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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35068

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Public Record

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY—
ACQUISITION AND OPERATION EXEMPTION—BNSF RAILWAY COMPANY**

CP'S SUPPLEMENTAL PROPOSAL

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Dated: June 3, 2022

Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) submits this Supplement to its Proposal filed March 1, 2021 in accordance with the Board’s Decision served on December 29, 2020 (the “Reopening Decision”) granting New Century Ag’s (“NCA’s”) Petition to Reopen the 2007 exemption proceeding.

In this Supplement, CP presents an alternative proposal for a haulage arrangement that would effectively *would give NCA everything it told the Board it wanted (and in some respects more)* and would be implemented via a CP-BNSF unit train haulage agreement *based on BNSF’s own March 1, 2021 proposal*. The alternative proposal would be subject to a trial period to ensure that the arrangement is feasible and to contractual provisions that ensure that the exchange continues to work after a successful trial. Because this alternative proposal, as well as CP’s March 1, 2021 proposals, each fully addresses NCA’s desires and the Board’s concerns, the Board should terminate this proceeding.

I. INTRODUCTION

The Reopening Decision ordered CP and BNSF to submit a proposal by March 1, 2021 to “fulfill the findings in [the] 2007 Decision”¹ that granted the Joint Petition for Exemption filed jointly by CP and BNSF Railway Company (“BNSF”). The parties were unable to agree on a joint proposal and on March 1, 2021, CP and BNSF each submitted a separate proposal.

CP’s March 1, 2021 proposal offered two alternative locations for exchanging unit train haulage traffic without putting CP’s crucial single-track mainline operations at risk. Both proposals, however, would have required BNSF to invest in physical infrastructure to avoid interference between haulage trains and CP’s operations on its busy North Portal-Minot mainline.

¹ *Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry.*, FD 35068 (STB served Sept. 7, 2007) (the “2007 Decision”).

Although the 2007 haulage agreement that BNSF entered required exactly this,² BNSF, in its March 1, 2021 proposal, refused to consider investments in capacity improvements necessary for it to serve NCA, instead proposing that the railroads exchange unit trains in downtown Minot, on CP's mainline. In response to CP's valid concerns regarding the difficulties and operational risks associated with a Minot exchange—risks that fall almost entirely on CP, its customers and the City of Minot—BNSF represented to the Board that (a) unit train service would be infrequent and (b) it would take specific steps to ensure that those trains did not disrupt CP's mainline operations.³ (We refer to this arrangement, incorporating BNSF's commitments to avoid interference with CP operations as the "BNSF Proposal.")

On March 22, 2021, NCA submitted its comments on the proposals, favoring the approach that avoided any need for new investments in infrastructure and thus preferring the BNSF Proposal to exchange unit trains in downtown Minot.

Although CP continues to have serious concerns with a Minot exchange and CP has sought reconsideration of the Reopening Decision,⁴ in December 2021, CP engaged NCA and BNSF in further negotiations based on the BNSF Proposal in an effort to address NCA's concerns and the Board's Reopening Decision. At CP and NCA's request, the Board placed this proceeding in abeyance to give the parties an opportunity to resolve the dispute privately. While CP cannot

² Section 2.05 of the Haulage Agreement (Joint Petition, Ex. G) requires that BNSF pay for any infrastructure improvements that CP, based on its own current and future capacity needs, deems necessary to handle BNSF haulage traffic that exceeds capacity on existing CP trains.

³ BNSF's New Century Ag Service Proposal, at 3-5 (filed March 1, 2021).

⁴ Petition for Reconsideration (CP filed Feb. 8, 2021). While CP continues to believe that reconsideration is warranted, CP has made every reasonable effort to give NCA exactly what it asked for in an effort to resolve this dispute.

disclose what was said in those confidential negotiations, as NCA and CP have jointly communicated, an agreement was not reached.

CP now presents the Board with its alternative proposal providing for an exchange of haulage trains at Minot. CP can state that both NCA and BNSF are aware that CP is prepared to accede to a trial run of the BNSF Proposal which, if successful, would result in a long term unit train haulage arrangement that fully satisfies NCA's desires. CP therefore would have anticipated that this arrangement would have been acceptable to both NCA and BNSF. CP remains willing to enter into such an arrangement in the form described in detail below.

Because NCA and BNSF now have three options available for BNSF to provide unit train service to NCA's Noonan facility, no further action by the Board with regard to service is necessary or appropriate in this proceeding. Accordingly, the Board should terminate this proceeding or, alternatively, grant CP's Petition for Reconsideration.

II. CP'S SUPPLEMENTAL PROPOSAL SATISFIES NCA'S CLAIMED DESIRES.

In support of the BNSF Proposal, NCA told the Board that it wants 100+ BNSF unit train service at Noonan that could handle outbound grain and inbound fertilizer, and was willing to initially cap the BNSF unit trains at a maximum of 2 per month *"to demonstrate that this would not cause undue disruption to CP's other rail service."*⁵ BNSF, for its part, told the Board it would coordinate in advance with CP, provide trains in distributed power configuration, have crews on

⁵ March 22, 2021 Comments of NCA on Railroad Proposals at 5 (emphasis added) ("As summarized in its Reply, NCA believes the Minot unit train operation should, at a minimum, involve CP and BNSF interchanging 100+ car unit trains for both outbound grain and inbound fertilizer, in addition to the continued provision of manifest service under the Haulage Agreement. To demonstrate that this would not cause undue disruption to CP's other rail service, NCA...is willing to initially limit its unit train requests to a maximum of two 100+ car trains per month that would be allowed to interchange empty in Minot and be pulled to the Noonan Terminal Facility loop track for loading and return back to Minot.").

hand to meet the train in Minot to expedite the hand off, and prioritize movement of the train clear of CP's mainline.⁶

CP is prepared to enter into a unit train haulage agreement attached hereto as Exhibit A which delivers on NCA's demands, memorializes BNSF's representations as enforceable commitments, and requires a demonstration that it "would not cause undue disruption to CP's other rail service."

