100.0000

Date of Formation	11/2015	07/2011	01/2015	01/2004	08/1998	07/2004	02/2005
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Top Officer

Daviod Lee Chairman/Board	Baxter Wellmon Chairman/Board	Bsxter Wellmon Managing Member	Baxter W. President	Baxter W. President	Baxter W. President	Baxter W. President
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Last Fed Income Tax Filed	2017	2016	2017
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Exhibit

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TRACK AGREEMENT

SAN JACINTO TRANSPORTATION COMPANY, INCORPORATED

This Agreement ("**Agreement**") made as of this ____ day of _____, 20____, (hereinafter "**Effective Date**") by and between **SAN JACINTO TRANSPORTATION, COMPANY**, a Texas Corporation, hereinafter called "**Railroad**", and _____, a(n) _____, formed under the laws of _____, hereinafter called "**Industry**".

Recitals

A. Railroad is the exclusive rail service provider for San Jacinto River and Rail Real Estate LLC, W&P Development Corporation, and or any other related entities at the San Jacinto River and Rail Park ("**SJRR**").

B. Industry owns or leases a building, space in a building or yard space in SJRR, which is presently, or will be, rail served ("**Industry's Property**").

C. Railroad and Industry wish to set forth their mutual agreement concerning the tender and receipt of rail freight service to and from Industry's Property.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Track:

Attached hereto as Exhibit A is a layout depicting certain rail track in SJRR (the "**Rail Plan**"). The portion of the track designated "Industry Track" begins 50 feet from the center of gauge of SJRR track, inclusive of all servitudes and appurtenances, on the Rail Plan is the responsibility of Industry and will be constructed, maintained and repaired by Industry (the "**Industry Segment**"). The remainder of the track designated on the Rail Plan as "Railroad Track", inclusive of all servitudes and appurtenances, is the responsibility of Railroad and will be constructed, maintained and repaired by Railroad (the "**Railroad Segment**").

2. Maintenance of Industry Segment of Track:

Industry agrees to maintain Industry Segment at its expense; said maintenance must include, but is not limited to maintaining proper drainage, control of vegetation both within the gauge and to a distance of 4 ½ feet outside the rails, and maintaining all walkways in good condition free from all debris and tripping and falling hazards.

Industry at its sole risk and expense will maintain, or cause to be maintained, the Industry Segment in a condition satisfactory to Railroad's certified track inspectors. Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Segment whenever a Railroad inspector determines the Industry Segment is unsatisfactory for movement over it and Industry has been notified and had sufficient time to effect repairs.

When Industry remedies such condition(s) to Railroad's inspector's approval, Railroad will again resume operation over the Industry Segment.

If Railroad operates over the Industry Segment with knowledge of an unsatisfactory condition, such action will not be construed as waiving Industry's obligations contained herein or Railroad's right to recover for or be indemnified and defended against any damages to property and injury to, or death of, persons that may result therefrom.

3. Clearances:

Industry agrees to review all existing and proposed structures above, beside and within the vicinity of the Industry Segment with Railroad's Track Engineer who will determine if the structure's location is in accordance with the governing limits as stated in Texas law and AREMA standards.

Industry shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within 8 ½ feet laterally from the center line of the track and applicable to both sides of the track. If the proposed structure is located on a curve (non-tangent) in the track, the lateral clearance is required to be increased by 1 ½ (1.5) feet for each degree of curvature. The vertical clearance requirement is 23 feet measured from the top of the rail. The vertical and horizontal dimensions identified for the track in this section are defined as the **"Clearance Zone"**.

Industry will not permit any structure or obstruction of any kind, permanent or temporary, to be placed or maintained within the Clearance Zone. If a condition arises where a structure is necessary for Industry that will reduce the clearances within the Clearance Zone, Railroad must approve the variance and Industry must provide warning devices and signage that alert Railroad employees of a restriction to the Clearance Zone to which Industry will maintain at its own expense in working order.

Railroad operation over the Industry Segment with knowledge of an unauthorized reduction to the Clearance Zone will not be construed as waiving Industry's liability or Railroad's right to recover from and be indemnified and defended against any damages to property, injury or death of persons that may result therefrom.

