

Before the
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760 (Sub-No. 46)

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BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

BNSF's Compensation Information

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Dated: February 4, 2019

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In *Decision No. 6* in this proceeding, served on December 7, 2018, the Surface Transportation Board (the “Board”) directed the parties to provide certain information, as specified in the appendix to that decision, that would assist the Board in establishing compensation for BNSF’s use of the Rosebluff Lead.¹ BNSF hereby provides the information requested in that Appendix, and reaffirms its previously stated positions with respect to such compensation terms. BNSF also renews its request, first made in its Application filed in this proceeding nearly six years ago, that the Board permit BNSF to commence operations *now* under an interim compensation scheme, to be reconciled once the Board establishes the final compensation terms. *See* BNSF Application (Feb. 27, 2013) at 16.

¹ The acronyms and defined terms used herein are the same as those used in BNSF’s Petition to Establish Conditions of Use and Compensation (BNSF-132, the “Petition”) filed in this proceeding on January 12, 2018, as modified to reflect the Board’s usage in *Decision No. 4* in this proceeding, served on May 4, 2018.

A. Summary of BNSF positions regarding compensation.

In approving the merger of UP and SP more than twenty-two years ago, the Board imposed the Lake Charles Merger Conditions. The Board intended those conditions to enable BNSF to provide an effective replacement, via direct or reciprocal switch BNSF service, for the competitive options lost to Lake Charles area shippers as a result of the merger of UP and SP.²

In *Decision No. 3* in this proceeding, served on July 5, 2016, the Board granted BNSF terminal trackage rights on the Rosebluff Lead, a rail line owned jointly by KCS and UP, to allow BNSF to fully implement the Lake Charles Merger Conditions and directly serve Lake Charles area shippers. The Board ordered BNSF, KCS, and UP to “collectively develop conditions governing their use of the Rosebluff Lead,” *Decision No. 3*, slip op. at 19, and ordered the parties to “attempt to agree upon the terms of compensation for BNSF’s use of the Rosebluff Lead.” *Id.* at 20. The Board stated that the parties may request that the Board establish conditions of use and compensation if the parties could not reach an agreement on these issues. *Id.* at 19-20.

On January 12, 2018, BNSF requested through the Petition that the Board establish BNSF’s proposal for BNSF direct service to the Lyondell facility as the condition of use, and that the Board establish compensation terms governing any BNSF use of the terminal trackage rights granted by the Board “under the principle controlling compensation in condemnation proceedings,” consistent with 49 U.S.C. § 11102(a).

With respect to the level and payment of compensation, BNSF has acknowledged that KCS – as one-half owner of the Rosebluff Lead terminal facilities

² BNSF has previously presented in this proceeding the full background of the Lake Charles Merger Conditions. *See, e.g.*, BNSF Application (Feb. 27, 2013) at 3-6; BNSF Opening Statement (Dec. 31, 2014) at 4-9. The Board has summarized this background in *Decision No. 3*, slip op. at 2-4, and in *Decision No. 4*, slip op. at 2.

over which the Board granted BNSF terminal trackage rights – is entitled to a portion of the compensation set by the Board. *See* BNSF Rebuttal (BNSF-138, filed July 16, 2018) at 30. However, the level of compensation that BNSF must pay for trackage rights implemented under the UP/SP merger conditions, such as the terminal trackage rights at issue here, has already been set as the “Prescribed Fee.”³

As BNSF described in further detail in the Petition at 15-17 and the BNSF Rebuttal (July 16, 2018) at 31-32, UP has an affirmative obligation under the BNSF Settlement Agreement, the CMA Agreement, the 50/50 Line Agreement, and the Lake Charles Merger Conditions to provide BNSF with direct service trackage rights over the Rosebluff Lead at the Prescribed Fee. BNSF and UP agreed to, and the Board set, the uniform Prescribed Fee for all BNSF trackage rights service subject to the UP/SP merger conditions so that BNSF could effectively compete on both long-haul and short-haul movements.

Indeed, in the Board’s decision approving the UP/SP merger subject to the Lake Charles Merger Conditions and other conditions, the Board conducted a thorough analysis of the Prescribed Fee and rejected challenges by KCS and others who argued that the Prescribed Fee was too high and that BNSF could not effectively provide replacement competition at that rate level. *Decision No. 44*, 1 S.T.B. 233, 413-17 (1996). The Board found that the Prescribed Fee is “well within a reasonable level,” *id.* at 413, and “will permit BNSF to compete effectively,” *id.* at 416. The D.C. Circuit specifically affirmed the Board’s determination on this issue. *Western Coal Traffic League v. STB*, 169 F.3d 775, 781 (D.C. Cir. 1999). The Board again considered the Prescribed Fee four years later and found “no real evidence

³ As defined in the Petition at 15, the Prescribed Fee is the level of compensation that BNSF must pay for trackage rights under the UP/SP merger conditions – namely the rate set by Section 9(a) of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 7 of the CMA Agreement.

that the [Prescribed Fee] has hindered BNSF from competing.” *UP/SP Merger (General Oversight)*, Decision No. 16, 5 S.T.B. 388, 397 (2000). The Board would frustrate its own carefully crafted conditions if, in conjunction with finally allowing BNSF to fully implement the Lake Charles Merger Conditions, the Board were to require BNSF to pay a rate that is greater than the Prescribed Fee for its trackage rights service.