Key aspects of the arrangement CP is prepared to enter into include the following:

- Procedures for advance coordination to ensure crew availability and avoid conflict with passenger rail;
- BNSF haulage trains must be equipped with distributed power and fully fueled;
- BNSF crews must meet the haulage train on arrival in Minot and assist in expediting the exchange operations;
- BNSF dispatchers must prioritize haulage train movement on to BNSF's mainline and cannot "hold" the train on CP's line for more than 10 minutes;
- Failure to provide crews, a properly equipped train, or to authorize the train to proceed clear of CP's main line would be subject to charges;
- Repeated failures by BNSF to comply with its obligations could result in temporary suspension of haulage service or termination;
- Unit trains handled in haulage would be limited initially to two trains a month consistent with NCA's demand. CP would consider a third train a month after two years of experience with the arrangement;
- Unit trains moving in haulage would serve the Noonan Terminal Facility loop track. CP would consider expanding service to Crosby, which does not currently have unit train capability, at the appropriate time;
- The service could be used for unit trains of 100+ cars and for "both outbound grain and inbound fertilizer" as well as other non-hazardous commodities;

⁶ BNSF's New Century Ag Service Proposal, at 3-5 (filed March 1, 2021).

- The service would be subject to BNSF executing the unit train haulage agreement with CP and successful completion of an initial trial period of a minimum of 6 months and 6 trains;
- If the trial period is successful, the unit train haulage agreement would continue for a 15-year term and automatically renew, unless terminated according to the agreement's termination provisions; and
- The manifest haulage agreement term would be harmonized with the unit train haulage arrangement.

CP views a trial period as absolutely critical to, and a reasonable means of, ensuring that BNSF is willing and in fact able to meet its commitments, and that the unit train exchange in Minot can be done quickly and safely. CP continues to believe that Minot is a poor option and doubts BNSF's ability and willingness to provide the resources necessary to making Minot work. As BNSF's recent and prolonged service difficulties demonstrate,⁷ CP would be foolish to simply take BNSF at its word that it will have sufficient crew and equipment on hand or that it will prioritize the haulage train exchange in order to protect CP's main line operations, elevating its competitor's interests over its own. Indeed, by giving BNSF the ability to undermine and disrupt the service of its chief rival in the region, the arrangement lets the fox loose among the flamingos. Moreover, even if BNSF does everything it says, its rosy predictions are untested and may turn out to be overly optimistic in practice, particularly in poor weather and during crop season.⁸

⁷ See e.g., *Urgent Issues in Freight Rail Service—Railroad Reporting*, Ex Parte 770 (Sub-No. 1), slip op. at 2 (STB served May 6, 2022) (“Since the beginning of 2022, and through the data for the week ending April 22, 2022, there has been no material, sustained decline in trains held per day due to crew or locomotive availability for BNSF”).

⁸ The minimum of six months and six trains trial period is intended to ensure that the railroads gain experience under different operating conditions. Both the weather and traffic volumes can vary dramatically by season. It is important to test the agreed upon procedures when volumes are high and operating conditions are poor, and not just in “normal operating conditions.”

CP also shares the City of Minot's concerns regarding the safety and community implications of conducting the exchange in downtown Minot.⁹ If any of these concerns are borne out, it will be CP, its customers, and the City of Minot that pay a steep price. Accordingly, a trial period simply makes sense and has no downside. It may serve BNSF's commercial interests to permanently lock in these new unit train haulage rights regardless of its ability to deliver on its representations or the harm caused to CP's service, but that is no reason to rush in without a real-world test of the BNSF Proposal.

Notwithstanding its demonstrated concerns, CP would intend to approach a trial period in good faith and with the hopes that its doubts are proven wrong. If issues are identified in the trial period, CP would work with BNSF to fine tune the haulage arrangement in an effort to address those issues. If CP, NCA and BNSF agree that the trial period is a success, the haulage arrangement would continue on a long-term basis assuming continued performance by BNSF of its obligations.

III. THE BOARD SHOULD TERMINATE THIS PROCEEDING.

CP's three proposals give BNSF multiple options for providing unit train service to NCA at Noonan. Each "fulfill[s] the findings in [the] 2007 Decision" as the Board construed them in the Reopening Decision, fully satisfying the Board's Reopening Decision. Each provides NCA the opportunity to receive competitive unit train service from BNSF. Each meets or exceeds the unit train service that NCA sought from the Board. CP intends to keep all three options open absent changed circumstances. Thus, the competitive options that NCA enjoys today are at least equal to, if not in excess of, NCA's options prior to the 2007 transaction.

Further Board action in this proceeding is neither necessary nor appropriate. As discussed in CP's March 1, 2021 Proposal, and incorporated herein by reference, CP's proposals offer

⁹ See May 24, 2021 Letter from City of Minot to STB, FD 35068 (filed May 25, 2021).

private, market-based solutions that are preferred by the Board. Additionally, neither the Board's statutory authority nor its governing precedent provide a basis on which the Board can impose a service order on the parties.¹⁰

Moreover, if BNSF refuses to provide service under any of these three proposals, then NCA's dispute is with BNSF and its apparent failure to fulfill its common carrier obligation, not with CP. Such issues may be more appropriately addressed in a different proceeding.¹¹ There is nothing more for the Board to do in this proceeding.