4. Derails, Gates, Doors and Pits:

Railroad requires a hand operated derail located a minimum of 50 feet from the clearance point of SJRR right-of-way be installed by Industry on the Industry Segment.

Industry may choose to install a gate designed to close an opening in a fence where the track enters Industry's Property. Maintenance and operation of such gate will be the sole responsibility of Industry. The gate design must be reviewed and approved by the Track Engineer for Railroad prior to installing. A gate that is designed to operate across the track must have an unobstructed lateral space of 8 ½ feet from the center line of the track (9 ½ on curves) on either side of the track. It must also have some type of restraining device that will secure the gate in the open position preventing it from closing; thus, fouling or obstructing the Clearance Zone on the track while Railroad crews are working. Industry may install a locking device on the gate, but it is to be of a design that either Industry or Railroad will be able to open the gate without assistance from the other.

Industry may install door(s) to close the opening in Industry's building, to be maintained by Industry at Industry's sole cost. The door(s) shall provide an open, unobstructed space of 8 ½ feet horizontal on each side as measured from the center line of the track and 22 feet horizontally measured from the top of the rail. A device shall be installed on the door so that when the door is opened for rail operations it cannot be closed until the switching operation is concluded. Prior to installation, Industry shall review the design of the door with the Track Engineer for Railroad.

A pit and pit appurtenances may be constructed, but will be maintained at Industry's sole cost and expense. Industry is required to review with and obtain approval from the Track Engineer for Railroad prior to commencement of any construction. Industry will maintain the pit and appurtenances in such condition that the use thereof by Industry shall not be or become an obstruction to the safe and proper maintenance of the track, or endanger employees of Railroad or other persons on or about the track or operations of Railroad upon the track. Industry agrees to provide a substantial metal or board cover for said pit, as approved by Railroad, and agrees to keep said pit covered with this material at all times when the pit is not in use.

The fact that the design, maintenance, repair or alteration of any of the gates, doors or pits have been approved by or performed under the supervision and to the satisfaction of Railroad shall not relieve Industry from responsibility or liability undertaken for any injury to or death of any person or damage to property that may occur or arise as the result of the construction, maintenance, presence, use, operation and removal of the appliances identified in this subsection.

5. Crossings Drives and (non-public) Roadways:

Private crossings and pedestrian crossings constructed over the Industry Segment may not be built without the design being reviewed and approved by the Track Engineer for Railroad. The crossing will be of such design as to allow clearance of the wheel flanges to function properly through the crossing. Industry shall place warning signs and signage that stipulates to employees and contractors not to cut through standing rail equipment. Industry is solely responsible for maintaining such crossings and for the elimination of any walking, tripping or falling hazards in connection therewith.

Industry will protect and defend Railroad and San Jacinto River and Rail (“SJRR”), the owner of the Park, for all claims of damage to property, injuries to and death associated with each crossing.

If the Industry Segment goes across a non-public roadway, Industry is responsible for the maintenance, warning devices and or signage, fencing and any other appearances that are deemed appropriate by the Track Engineer for Railroad. Industry will maintain the roadway in such condition that neither it nor the use thereof by Industry shall be or become an obstruction to the safe and proper maintenance and switching on the Industry Segment; or create a circumstance that could endanger employees of Railroad or other persons on or about the Industry Segment.

6. Use of the Industry Segment By Third Party:

Industry may permit use of the Industry Segment by a Third Party if:

- The Third Party signs a Track Agreement with Railroad; and
- Industry assumes responsibility for said Third Party user.

7. Use of the Industry Segment For Third Parties:

Railroad shall have complete control of the operations on the Industry Segment and may use the same for temporary use for Railroad convenience. Any such use of the Industry Segment by Railroad shall not interfere unreasonably with the business of Industry.

8. Blue Flag Protection:

Railroad *requires* when Industry is loading or unloading a rail car by using hoses, pipes, conveyors that such car is protected with the use of a Blue Flag (sign) with a minimum size of 12 x 15 inches on a post attached to the track or within the gauge of the track in front of the rail car.

Railroad requires a Blue Flag be used anytime Industry uses employees to enter into load/unload a rail car.