UP’s failure to secure KCS’s consent to the grant of Rosebluff Lead trackage rights to BNSF – which has required BNSF, in turn, to institute this proceeding to obtain terminal trackage rights over the Rosebluff Lead – should not result in BNSF paying more for its use of the Rosebluff Lead trackage rights than the Prescribed Fee that BNSF pays for all other BNSF trackage rights over UP lines resulting from the UP/SP merger conditions. Furthermore, Lake Charles area shippers have an independent right under the CMA Agreement and the Lake Charles Merger Conditions to receive direct BNSF service subject to the Prescribed Fee.

Therefore, BNSF has proposed that BNSF pay UP the Prescribed Fee, and that UP then pay KCS the amount due to KCS under the compensation terms set by the Board.⁴ BNSF has also stated that it would be willing to directly pay KCS fifty percent of the compensation set by the Board, and to pay UP the Prescribed Fee minus the amount paid to KCS. *See* BNSF Rebuttal (July 16, 2018) at 31. If the Board ultimately orders BNSF to pay any amount greater than the Prescribed Fee for use of the terminal trackage rights, BNSF reserves the right to seek reimbursement from UP for such amount.

⁴ This is consistent with the current payment structure for BNSF service to Rosebluff Lead customers via UP or KCS reciprocal switch. BNSF currently pays only UP for all such service, including the traffic switched by KCS to BNSF customers in Zone 1 and the traffic switched by UP to BNSF customers in Zone 2. UP presumably pays KCS for switching BNSF cars to Zone 1 shippers. BNSF’s proposal for terminal trackage rights compensation would preserve that same arrangement.

B. Compensation information requested by the Board.

1. *Provide documents sufficient to demonstrate the current fee that BNSF pays to UP for reciprocal switching on the Rosebluff Lead, including governing agreements, terms, and clauses (e.g., escalation clauses).*

The current fee that BNSF pays to UP for reciprocal switching on the Rosebluff Lead is governed by (1) a Haulage Agreement between BNSF and UP, entered into on June 1, 1996, attached hereto as Exhibit A (the “Haulage Agreement”), and (2) the BNSF Settlement Agreement, as restated and amended in 2002 (the “RASA”), attached hereto as Exhibit B.

BNSF currently pays UP \$315.92 per car for reciprocal switch service to shippers on the Rosebluff Lead. This fee is charged for each BNSF car (empty or loaded) on every movement to and from the Rosebluff Lead shippers. The \$315.92 per car fee is the sum of the following charges:

- Handling Fee (On): \$65.93
- Haulage Mileage Fee: \$6.53 (9.6 mi x \$0.68/mi)
- Reciprocal Switch Fee: \$171
- Haulage Mileage Fee: \$6.53 (9.6 mi x \$0.68/mi)
- Handling Fee (Off): \$65.93

The Handling Fees are charged to BNSF for interchanging each BNSF car (empty and loaded) to and from UP at UP Lake Charles Yard. The Haulage Mileage Fees are charged to BNSF for UP’s movement of each BNSF car (empty and loaded) between UP Lake Charles Yard and the West Lake Charles station at the Rosebluff Yard. The Handling Fees and Haulage Mileage Fees are set forth in Exhibit B to the Haulage Agreement, as escalated by Section 4 to the Haulage Agreement.

The Reciprocal Switch Fee is charged for UP’s and KCS’s reciprocal switching of each BNSF car (empty and loaded) to shippers using the Rosebluff Lead, the Rosebluff Yard, and related track. The Reciprocal Switch Fee is derived from

Section 9(i) of the BNSF Settlement Agreement, as escalated annually by Section 12 of the BNSF Settlement Agreement.

2. *Provide documents sufficient to demonstrate the current Prescribed Fee (i.e., the trackage rights fee that BNSF pays to UP under the UP/SP merger agreements/conditions), including governing agreements, terms, and clauses (e.g., escalation clauses).*

The current Prescribed Fee for BNSF movements on the relevant portion of the 50/50 Line is \$0.0033045 per gross ton mile. This fee is derived from Section 9(a) of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 12 of the BNSF Settlement Agreement,⁵ and as modified by BNSF and UP in Section 7 of the 50/50 Line Agreement (as amended by Sections 1 and 4 of the 2003 Letter Agreement).

The BNSF Settlement Agreement, as restated and amended in 2002 (the “RASA”), is attached hereto as Exhibit B, the 50/50 Line Agreement is attached hereto as Exhibit C, and the 2003 Letter Agreement is attached hereto as Exhibit D.

3. *If the Board determines that its SSW Compensation methodology should be used to calculate the trackage rights fee owed to one or more owners of the Rosebluff Lead/Yard,*
 - a. *What adjustments or modifications to the SSW Compensation methodology would be needed if BNSF is allocated one daily, exclusive window of time for direct operations on the Rosebluff Lead and BNSF’s window occurs:*
 - i. *during UP’s 12-hour window in Rosebluff Yard;*
 - ii. *during KCS’s 12-hour window in Rosebluff Yard;*
 - iii. *during both UP’s and KCS’s 12-hour windows in Rosebluff Yard?*

⁵ The current GTM Rate for BNSF movements on UP/SP trackage rights lines is \$0.00420 per gross ton mile. This is the trackage rights fee that BNSF pays to UP under the UP/SP merger agreements / conditions.