IV. CONCLUSION

For the reasons stated above, the Board should endorse CP's reasonable alternative proposals, and terminate this proceeding or, alternatively, grant CP's Petition for Reconsideration.

¹⁰ See CP Proposal at 17-22.

¹¹ See e.g., *Soo Line R.R.—Acquis. & Operation Exemption—BNSF Ry.*, FD 35068, slip op. at 4 (STB served April 22, 2019).

Dated: June 3, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2022, copies of the foregoing Supplemental Proposal were served by electronic mail on the following:

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EXHIBIT A

**NORTH DAKOTA
UNIT TRAIN HAULAGE SERVICES AGREEMENT**

THIS UNIT TRAIN HAULAGE SERVICES AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 2022 (the "Effective Date") by and between SOO LINE RAILROAD COMPANY, d/b/a Canadian Pacific ("CP") and BNSF RAILWAY COMPANY ("BNSF"), sometimes collectively referred to as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, CP and BNSF are parties to that certain North Dakota Haulage Service Agreement dated September 18, 2007 and that certain Supplemental Agreement dated May 11, 2018, wherein CP provides haulage services to BNSF for loaded and empty freight cars in BNSF's account moving in manifest service in either direction between Minot, North Dakota and the Conveyed Line Industries (as defined therein) located on CP's rail line between Crosby, North Dakota and a point east of Lignite, North Dakota in Divide and Burke Counties, North Dakota (the "Crosby Line"); and

WHEREAS, the Parties interchange rail freight cars in Minot, ND under the terms and conditions of an agreement dated March 15, 1988, as supplemented and/or amended, hereinafter referred to as the "Interchange Agreement"; and

WHEREAS, BNSF desires to purchase haulage services from CP for loaded and empty freight cars in BNSF's account moving in unit train service in either direction on lines of railway owned or controlled by CP between BNSF's interchange tracks in Minot, North Dakota and the New Century Ag loop track located in the vicinity of Noonan, ND, hereinafter referred to as the "Haulage Route"; and

WHEREAS, CP has agreed to provide or cause to provide to BNSF, and BNSF has agreed to purchase from CP, such unit train haulage services; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which CP shall continue to provide or cause to provide such haulage services to BNSF;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1 - BNSF HAULAGE CARS

1.01 "BNSF Haulage Cars" shall mean Railcars (as defined in Section 1.02) tendered by BNSF in the revenue waybill and car hire account of BNSF for handling on the Haulage Route.

1.02 "Railcars" shall include loaded and empty freight rail cars to be moved in unit train service under the provisions of this Agreement (i) containing only those commodities listed in Appendix I of this Agreement; (ii) in the waybill and car hire accounts of BNSF (as determined under the Association of American Railroad Car Hire and Car Service Rules); and (iii) destined to or originating from the New Century Ag loop track at or near Noonan, ND over the Haulage Route. The aforesaid Railcars to be handled by CP under the provisions of this Agreement are hereinafter referred to as "BNSF Haulage Cars".

1.03 A "Haulage Train" shall consist of locomotives provided, or caused to be provided by BNSF, and unless approved in writing by CP, no fewer than one hundred (100) BNSF Haulage Cars of the same type.

1.04 Subject to the clearance file maintained by CP and prior to any dimensional load or excess clearance Railcar(s) being tendered by BNSF for movement under this Agreement, BNSF shall first notify CP in writing, giving all pertinent physical facts, and requesting verification. CP shall respond promptly either confirming the physical facts related to the proposed dimensional load or excess clearance Railcar(s) or specifically identifying the physical facts which would interfere with a planned move. In no event shall CP deny to BNSF the ability to tender a specific Railcar for movement over the Haulage Route and then subsequently grant approval for the same or similar movement over the same portion of the Haulage Route in a CP train unless BNSF receives timely notice that the limiting clearance or other reason for denial has been removed. The Parties shall cooperate to accommodate all dimensional loads and excess clearance Railcars, subject

to compensation to CP for any special services necessary or advisable for the movement thereof at the charge to be assessed by CP to BNSF from time to time to recover all costs incurred by CP associated with the movement of such dimensional load and/or excess clearance Railcars.

Section 2 - HAULAGE SERVICES

2.01 CP hereby agrees to handle BNSF Haulage Cars in unit train service pursuant to the terms and subject to the conditions set forth in this Agreement ("Haulage Services") with CP crews and/or its designated agents and BNSF locomotive power and fuel. Such Haulage Services shall include, as applicable, (i) the transportation of BNSF Haulage Cars over the Haulage Route; (ii) movement of bad order equipment to or from repair tracks, provided, however, that BNSF will be billed separately for repairs to such equipment performed by CP pursuant to Section 3.06 of this Agreement; (iii) such mechanical or other inspection of BNSF Haulage Cars as may be prescribed by regulation or CP's operating practices; and (iv) provision of supervision as required.

2.02 Subject to BNSF's request for such services, CP shall perform Haulage Services for up to two (2) westbound Haulage Trains and two (2) eastbound Haulage Trains, with at least seventy-two (72) hours spacing between each westbound Haulage Train and Eastbound Haulage Trains, each calendar month, excluding holidays as observed by CP. After two years' of experience with operations under the Agreement, CP will consider adding one (1) additional Haulage Train in each direction per calendar month, taking in to consideration BNSF's compliance with its obligations under the Agreement, the impact on CP's operations, and capacity constraints.