When the car is released to Railroad by Industry, Industry must remove the Blue Flag. As long as the Blue Flag is on the car, Railroad employees are instructed NOT to handle the rail car; the railroad industry treats a Blue Flag as a safety "Lock-Out Device" and the person/group who places the Blue Flag should be the **only** person/group who can remove said device.

9. Movement of Rail Cars on the Track:

Railroad prohibits Industry from moving rail cars under any circumstances unless Industry uses an authorized rail car movement device and has previously secured permission in writing from Railroad.

Industry will be responsible for death, personal injury and property loss and damage which occurs by reason of or arising out of, or is incidental to, its movement of the rail equipment.

10. Liability:

Except as otherwise provided in subsequent sections of this Agreement, the responsibility of the parties hereto, as between themselves, for death, personal injury and property loss and damage which occur by reason of or arise out of, or are incidental to, the construction, operation, maintenance or use of track within SJRR shall be determined and borne as follows:

(a) Industry shall be solely responsible for and shall indemnify, protect and hold Railroad and SJRR harmless for all claims, demands, suits, judgements, liabilities, costs (including attorney's fees) and expenses occasioned by any death, personal injury, or loss of or damage to property arising out of or in any manner incidental to movement, operation or loading into or unloading from rail cars, or the handling, storage or transmission in connection with such loading or unloading, of hazardous or flammable materials (as defined in the regulations of the United States Department of Transportation) in, on or about the Industry Segment, whether or not negligence on the part of Railroad or SJRR may have caused or contributed to such injury, loss or damage, unless such damages are caused by the use of the Industry Segment by Railroad for the benefit of third parties pursuant to Paragraph 6 hereof.

(b) Industry shall be solely responsible for and shall indemnify, protect and hold Railroad and SJRR harmless for all claims, demands, suits, judgements, liabilities, costs (including attorney's fees) and expenses occasioned by any death, personal injury, or loss of or damage to property arising out of the use of the Industry Segment by Industry for the benefit of third parties pursuant to Paragraph 6 hereof, whether or not

negligence on the part of Railroad or SJRR may have caused or contributed to such injury, loss or damage.

(c) Knowledge on the part of Railroad of any violation of any of the terms of this Agreement by Industry shall constitute neither negligence nor acquiescence on the part of Railroad and shall in no event relieve Industry of any of its responsibilities and indemnity obligations assumed by Industry in this Agreement.

11. Environmental:

Industry will comply with all federal, state, and local laws, rules, regulations and ordinances which relate to the control of air, water, noise, solid waste and other pollution or to the storage, transport, release or disposal of hazardous materials, substances, or waste. Industry will, at its own expense, make all modifications, repairs, or additions to the Industry Segment necessary to effect such compliance, and Industry will install and bear the expense of any and all structures, devices or equipment on the Industry Segment required by any such laws, rules regulations or ordinances, or by the order of any governmental agency.

(a) Industry shall not dispose of any waste of any kind, whether or not hazardous, anywhere in SJRR, and shall not conduct any activity on the Industry Segment without obtaining all the required environmental permits from either the federal or state agencies.

(b) Regardless of any Railroad acquiescence, Industry agrees to indemnify, protect and hold Railroad and SJRR harmless from and against all liabilities, fines and penalties arising or growing out of a violation of this Paragraph 11, and Industry agrees to reimburse Railroad and SJRR for all costs and expenses incurred by Railroad and SJRR in eliminating or remedying such violations. Regardless of Railroad's acquiescence and notwithstanding any of the provisions in this Agreement, Industry shall indemnify, protect and hold Railroad and SJRR harmless from and against all claims, demands, suits, judgements, liabilities, costs (including attorney's fees) and expenses for any losses, personal injury to or death of any person or persons whomsoever, damage to or loss of any property whatsoever, and all penalties arising or growing out of Industry's use or release of any hazardous material, substance or waste onto the ground or into the water or air from or upon the Industry Segment.

12. Insurance:

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement insurance as set forth in Insurance **Exhibit B**.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Industry agrees to waive its right of recovery against Railroad and SJRR for all claims and suits against Railroad and SJRR. In addition, its insurers, through policy endorsement, waive their right of subrogation against Railroad and SJRR for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Industry further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad and SJRR for loss of its owned or leased property or property under its care, custody or control.