The Board analyzed the evidence presented by the parties in the initial phase of this proceeding and found “periods of reduced train activity, providing opportunities for more than one railroad to operate on portions of the Lead at the same time.” *Decision No. 3*, slip op. at 16. BNSF’s proposed operating plan is based on flexibility and a commitment to coordination among all the parties that the Board recognized would be necessary. *See* BNSF Rebuttal (July 16, 2018) at 15-17. BNSF proposes to operate during the “natural windows” that create running tracks through the Rosebluff Yard and clear the 50/50 Line every day during UP’s 12-hour window. *See id.* at 17-21. However, BNSF has proposed coordinating directly with KCS for operation during KCS’s operating window if BNSF is unexpectedly delayed. *See id.* at 16 n.13.

If, contrary to BNSF’s proposal, the Board allocates BNSF one daily, exclusive window of time for direct train service operations on the Rosebluff Lead, BNSF does not believe that any adjustments or modifications to the *SSW Compensation* methodology would be needed based on when that BNSF window would occur.

Under the *SSW Compensation* methodology, the variable costs incurred by UP and KCS due to BNSF’s operations over the track (largely dispatching and yardmaster expenses) and BNSF’s usage-proportionate share of the track’s maintenance and operation expenses would not be affected by *when* BNSF’s exclusive operating window would occur. UP and KCS split the maintenance costs of the track on a per-car-use basis, *see* KCS Reply (June 25, 2018) at 37, and the same variable costs and maintenance and operation expenses related to BNSF operations would be incurred irrespective of when the exclusive BNSF operating window suggested by the Board would occur. Similarly, the interest rental component, designed to compensate UP and KCS for BNSF’s use of their capital dedicated to the track, should not vary based on when the BNSF window would

occur, because the windows are an operating convention that do not reflect the underlying value of the track.

However, setting a fixed duration for BNSF's daily, exclusive use of the track could affect the development of the relative usage share between the three parties used in the interest rental component of the *SSW Compensation* methodology that could link compensation to the value of operating time on the track rather than on cars, car miles, or ton miles.

- b. *Would the SSW Compensation methodology need to be modified to properly account for operations in Rosebluff Yard if BNSF's proposed direct train service traverses Rosebluff Yard without stopping or switching?*

The *SSW Compensation* methodology would not need to be modified if BNSF's direct train service traverses Rosebluff Yard without stopping or switching, as BNSF has proposed. However, the track infrastructure included in the *SSW Compensation* methodology should be limited only to portions of the Rosebluff Yard to be used by BNSF – namely the Rosebluff Yard running track. Costs for any unrelated Rosebluff Yard track that BNSF will not use should not be included in the *SSW Compensation* methodology. Also, development of BNSF's relative usage share should appropriately recognize BNSF's direct-service operations through the Rosebluff Yard.

- c. *What method should be used to calculate the interest rental component? Provide all information and data needed to support the suitability of your preferred method and to calculate the interest rental component under that method.*

Because BNSF has no ownership interest in the Rosebluff Lead and the Rosebluff Yard, BNSF does not have the information or data necessary to determine which method should be used to calculate the valuation base to be used in the interest rental component. In a recent proceeding applying the *SSW Compensation*

methodology, the Board held that the tenant should have an opportunity to build a record through discovery and obtain the data it needed to make its case on the appropriate valuation method. *See New England Cent. R.R., Inc.—Trackage Rights Order—Pan Am S. LLC*, FD 35842, slip op. at 2 (STB served Feb. 12, 2016). The same rule should apply here. BNSF has specified in Exhibit E attached hereto the types of information and data that BNSF would need to obtain through discovery to support the suitability of BNSF's preferred method.

- d. Should the below-the-wheel variable costs and maintenance-of-way costs be calculated based on actual costs or system-average costs under the Uniform Railroad Costing System (URCS)?*

The approach used to develop the variable costs incurred by UP and KCS due to BNSF's operations and BNSF's usage-proportionate share of the track's maintenance and operation expenses should be determined based on actual expenditures associated with the track. As the Interstate Commerce Commission held in *SSW I*, "the most appropriate means of sharing M&O expense is to allocate a portion of the actual expense incurred . . . on a percentage use basis." *St. Louis Sw. Ry.—Trackage Rights over Mo. Pac. R.R.—Kansas City to St. Louis*, 1 I.C.C.2d 776, 790 (1984) ("*SSW I*"). The most recent Board proceeding to apply *SSW Compensation* methodology also used actual maintenance costs. *See New England Cent. R.R., Inc.—Trackage Rights Order—Pan Am S. LLC*, FD 35842, slip op. at 11 (STB served Oct. 31, 2017).