2.03 CP shall afford BNSF Haulage Cars substantially the same type and levels of service for the protection of freight (such as inspections, load shifting, and security) as CP does for its own traffic.

2.04 Each Haulage Train shall comply in all respects with the safety rules, operating rules, and other regulations of CP, and the movement of Haulage Trains over the Haulage Route shall at all times be subject to the orders of the transportation officers

of CP and any other carrier over whose lines a Haulage Train moves; provided, however, that such safety rules, operating rules, other regulations, and orders of the transportation officers of CP shall not unjustly discriminate between the Parties. CP will not make any rule or restriction applying to Haulage Trains that does not apply equally to CP's trains. All Haulage Trains shall be powered to permit operation at posted speeds, as defined within applicable timetables.

2.05 BNSF shall not tender, and CP shall not be obligated to accept, any Haulage Trains greater than the maximum allowed footage in length, as governed by CP, for its own traffic along the Haulage Route as such maximum length shall change from time to time, subject to the limitation that New Century Ag must be able to load the Haulage Train clear of CP's mainline without cutting the train. The maximum footage allowed on the Haulage Route, as well as any changes to the maximum footage allowed, shall be communicated to BNSF by CP.

2.06 If the Haulage Route is unavailable to BNSF for more than twenty-four (24) consecutive hours due to a derailment, line outage, or other interruption of service on the Haulage Route (the "Outage Period"), and no detour is available, then CP and BNSF shall consult within twelve (12) hours of the first twenty-four (24) hours of the Outage Period in order to address any resulting backlog of Haulage Trains over a reasonable period of time ("Resolution Period") at the end of the Outage Period. The Parties shall endeavor to clear any resulting backlog of Haulage Trains as quickly as practicable.

2.07 For each Haulage Train, BNSF shall physically provide to CP a sufficient number of locomotives in distributed power configurations, with a minimum configuration of 1-0-1, to at least meet the train speed specifications in CP's applicable timetable, subject to any slow orders which are in effect, which motive power shall not be less than 0.6 horsepower per ton for each ton of gross weight operating over the Haulage Route ("BNSF Locomotives"). The BNSF Locomotives shall be properly positioned to avoid any additional handling by CP. For example, when the BNSF Locomotives powering a Haulage Train over the Haulage Route consists of two (2) locomotive units, said units shall be positioned to avoid the turning of locomotives to allow the train consist to be

pulled in either direction. The BNSF Locomotives shall have sufficient fuel that CP will not be required to refuel the BNSF Locomotives. CP may refuse the Haulage Train until such Haulage Train is brought into compliance with the foregoing requirements or may impose the Train Make-up Charge set forth in Exhibit A for failure to comply with the foregoing requirements. In the event CP must refuel any BNSF Locomotives, BNSF shall compensate CP for the fuel, as prescribed in Section 6.03 of this Agreement.

2.08 BNSF Locomotives shall be properly equipped, including interoperability with CP's positive train control ("PTC") system and requirements (or any other railroad's PTC system and requirements) on the Haulage Route over which CP will operate in good running order, adequately fueled and serviced, in compliance with applicable laws and regulations, and as required per CP collective bargaining agreements with its train and engine ("T&E") personnel. It is understood between the Parties that BNSF Locomotives shall also be equipped with dynamic brakes (except as may otherwise be mutually agreed by BNSF and CP on a case-by-case basis), and with radios compatible for operations over the lines of both BNSF and CP. Horsepower hours and fuel will not be equalized pursuant to any run through agreement in effect between the parties with respect to those BNSF Locomotives handling BNSF Haulage Trains under this Agreement. Notwithstanding any provision to the contrary herein, the terms of any run through agreement in effect between the parties shall govern the parties with respect to loss or damage to BNSF's Locomotives.

2.09 If one or more of the BNSF Locomotives require(s) repair while on CP's lines, CP may, without BNSF's prior consent, perform light repairs to such BNSF Locomotives, not to exceed a total of [REDACTED] hours of labor or [REDACTED] dollars (\$[REDACTED]). The cost of such repairs will be invoiced by CP to, and shall be paid by, BNSF. If one or more of the BNSF Locomotives require(s) repairs exceeding a total of [REDACTED] hours of labor or [REDACTED] dollars [REDACTED], CP shall obtain the approval of the appropriate mechanical officer of BNSF prior to making such repairs. If BNSF declines to approve such repairs, CP shall return the subject BNSF Locomotive(s) to BNSF. The [REDACTED] threshold for obtaining consent for repairs pursuant to this Section shall be adjusted in the manner set forth in Schedule A of this Agreement.

Section 3 - MANAGEMENT AND OPERATION

3.01 BNSF shall assemble the westbound Haulage Trains and perform the mechanical and air brake tests and provide documentation of such tests. BNSF shall deliver the fully assembled westbound Haulage Trains to CP crews on BNSF's mainline track(s) at the connection switch between CP's mainline track and BNSF's mainline track(s) in Minot, ND. The Parties agree that any exchange location other than BNSF's Old Yard must be mutually agreed to by both parties' local operating officers. BNSF's dispatcher shall give priority to the departing westbound Haulage Train via the Soo Tower interlocking signals. A Train Make-up Charge may be imposed for failure to comply with the requirements of this Section 3.01. BNSF shall not deliver Haulage Trains to CP during any time period in which there is a potential for delay due to passenger trains.