Industry's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad and SJRR. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above shall include a severability of interest endorsement and shall name Railroad and SJRR as additional insureds. Severability of interest and naming Railroad and SJRR as additional insureds shall be indicated on the certificate of insurance.

Industry is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be paid directly by Industry. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Industry's insurance shall be paid by Industry as if Industry elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing rail transportation services, Industry shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Industry will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state of Texas where the rail transportation services are to be provided.

Industry represents that this Agreement has been thoroughly reviewed by industry's insurance agent(s)/broker(s), who have been instructed by Industry to procure to insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad and/or SJRR may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Industry, Industry shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming Railroad and SJRR as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railroad and SJRR to the same extent and under the same terms and conditions as Industry is required to release, defend and indemnify Railroad and SJRR herein.

Failure to provide evidence as required by this section shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Industry's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Industry shall not be deemed to release or diminish the liability of Industry including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

13. Railroad's Obligation:

Railroad shall not be liable as a common carrier, or as a Bailee, for any property loaded into any car on the Industry Segment until such car is attached or coupled to the engine or train by which it is to be moved from the track towards its destination and accompanied with a revenue waybill. Until a car is so attached or coupled, the car and its contents shall be deemed and held to be in the possession of Industry insofar as responsibility therefor and liability related thereto are concerned. All carload shipments consigned to or in the car of Industry for delivery shall be deemed to have been fully and completely delivered as soon as the car or cars containing such shipments shall have been placed on the Industry Segment or a designated storage track at Industry's direction and thereafter, detached from the engine or train by which it was moved, and

Railroad shall thereupon be relieved of any further liability therefor, either as a common carrier or as a Bailee.

14. Governmental Authority:

Notwithstanding any other provision of this Agreement, Industry agrees to comply, at its sole expense, with all requirements imposed by any governmental authority with respect to the Industry Segment.

15. Right to Discontinue Operations:

If Industry shall fail to comply with any of the terms of this Agreement, Railroad shall have the right to immediately discontinue rail service to Industry's Property, without liability to Industry.

16. No Waiver of Breach:

No waiver by Railroad of any breach by Industry of the terms of this Agreement shall be construed as a waiver of any other or subsequent breach. Termination of this Agreement shall not be construed to release Industry from any obligation or liability accruing hereunder prior to the time such termination becomes fully effective.

17. Notices:

Any notice required to be given pursuant to the terms of this Agreement shall be transmitted by U.S. Mail, by any other method customarily used in normal business practice, or by hand delivery. Any notice to be given pursuant to this Agreement shall be transmitted to the respective parties at the following addresses or at such other places as the parties may from time to time designate.

As to Railroad:	C. F. Oschman, Vice President
	San Jacinto Transportation Company, Inc.
	1554 Paoli Pike, #179
	West Chester, PA 19380

As to Industry:

18. Successors and Assigns:

This Agreement is binding upon and shall inure to the benefit of Industry's and Railroad's successors and assigns. In the event Railroad is no longer the provider of rail service to SJRR, Railroad will assign this Agreement to the successor rail service provider and the successor rail service provider shall assume Railroad's obligations and responsibilities hereunder on a going-forward basis.

19. Effective Date and Termination:

This Agreement shall be effective as of the ____ day of _____, 20____ and shall continue in effect for so long as Industry desires rail service to Industry's Property. Notwithstanding the foregoing, Railroad may terminate this Agreement in the event Industry fails to comply with its obligations hereunder and such failure continues without cure for thirty (30) days after written notice of such failure. Industry understands, once terminated, Industry will no longer be provided rail service to Industry's Property.

20. Construction of Agreement:

The headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any section of this Agreement. If any provision of this Agreement or any part of any provision should become or be found to be invalid or unenforceable, the remaining provisions and parts shall continue to be fully effective and enforceable. Where necessary or appropriate in this Agreement, the singular and plural shall be interchangeable and words of any gender shall include all genders.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Industry By _____
Signature

Print Name

Title

San Jacinto Transportation Company By _____
Signature

Print Name

Title