- e. Should the SSW Compensation methodology take into account how costs and fees are currently allocated between the two owners of the Rosebluff Lead/Yard? If so, explain how certain SSW Compensation cost categories (e.g., maintenance-of-way) should be allocated between the owners of the property? What other adjustments or modifications to the SSW Compensation methodology would be needed to account for the fact that the Rosebluff Lead/Yard has two owners?*

The *SSW Compensation* methodology is based on the tenant carrier's operations over the track at issue, and the relevant input factors are not dependent on the number of owners of the track. The issues raised here regarding the current allocation of costs and fees between UP and KCS could be relevant to any division between UP and KCS of the fee determined by the *SSW Compensation* methodology, but the methodology itself should not need to be adjusted or modified to account for the fact that the relevant track has two owners.

- f. Should the trackage rights fee set by the Board be calculated on a carload, per car-mile, or per ton-mile basis?*

BNSF initially proposes that the trackage rights fee set by the Board be calculated on a per ton-mile basis. The Prescribed Fee is based on a gross ton-mile calculation, and any fee set by the Board for BNSF's usage of the terminal trackage rights should similarly be based on ton-miles in order to ensure that shippers receive the most competitive rate that BNSF can offer. BNSF reserves the right to modify this proposal if, for example, the Board sets a fixed daily duration for BNSF access to the track.

- g. Identify additional costs, if any, specific to the Rosebluff Lead/Yard that would not be accounted for under the Board's SSW Compensation methodology.*

BNSF believes that there are no additional costs specific to the track covered by the Board's grant of terminal trackage rights that would not be accounted for under the *SSW Compensation* methodology, which comprehensively addresses all relevant costs related to a tenant carrier's use of track.

C. The Board should permit BNSF to commence direct train service now under an interim compensation scheme.

The parties have fully briefed their positions on the conditions of use for BNSF's terminal trackage rights. Rather than delaying BNSF direct train service

pending what could be a lengthy process to establish the final compensation terms, BNSF respectfully renews its request that the Board proceed to establish the conditions of use and then permit BNSF to commence trackage rights operations on the Rosebluff Lead immediately. *See* Petition at 16-17.

As BNSF noted in its Petition at 3, the Board must “complete any proceeding under [Section 11102(a)] within 180 days after the filing of the request for relief.” 49 U.S.C. § 11102(d). Allowing BNSF to commence trackage rights operations now would be consistent with the intent of the Section 11102(d) deadline to expedite the consideration of terminal trackage rights proceedings. *See also* 49 U.S.C. § 10101(15) (“In regulating the railroad industry, it is the policy of the United States Government . . . to provide for the expeditious handling and resolution of all proceedings. . . .”).

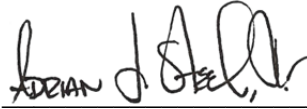
In accordance with 49 U.S.C. § 11102(a) and Interstate Commerce Commission (“ICC”) precedent, BNSF would pay or otherwise “adequately secure” interim compensation for such operations, to be reconciled once the Board ultimately establishes the final compensation terms. *See UP/MP/WP*, 366 I.C.C. 462, 590 (1982). The Board’s indication in *Decision No. 3* that it would set compensation if the parties could not agree and “apply the principles for compensation in condemnation proceedings” fulfilled the requirement of the statutory term “adequately secured.” *See S. Pac. Transp. Co. v. ICC*, 736 F.2d 708, 723 (D.C. Cir. 1984). However, BNSF is willing to pay interim compensation in this case in the form of the Prescribed Fee or some other reasonable fee based on established costing mechanisms such as the Uniform Rail Costing System (URCS) variable costs methodology. The final compensation terms later established by the Board would accrue from the start of BNSF’s trackage rights operations over the Rosebluff Lead and be reconciled after establishment. *See UP/MP/WP*, 366 I.C.C. at 590.

As the Board knows well, the path to establishing final compensation terms – whether based on the *SSW Compensation* methodology or some other “principle controlling compensation in condemnation proceedings,” 49 U.S.C. § 11102(a) – can be long and arduous. Indeed, the most recent Board proceeding to establish trackage rights compensation under the *SSW Compensation* methodology required nearly three years to complete. *See New England Cent. R.R., Inc.—Trackage Rights Order—Pan Am S. LLC*, FD 35842 (STB served Oct. 31, 2017). The trackage rights user in that proceeding continued to operate during the pendency of the Board proceeding. *Id.*, slip op. at 1-2.

More than twenty-two years ago, UP and the Board promised BNSF and Lake Charles area shippers direct BNSF access in order to offset the loss of competition from the UP/SP merger. *See UP/SP Decision No. 44*, 1 S.T.B. at 243, 427-29; *Decision No. 3*, slip op. at 2-3. Nearly six years ago, BNSF filed its application for terminal trackage rights in this proceeding. More than one year ago, following the Board’s grant of BNSF’s application, BNSF filed the instant Petition requesting that the Board set the terms of use and compensation for the use of the terminal trackage rights granted by the Board. If the Board begins the process of applying *SSW Compensation* or some similar methodology without first allowing BNSF to begin its terminal trackage rights operations, a number of additional years could elapse before Lake Charles area shippers receive the BNSF direct service promised to them by UP and the Board.

The Board should establish the conditions of use now, while the operational evidence submitted by the parties through this proceeding remains fresh, and permit BNSF to commence trackage rights service immediately under an interim compensation scheme so that the full scope of competition promised by UP and required by the Board can finally be achieved.