3.02 BNSF shall provide CP with at least 3 hours' advance notice for pickup of westbound Haulage Trains. CP shall provide BNSF with at least 3 hours' advance notice before delivering eastbound Haulage Trains to BNSF on BNSF's mainline track(s) at Minot, ND, at BNSF's "Old Yard", or on such other designated BNSF track(s). Contemporaneous with CP's notification, BNSF shall advise CP of any expected passenger trains which could delay interchange in Minot. CP and BNSF shall coordinate to avoid any such delay. BNSF shall have a train crew on hand to meet the train on arrival at the interchange track between CP and BNSF mainlines in Minot. The BNSF crew shall assist with interchange including by lining the switches, by taking possession of the Haulage Train unless otherwise agreed, and by taking any other actions necessary to expedite the Haulage Train's clearance of the CP mainline. BNSF's dispatcher shall give priority to the arriving eastbound Haulage Train via Soo Tower interlocking signals, to proceed onto BNSF's mainline track(s) so that it does not block or foul CP's mainline track. In the event BNSF's dispatcher fails to provide the crew operating the eastbound Haulage Train authority to proceed onto BNSF's mainline, BNSF's crew is not available on arrival in Minot, or BNSF otherwise fails to promptly move the Haulage Train and the Haulage Train is held more than ten (10) minutes on CP's mainline, BNSF shall pay CP a Delay Charge of [REDACTED] per Haulage Train, an additional [REDACTED] for each minute thereafter up to twenty (20) minutes that authority is not provided, an additional [REDACTED]

for each minute between thereafter up to thirty (30) minutes that authority is not provided, and an additional [REDACTED] for each minute thereafter. If BNSF fails to comply with its operational obligations in this Section 3.02 more than once in any 6-month period, or fails to pay timely any Delay Charge, Haulage Service will be suspended for 6 months or, in the case of unpaid charges, until such Delay Charges are paid. CP will inform BNSF in writing of such failure prior to suspending any Haulage Service. If BNSF repeatedly fails to comply with its operational obligations in this Section 3.02, CP has the right to terminate this Agreement on thirty (30) days' written notice to BNSF. For clarity and the avoidance of doubt, the provisions of Section 9.03 will not apply to CP's termination rights under this Section 3.02.

3.03 CP crews' operation over BNSF's tracks and yard facilities shall at all times be subject to the direction and control of the BNSF local operating officer in charge of such tracks and yard facilities and the applicable provisions of BNSF's safety and operating rules. The operation of Haulage Trains over CP railroad lines shall at all times be subject to the exclusive direction and control of CP and the applicable provisions of CP's safety and operating rules. In the event the Haulage Route includes another track owner's railroad line over which CP may perform Haulage Services, the other track owner's safety and operating rules shall apply to BNSF Haulage Cars to the same extent as they apply to CP train movements.

3.04 BNSF shall provide, or cause to have provided via EDI 417 and 418 transmissions (or by such other means as may be mutually agreed by the Parties), information necessary for the further handling and movement of BNSF Haulage Cars. Such information shall include, for each Railcar:

- (a) Car initial and number;
- (b) Loaded or empty;
- (c) Haulage waybills; and
- (d) Such other information as the Parties may agree to be necessary or convenient for the safe and efficient exchange and further movement of such cars.

CP may refuse the Haulage Train and a Train Make-up Charge may be imposed if the physical train make-up does not match the EDI transmission required by this Section 3.04.

3.05 BNSF Haulage Cars shall be considered physically received by CP when the CP crew boards the BNSF Locomotive of the fully assembled Haulage Train. BNSF Haulage Cars shall be considered physically received by BNSF when the CP crew debarks from the BNSF Locomotive and properly secures the train or when the BNSF crew boards the BNSF locomotive.

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

Section 4 – NO SERVICE GUARANTEE

4.01 It is the intent of CP that it shall generally accord BNSF Haulage Cars the same level of service as CP's own traffic of the same type; provided, however, that nothing in the foregoing shall constitute a service guarantee.

Section 5 - CAR ACCOUNTING AND CAR HIRE

5.01 BNSF Haulage Cars shall at all times remain in the revenue waybill and car hire accounts of BNSF while moving in Haulage Service over the Haulage Route. CP shall not be entitled to any line haul revenue for the handling of BNSF Haulage Cars, nor shall CP participate in the routing of, nor appear in tariffs, waybills, or other shipping documents as a participating carrier in connection with the movement of BNSF Haulage Cars. As between CP and BNSF, BNSF shall be responsible for all mileage and car hire charges accruing on Railcars moving in Haulage Service, and BNSF shall report and pay, or arrange to have reported and paid, all appropriate allowances and charges directly to the owner(s) of such Railcars.

Section 6 - COMPENSATION

6.01 BNSF agrees to pay the compensation for the Haulage Services as set forth in Schedule A attached hereto.

6.02 The Parties intend to exchange car movement information via EDI channels. CP shall employ such information provided by BNSF and submit an invoice for Haulage Service on a monthly basis. BNSF shall make all payments called for under this Section within thirty (30) calendar days after invoice date. In the event of any disruption to CP's use of the electronic exchange of information, BNSF shall provide any other information relating to such BNSF Haulage Cars that CP may reasonably request in connection with accounting for Haulage Services.

6.03 The amounts specified in this Section 6 shall be in addition to any and all other costs, expenses, and charges that BNSF is required to bear and pay under the provisions of this Agreement, including Train Make-up Charges and Delay Charges. For clarity, BNSF shall be responsible for all costs and expenses incurred by CP while directly or indirectly handling BNSF Haulage Cars. Expenses are on an actual costs basis shall include, but not be limited to, invoiced expenses, direct labor and material costs, together with surcharges, overhead percentages, and equipment rentals as specified at the time any work was performed by CP or its agent.

6.04 The payment of bills shall not be delayed or payment refused or shorted on the face amount of bill rendered because of errors in supporting details which are not serious and important, but bills shall be paid as rendered and exception taken in writing addressed to the CP officer responsible for the issuance of the bill.

6.05 The records of each Party pertaining to this Agreement shall be open to inspection by representatives of the other Party upon reasonable notice, during regular office hours. No bill shall be rendered nor exception honored for charges incurred one (1) year after the service month in which the expense was incurred.

6.06 Waiver of a default in any given instance or many similar instances shall not be construed as a waiver in any other instance. Failure of a Party to enforce its remedies

in any one instance or many similar instances shall not constitute a waiver of the right to enforce its remedies in any other instance.

6.07 It is expressly understood and agreed that the payments described in this Section 6 to be paid by BNSF do not in any case include any cost or expense which may be incurred by CP on account of loss of or damage to property, or injury to or death of any person or persons arising out of or in connection with the operation by CP of its locomotives, trains, or cars, upon or over the CP trackage on the route used to transport the BNSF Haulage Cars. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provision of Section 7 hereof.

Section 7 - LIABILITY

7.01 For purpose of this Section 7, the following words shall have the meanings as set forth below:

- (a) “Equipment” means and is confined to cabooses, hi-rail vehicles, track inspection equipment, and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. “CP Equipment” means Equipment operated by or in the account of CP, and “BNSF Equipment” means Equipment operated by or in the account of BNSF;
- (b) “CP Traffic” means rail cars and lading moving in the revenue and car hire account of CP and CP Equipment. “BNSF Traffic” means rail cars and lading moving in the revenue and car hire account of BNSF and BNSF Equipment;

- (c) “Foreign Railroad” means a railroad not party to this Agreement;
- (d) “Foreign Train” means a Foreign Railroad handling its own traffic which shall be considered to be the trains of BNSF handling only BNSF Traffic;
- (e) “CP Train” means a train operated by CP with only CP Traffic over the Haulage Route which shall further include a Foreign Train with foreign traffic as defined above;
- (f) “BNSF Train” means a train operated by BNSF;
- (g) “Haulage Train” has the meaning set forth in in Section 1.03 herein; and
- (h) “Loss or Damage” means without limitation all claims, liability, cost, and expense of every character (except liability for punitive and exemplary damages) including, but not limited to, amounts paid or to be paid under any State or Federal compensation law (including without limitation, the Federal Employer’s Liability Act), incident to loss or destruction of or damage to property (including property of the Parties hereto and property being transported by the Parties), and injury to and death of persons arising from the provision of Haulage Services on, over, or along the Haulage Route. Loss or Damage shall also include all costs and expenses incidental to any claims, suits, demands, and judgments (including attorneys’ fees, court costs, and other costs of investigation and litigation), the expense of clearing wrecked or derailed Equipment, the costs of environmental protection, mitigation, or clean up necessitated by such wreck or derailments, and 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 or Damage shall be reduced by any amount recovered from third parties.

7.02 Only Haulage Train involved.

- (a) Whenever Loss or Damage occurs with only a Haulage Train being involved, then BNSF shall assume and bear all liability for Loss and Damage to BNSF Traffic moving in such Haulage Train.
- (b) If any other Loss or Damage, including without limitation Loss or Damage to employees or locomotives of the Parties (which employees and locomotives are hereby specifically excluded from the allocation in Section 7.02(a)) and any Loss or Damage to third party rail cars and Equipment, to trackage, to property (including the Haulage Route), and any injury to or death of any other person or persons, so occurring shall be borne solely by BNSF.

7.03 More than one train involved.

- (a) Whenever Loss or Damage occurs involving (1) a Haulage Train and a CP Train or a BNSF Train or (2) a Haulage Train, a CP Train, and a BNSF Train, then CP shall assume and bear all liability for Loss or Damage to CP Traffic moving in such train(s) and BNSF shall assume all liability for Loss and Damage to BNSF Traffic moving in such train(s).
- (b) In such event as described in Section 7.03(a), any other Loss or Damage, including without limitation, Loss or Damage to employees or locomotives of the Parties (which employees and locomotives are hereby specifically excluded from the allocation in Section 7.03(a)) and any Loss or Damage to third party rail cars, lading and Equipment, to trackage, to property (including the Haulage Route), and any injury to or death of any other person(s), shall be borne by each of BNSF and CP in proportion to the number of all rail cars

which are BNSF Traffic and of which are CP Traffic.

- (c) Whenever Loss or Damage occurs with more than one train, and such incident involves at least one Haulage Train and one Foreign Train, then BNSF shall assume and bear all liability for Loss or Damage to BNSF Traffic moving in such train(s), and, solely as between BNSF and CP, CP shall assume all liability for Loss and Damage to CP Traffic moving in such train(s) to include the Foreign Train's cars and lading.
- (d) In such event as described in Section 7.03(c), any other Loss or Damage, including without limitation, Loss or Damage to employees or locomotives of the Parties (which employees and locomotives are hereby specifically excluded from the allocation in Section 7.03(c)) and any Loss or Damage to third party rail cars, lading and Equipment, to trackage, to property (including the Haulage Route), and any injury to or death of any other person(s) shall be borne by each of BNSF and CP in proportion to the number of all rail cars which are CP Traffic (including the Foreign Train's cars) and of which are BNSF Traffic.