Respectfully submitted,



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Dated: February 4, 2019

**HAULAGE AGREEMENT
BETWEEN
LAKE CHARLES, LOUISIANA AND HARBOR, LOUISIANA;
LAKE CHARLES, LOUISIANA, AND
WESTLAKE, LOUISIANA, ROSE BLUFF, LOUISIANA
AND WEST LAKE CHARLES, LOUISIANA**

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

WITNESSETH:

WHEREAS, Owner owns lines of railroad which extend from Lake Charles, Louisiana, SPT's Milepost 216.6 to Harbor, Louisiana, a spur 4.1 miles from Mallard Jct, SPT's Milepost 215.3, and between Lake Charles and West Lake, Louisiana, Rose Bluff, Louisiana and West Lake Charles, Louisiana, a distance of approximately 7 miles between Lake Charles Yard and the yard at Rose Bluff ("Haulage Corridor"), as illustrated by dashed line on the attached print dated June 1, 1996, marked Exhibit "A", attached hereto and made a part hereof:

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

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

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

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

Section 1. Haulage Rights.

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

- i. Haulage Services for rail cars shall be provided on a per rail car basis only.
- ii. User shall have the right to handle traffic of shippers open to all of UP, SP and The Kansas City Southern Railway Company ("KCS") at Lake Charles and West Lake, and SP and KCS only at West Lake Charles and Rose Bluff, (a) to, from and via New Orleans, Louisiana, and (b) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with The Texas Mexican Railway Company) or Brownsville, Texas. Shippers to which User shall have the right to handle traffic shall be those published, and amendments thereto, in the respective tariffs of SP, KCS, and UP.
- iii. Haulage Services shall apply to all commodities.
- iv. User agrees that where blocking is requested by User, it will enter into a separate written agreement with Owner detailing, among other things, the number of blocks required and Owner's cost to provide such blocking.
- v. It is expressly understood by the parties that any Haulage Services provided by Owner shall, at Owner's option, be on a train load basis or using Owner's existing train service and capacity, in both cases using Owner's locomotives and crews.
- vi. For such Haulage Services, User shall be permitted to quote rates in contracts, quotations, or appropriate publications.

- vii. User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) serve any new shipper facility on any SP-owned line over which User receives trackage rights pursuant to the Settlement Agreement, and (c) subject to the geographic limitations set forth below, serve new shipper facilities, future transloading facilities and to establish and serve intermodal and auto facilities at points listed on Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (c) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established they shall be presumed to establish these geographic limitations.

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

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

(D) During the normal course of business it is expected that some rail cars moved under this Haulage Agreement shall be diverted by User. If, in the sole opinion of the Owner, diversion of rail cars by User becomes an unreasonable administrative burden on Owner, Owner shall so notify User and present to User an estimate of Owner's actual cost to handle diversions for User. If such amount is not accepted by User, User and Owner shall then negotiate in good faith to determine an appropriate charge to be paid by User to Owner to cover Owner's reasonable cost for each rail car so diverted after Owner's

notification to User as set forth above. If after ninety (90) days Owner and User have been unable to reach agreement that a diversion cost is appropriate or as to what the cost of each diversion shall be then the matter shall be submitted to binding arbitration under the terms and conditions contained in Section 13 of this Haulage Agreement.

Section 2. Pick Up and Delivery Tracks. The location of tracks designated for pickup and for delivery of the rail cars of User at Lake Charles in connection with the provision of Haulage Services shall be as mutually agreed upon by the authorized representatives of the parties from time-to-time.

Section 3. Receipt and Delivery of Rail Cars. Rail cars shall be deemed received from User (i) when Owner couples into such rail cars, or (ii) in the case of run through operations, when, Owner's crews board User's train for the commencement of Haulage Services. Rail cars shall be deemed delivered to User (i) when set out, and the locomotives of Owner are uncoupled therefrom, on agreed to tracks, or (ii) in the case of run through operations, when Owner's crews disembark from User's train at the designated delivery track, and the notification of such delivery has been given to User.

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

In addition to all other charges to be paid by User to Owner herein, at West Lake, and West Lake Charles, User shall also pay a fee to Owner of Three Hundred Fifty Dollars (\$350) per loaded car for all shippers other than Pittsburgh Plate Glass, Inc. ("PPG") and a fee of Three Hundred Forty-Two Dollars (\$342) per loaded car for PPG traffic. These fees shall be adjusted upwards or downwards as set forth below in this Section 4.

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

Upon every fifth anniversary of this Haulage Agreement ("Anniversary Date"), either party may request on ninety (90) days' written notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, any party may request binding arbitration under Section 13 of this Haulage Agreement. It is the intention of the parties that the Haulage Rates reflect the same basic relationship to operating costs as upon execution of this Haulage Agreement.

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

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

Section 6. Billing.

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

Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

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

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

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

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

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

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

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

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

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

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

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

Section 9. Hazardous Materials.

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

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

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

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

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

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

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

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

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

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

Section 13. Arbitration.