7.04 Notwithstanding anything to the contrary in Sections 7.02 and 7.03, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, then, as between themselves,

- (a) CP shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results solely from a substance transported in CP Traffic and/or a CP locomotive hauling only CP Traffic from which there was a release;
- (b) BNSF shall be solely responsible for any damage or destruction to the environment (including exacerbation of existing conditions) and

to third parties which results solely from a substance transported in BNSF Traffic and/or a BNSF locomotive from which there was a release; and

- (c) responsibility for damage or destruction to the environment (including exacerbation of existing conditions) and to third parties which results from one or more substances transported in CP Traffic and BNSF Traffic and/or a BNSF locomotive or a CP locomotive from which there was a release shall be shared by the Parties in proportion to the total number of such rail cars, Equipment or locomotives in the revenue or non-revenue waybill and car hire account of each Party from which there was such a release.

7.05 Notwithstanding anything to the contrary in this Section 7, whenever Loss or Damage occurs with one or more trains being involved, and one or more of the involved trains is a CP Train, a BNSF Train, or a Haulage Train, and such Loss or Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost, and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section 7.05, “gross negligence or willful or wanton misconduct” shall be defined as “the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness”.

7.06 Notwithstanding any provision of this Agreement, each Party shall be responsible for any Loss or Damage to the extent such Loss or Damage was caused by acts or omissions of that Party’s employees while under the influence of drugs or alcohol. An FRA positive test for drugs or an FRA alcohol test of .04 or greater shall establish that an employee was “under the influence of drugs or alcohol” for the purposes of this Agreement.

7.07 If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 7.

7.08 In every case of death or injury suffered by an employee of BNSF or CP, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability, or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

7.09 Whenever any liability, cost, or expense is assumed by or allocated to a Party under this Section 7, that Party shall (1) forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost, and expense, regardless of whether such liability, cost, and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance, or misfeasance of the indemnitees or their directors, officers, agents, or employees (except as specifically set forth in Sections 7.05 and 7.06), and (2) defend such indemnitees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

7.10 Each Party shall investigate, adjust, and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, as amended, or in accordance with any applicable transportation contract pursuant to 49 U.S.C. Section 10709, as amended.

7.11 The provisions of this Section 7 shall survive the expiration or termination

of this Agreement.

Section 8 - COMPLIANCE WITH LAW

8.01 Each Party hereto shall comply with all applicable federal, state, and local laws, rules, regulations, and orders promulgated by any government or governmental agency that relate to the provision of Haulage Services or the movement of BNSF Haulage Cars hereunder. If any fine, penalty, cost, or charge is imposed or assessed on or against either Party hereto by reason of the other Party's non-compliance with any such laws, rules, regulations, or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, cost, or charge, and all expenses and attorney's fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge, or expense to that other Party.

Section 9 - TERM

9.01 The Term of this Agreement shall commence on the Effective Date and remain in effect for an initial trial period of six (6) months and a minimum of six (6) Haulage Trains. Subject to the Parties' mutual agreement at the conclusion of the initial trial period, the Term shall be extended until May 31, 2038 (the "Termination Date"). On the Termination Date and on each subsequent fifteen-year anniversary of the Termination Date, the Term shall be automatically renewed for a period of fifteen (15) years unless either party provides written notice to the other party of its intention not to renew the Agreement no later than six (6) months before the Termination Date.

9.02 Termination of this Agreement shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination hereof.

9.03 In the event of any substantial failure on the part of either Party to perform its obligations under this Agreement, and its continuance in such default for a period of thirty (30) calendar days after written notice thereof by certified mail from the other Party, the non-defaulting Party shall have the right at its option, after first giving fifteen (15)

days' written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Section 12 and seek damages and/or specific performance of this Agreement from the defaulting Party. In the case of a substantial default by BNSF which continues after adjudication of such default through arbitration, CP may terminate this Agreement if BNSF fails to cure such substantial default within: (i) seven (7) business days of the receipt of notice of continued default in the case of such a default by BNSF in an obligation to pay CP, and (ii) fifteen (15) days of the receipt of notice of continued default in the case of any other such default under this Agreement.

Section 10 - FORCE MAJEURE

10.01 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including strikes, riots, floods, accidents, Acts of God, acts of terrorism, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures (including rerouting BNSF Haulage Cars over alternate rail lines to the extent practicable) to restore performance of its obligations in a timely manner; provided, that if a detour is over CP's line, BNSF shall compensate CP for the provision of service over such detour route at the rate prescribed by Section 6.01, and if such detour is over the lines of a carrier (or carriers) other than CP, BNSF shall compensate CP for its pro-rata share of the additional costs incurred by CP in providing service via such detour routes.

10.2 The Party invoking force majeure shall immediately notify the other Party by telephone followed by written notice no later than five (5) days thereafter giving details of the force majeure event. Upon cessation of the force majeure event, the invoking Party shall immediately notify the other Party of its cessation as provided in the preceding

sentence. Any dispute respecting the occurrence or cessation of the force majeure event shall be subject to arbitration pursuant to Section 12 of this Agreement.

Section 11 - SUCCESSORS AND ASSIGNS

11.01 This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns. This Agreement may not be assigned by either party without the other party's consent, except as provided otherwise in this Section 11.

11.02 BNSF may assign this Agreement to a firm or corporation acquiring substantially all of the assets or business of BNSF, or merging or consolidating with BNSF; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of BNSF under this Agreement that existed prior to such assignment.