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

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

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

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

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

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

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

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

Section 14. Assignment. Except as provided in Section 6(E) and in the following sentence, this Haulage Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of the other party. This Haulage Agreement may be assigned by any party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets. In the event of an authorized assignment, this Haulage Agreement and the operating rights thereunder shall be binding upon the successors and assigns of the parties.

Section 15. Term and Termination. This Haulage Agreement shall be effective upon execution for a term of five (5) years (the "Initial Term") and shall automatically renew thereafter for successive periods of one (1) year in length (each, an "Extension") unless notice of termination of this Haulage Agreement at the end of the Initial Term or any Extension is given by Owner to User on ninety (90) days' written notice; provided, however, that the User may terminate this Haulage Agreement at any time during the Initial

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

Section 16. Default.

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

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

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

Section 17. Severability. If any part of this Haulage Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Haulage Agreement and the remaining parts of this Haulage Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 18. Conflicting Provisions. If any conflict between the Settlement Agreement and this Haulage Agreement shall arise, the provisions of the Settlement Agreement shall govern unless specific reference is made in this Haulage Agreement, or any amendment thereof, to the fact that an inconsistency exists between it and the Settlement Agreement and that, as to such specifically identified inconsistency, the terms of this Haulage Agreement, or any amendment thereof, control.

Section 19. Notices. All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Haulage Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid and addressed to such other party at the address listed below:

If intended for Owner:

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

With a copy to:

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

If intended for User:

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

With a copy to:

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

Section 20. Other Agreements.

This Haulage Agreement shall not become effective unless and until each and every trackage rights, haulage, purchase/sale and proportional rate agreement between and among the parties to the Settlement Agreement (collectively, the "Other Agreements") necessary to implement the Settlement Agreement becomes effective in accordance with the terms of each such Other Agreement and the Settlement Agreement; and in the event that one or more of such Other Agreements for any reason does not become effective, this Haulage Agreement shall be of no force and effect and shall terminate.

[illegible]

[SIGNATURES APPEAR ON NEXT PAGE]

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

MISSOURI PACIFIC RAILROAD COMPANY

By: James V. Dilan
Its: Vice President - Law

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

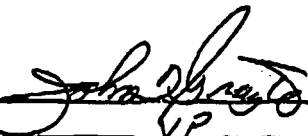
By: _____
Its: _____

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

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Its: _____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:  _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: _____
Its: _____

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

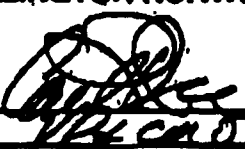
MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Its: _____

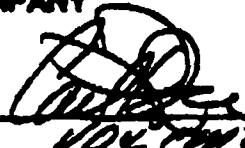
SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By:  _____
Its: V.P. CARO

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:  _____
Its: V.P. CARO

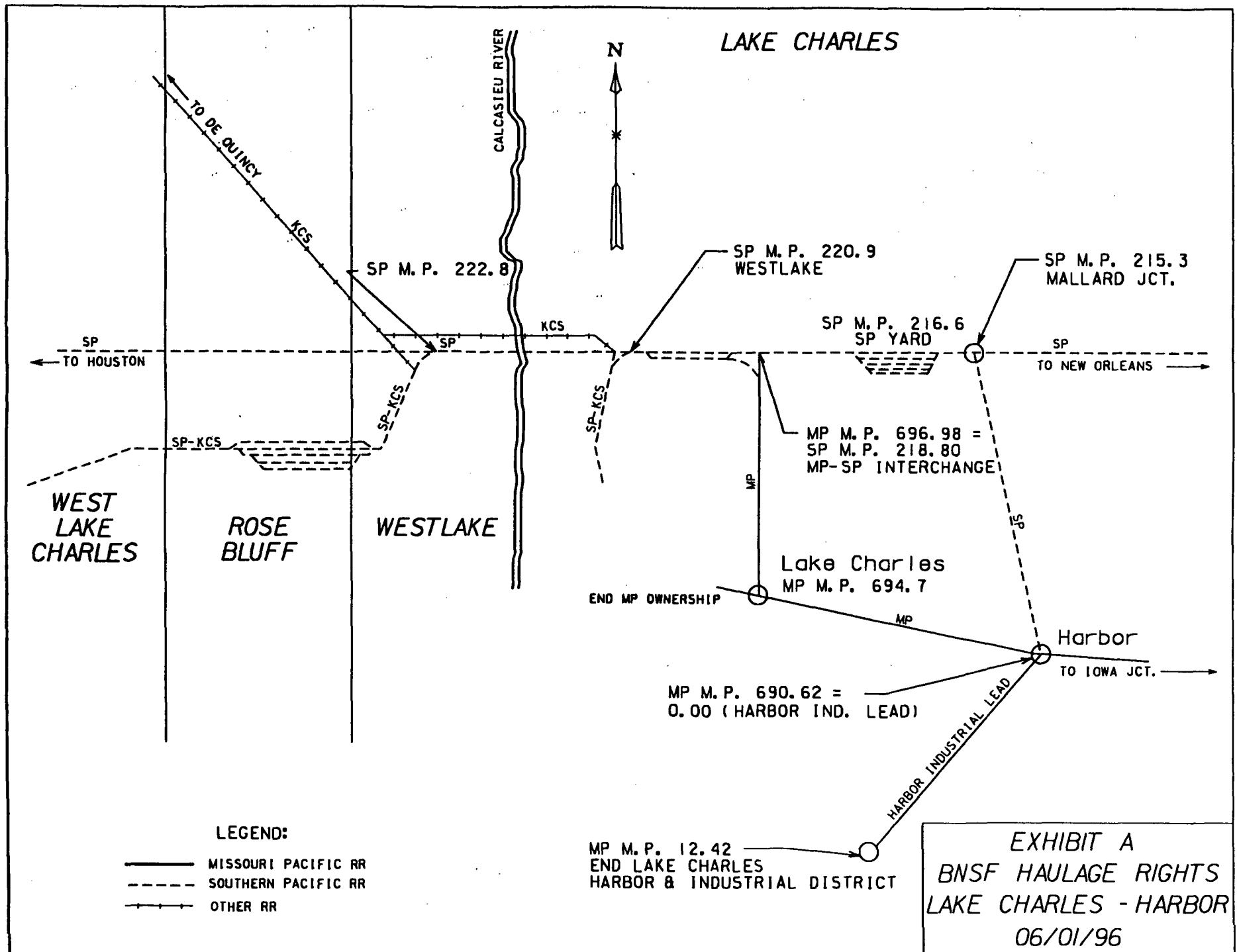


EXHIBIT "B"

TO

HAULAGE AGREEMENT

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

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

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

03/01/02

RESTATED AND AMENDED AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1. **Western Trackage Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **I-5 Corridor**

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

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

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

3. **Southern California Access**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. St. Louis Area Coordinations

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

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

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

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

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

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

8. **Additional Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Trackage Rights - General Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **Term**

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

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

12. **Adjustment of Charges**

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

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

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

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

13. **Assignability**

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

14. **Government Approvals**

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

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

15. **Arbitration**

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

16. **Further Assurances**

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

17. **No Third Party Beneficiaries**

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibit A
LIST OF “2-TO-1” POINTS

Points Referred to in Section 1(b)

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

Points Referred to in Section 3(a)

Ontario CA
 La Habra CA
 Fullerton CA

Points Referred to in Section 4(b)

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

Points Referred to in Section 5(b)

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

Points Referred to in Section 6(d)

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

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

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

2. South Texas Trackage Rights

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

3. Eastern Texas – Louisiana Trackage Rights

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

4. Additional Rights

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

5. Rights to Omnibus Points

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

AGREEMENT

AGREEMENT made this 1st day of September, 2000, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF," and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called "UPRR."

WITNESSETH:

WHEREAS, BNSF owns a line of railroad between Iowa Junction, Louisiana and Avondale, Louisiana and UPRR owns a line of railroad between Dawes, Texas and Iowa Junction, Louisiana; and

WHEREAS, by conveyance simultaneous with the entry into this Agreement, but separate and apart from this Agreement, BNSF is acquiring an undivided one-half interest in certain of the UPRR Trackage (as hereinafter defined) and UPRR is acquiring an undivided one-half interest in certain of the BNSF Trackage (as hereinafter defined); and

WHEREAS, the parties desire to set forth in this Agreement the manner in which the Joint Trackage (as hereinafter defined) will be managed, maintained and operated subsequent to acquisition by (1) UPRR of a one-half interest in that portion of the BNSF Trackage to be conveyed to it, and (2) BNSF of a one-half interest in that portion of the UPRR Trackage to be conveyed to it.

NOW, THEREFORE, it is mutually agreed:

Section 1. DEFINITIONS

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

Additions and Betterments shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts under principles of railroad retirement and betterment ("RRB") accounting.

BNSF Trackage shall mean ~~(a)~~ the portion of the mainline track of the former Southern Pacific Transportation Company ("SP") Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, as shown on the print dated February 12, 1998, attached as Exhibit "A" and by reference made a part of this Agreement (the "Print"), including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which UPRR has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined below) as is now owned or controlled by BNSF or as is added to the ownership or control of BNSF.

Consolidated Dispatching Center or CDC shall mean a consolidated regional dispatching center, established and operated pursuant to the provisions of an agreement entered into between the parties, located in UPRR's Spring, Texas facility, encompassing BNSF, UPRR, Houston Belt & Terminal Railway Company ("HBT") and Port Terminal Railroad Association ("PTRA") (between Bridge 5A and Deer Park Junction) lines generally as shown on Exhibit "A" attached thereto, and lines of The Kansas City Southern Railway Company ("KCS") and Texas Mexican Railway Company ("TexMex") in the same general area if KCS and TexMex elect to participate in consolidated dispatching.

Customer Access Trackage shall mean trackage which is not included in subsection (a) of the above definition of BNSF Trackage or in subsection (a) of the below definition of UPRR Trackage, and which from time to time would be utilized to provide access to present and future industries or facilities originating or terminating traffic on the former SP Lafayette Subdivision between Dawes (MP 353.0) and Avondale (MP 14.94) and on former SP branches and spurs connecting to the said section of the Lafayette Subdivision or any new branches and spurs connecting to these lines, together with the right of way for such trackage, and trackage appurtenances, signals and communications facilities for the control of operations thereover (for purposes of management and use of such signals and communications facilities only, and not ownership); it being agreed that such trackage is included in the definition of "Customer Access Trackage" (and as such is subject to the terms of this Agreement) only during the time period that such trackage is to be utilized for access.