11.03 CP may assign this Agreement to a firm or corporation acquiring substantially all of the assets or business of CP, or merging or consolidating with CP; provided, however, that such assignment shall not transfer or extinguish any liability or obligation of CP under this Agreement that existed prior to such assignment.

Section 12 - ARBITRATION

12.01 Any dispute arising between the Parties with respect to this Agreement shall be referred to the respective senior operating officers for resolution. In the event such officers are unable to resolve the dispute, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expenses of the arbitrator, if any, shall be borne by CP and BNSF, with each paying 50 percent of such compensation, costs, and expenses. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and

all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

Section 13 - NOTICE

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

(a) If to BNSF:

AVP Contracts & Joint Facilities
BNSF Railway
2600 Lou Menk Drive
Fort Worth, TX 76131
Email: OPRDLJointFacilities@bnsf.com

(b) If to CP:

Director Interline and Passenger - South
Canadian Pacific
120 South 6th Street
Suite 800
Minneapolis, MN 55402

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

Section 14 - CONFIDENTIALITY

14.01 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement,

during the Term and any renewal Term(s), the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than officers, employees, and attorneys, without the prior written approval of the other Party.

Section 15 - INDEMNITY COVERAGE

15.01 As a part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party hereto shall extend to and indemnify the parent corporation, subsidiaries, and affiliates of such other Party, and all of their respective directors, officers, agents, and employees.

Section 16 - GENERAL PROVISIONS

16.01 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto.

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

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

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

16.05 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

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

16.07 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the Parties hereto, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by such Party and includes such trains, locomotives, cars, and equipment which are owned by, leased to, or in the account of such Party.

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

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

16.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly

enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

16.11 Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between CP and BNSF. BNSF and CP each shall indemnify and hold harmless the other against any and all costs and payments, including benefits, allowances, and arbitration, administrative, and litigation expenses, arising out of claims or grievances made, or lawsuits brought, by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency or pursuant to a collective bargaining agreement. It is the Parties' intention that BNSF and CP each shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and grievances filed by its own employees arising under its collective bargaining agreement with its employees.

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

Section 17 - GOVERNING LAW

17.01 It is the intention of the Parties hereto that the laws of the State of North Dakota, except for its conflict of laws rules, shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties' hereto.

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

SOO LINE RAILROAD COMPANY
d/b/a Canadian Pacific

BNSF RAILWAY COMPANY

By _____

By _____

Its _____

Its _____

Date _____

Date _____

APPENDIX I
TO
NORTH DAKOTA UNIT TRAIN HAULAGE SERVICE AGREEMENT
PERMITTED COMMODITIES

Any non-hazardous commodity that New Century Ag can handle with its loop track facility located in the vicinity of Noonan, ND.

SCHEDULE A HAULAGE FEE	
HAULAGE FEE FOR SERVICES PERFORMED BY CP	
Haulage Fee:	per loaded or empty Railcar

In addition to the Haulage Fee set forth above, BNSF shall pay CP a Train Make-up Charge for Haulage Trains presented to CP that are not in compliance with the requirements set forth in Section 2.07, Section 3.01, or Section 3.04.

- Train Make-up Charge: per train.

In addition to the Haulage Fee set forth above, BNSF shall pay CP a Delay Charge for eastbound Haulage Trains that cannot be delivered in compliance with Section 3.02.

- Delay Charge: As set forth in Section 3.02, per Haulage Train each time a Haulage Train unnecessarily blocks or fouls CP's mainline track for more than ten (10) minutes, an additional for each minute thereafter up to twenty (20) minutes, an additional for each minute thereafter up to thirty (30) minutes, and an additional for each minute thereafter.

BILLING PROCEDURES:

1. The Haulage Fee shall apply to each BNSF loaded or empty Haulage Car. The Haulage Fees, Train Make-up Charge, and Delay Charge will be subject to annual revision in accordance with Item 2.
2. The Haulage Fee, Train Make-up Charge, and Delay Charge shall be revised effective January of each year, beginning July 1, 2022, to compensate for one hundred percent (100%) of the increase or decrease in the cost of labor and material, including fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost

Recovery Index" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (incl. fuel)" index for the Western District shall be used to escalate the Haulage Fee, Train Make-up Charge, and Delay Charge associated with BNSF Haulage Cars. Such final index figures for the calendar year 2020, hereinafter referred to as the "Base Calendar Year," shall be taken as the base index. The Haulage Fee, Train Make-up Charge, and Delay Charge shall be revised by calculating the percentage of increase or decrease in the final index published for the calendar year immediately prior to the year to be escalated as related to the Base Calendar Year, and applying that percentage to the original Haulage Fees. No such adjustment shall reduce the charges below the levels of the original Haulage Fee, Train Make-up Charge, and Delay Charge.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (including fuel)" final index for the Base Calendar Year; "B" to be the "Material prices, wage rates and supplements combined (including fuel)" final index for the calendar year 2021; "C" to be the initial Haulage Fees set forth above; and "D" to be the percentage of increase or decrease, the adjusted Haulage Fee, Train Make-up Charge, and Delay Charge to be applied on and after July 1, 2022 would be determined by the following formula:

$$(1) \quad (B - A) / A = D$$

$$(2) \quad (C \times D) + C = \text{adjusted Haulage Fees, effective July 1, 2022}$$

If the base for the "Annual Indices of Charge-out Prices and Wage Rates" issued by the AAR is changed from the year 1977, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 1977. If the AAR or any successor organization discontinues publication of the "Annual Indices of Charge-out Prices and Wage Rates," an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties. In the absence of agreement, either Party may submit the issue to binding arbitration in the manner prescribed in Section 12.