Equipment shall mean trains, locomotives, rail cars (loaded or empty), trailers and containers (loaded or empty), cabooses, vehicles and machinery which are

capable of being operated on railroad tracks or on adjacent right-of-way for purpose of the maintenance or repair of such railroad tracks or right-of-way.

Exclusive BNSF Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, and all Additions and Betterments thereto, not included at any given time within the definition of BNSF Trackage.

Exclusive UPRR Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, and all Additions and Betterments thereto, not included at any given time within the definition of UPRR Trackage.

GTM shall mean gross ton mile, which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

GTM Handled Proportion shall mean the GTMs operated by one of the parties over the Joint Trackage divided by the total GTMs operated by both parties over the Joint Trackage during the same time period. All movements over the Joint Trackage shall be counted for the purposes of computing such GTM Handled Proportion; provided, however, that (1) Equipment engaged in work service pertaining to inspection, construction, maintenance or operation of the Joint Trackage or changes in and/or Additions and Betterments or Improvements to the Joint Trackage shall not be so counted, and (2) GTMs of third parties (other than Louisiana & Delta Railroad, Inc., or its successors, ("L&D") whose use shall be attributed as provided at Section 4.1 below) shall be attributed to the party that admitted such third party or for whose benefit such third party was so admitted.

Joint Service Standards Committee shall mean a committee comprised of the chief transportation officers (or their designees) of UPRR and BNSF which shall be responsible for establishing appropriate rules or standards to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage.

Joint Trackage shall mean the BNSF Trackage and the UPRR Trackage, collectively.

Light Engines shall mean one or more locomotive units not coupled to cars.

Management Services shall mean (1) the field management of, facility maintenance of, and making of Additions and Betterments or Improvements to, the Joint

Trackage, (2) provision and performance of all work and services necessary to facilitate, or incidental to, the operation and use of the Joint Trackage pursuant to and in accordance with the terms of this Agreement, and (3) provision and furnishing of all Equipment and employees in the management, control and maintenance of the Joint Trackage. The Management Services do not include any of the services to be provided under the Property Management Agreement.

Manager shall mean UPRR with reference to the performance of Management Services on the UPRR Trackage, and BNSF with reference to the performance of Management Services on the BNSF Trackage.

Project shall mean the establishment of the CDC and the relocation of certain existing dispatching functions of the parties to the CDC.

Property Accounts shall mean the accounts so designated in the applicable STB accounting classification for railroad companies in effect from time to time.

Property Exchange Agreement shall mean the Property Exchange Agreement of September 1, 2000, between BNSF and UPRR.

Property Management Agreement shall mean the Property Management Agreement of September 1, 2000, between BNSF and UPRR.

Purchase and Sale Agreement shall mean the Purchase and Sale Agreement of December 11, 1996, between BNSF and Southern Pacific Transportation Company.

Settlement Agreement shall mean that Agreement dated September 25, 1995, as amended and supplemented by the parties hereto and as conditioned by the STB, between Union Pacific Corporation, UPRR, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation ("SPRC"), Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP"), on the one hand, and The Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, concerning the proposed acquisition of SPRC by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to an application to the Interstate Commerce Commission in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.

STB shall mean the Surface Transportation Board or successor agency.

Term Sheet shall mean that Term Sheet Agreement between UPRR and BNSF covering Ownership and Operation of Lines In and Around Houston, Texas dated February 12, 1998.

UPRR Trackage shall mean (a) the portion of the mainline track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, as shown on the Print, including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which BNSF has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined above) as is now owned or controlled by UPRR or as is added to the ownership or control of UPRR.

User shall mean (1) BNSF with reference to BNSF's operation over the UPRR Trackage and (2) UPRR with reference to UPRR's operation over the BNSF Trackage.

Section 2. ACCESS

2.1 (a) UPRR and BNSF shall each have the right to serve all present and future industries or facilities originating or terminating traffic on the Joint Trackage.

(b) In the event that UPRR shall locate a New Customer Facility (as such term is defined at Section 2.2 (a) below) on or adjacent to the Exclusive UPRR Trackage, BNSF shall have the right to serve such New Customer Facility; provided, however, that BNSF shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive UPRR Trackage.

(c) In the event that BNSF shall locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage, UPRR shall have the right to serve such New Customer Facility; provided, however, that UPRR shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage.

(d) Whenever a New Customer Facility is to be located on the Joint Trackage, the Manager of that portion of the Joint Trackage shall notify the other party that such New Customer Facility is to be so located. Such notice shall be given as soon as

practicable after agreement between the Manager and the customer has been reached for the location of the New Customer Facility.

(e) At least forty-five (45) days prior to initiating service to an industry or facility, the non-Manager must elect, in writing, whether its service shall be (1) direct, (2) through reciprocal switch, (3) on a haulage basis for the fee calculated as shown on the example attached as Exhibit B, or (4) with the Manager's prior written agreement, using a third party contractor to perform switching for the non-Manager alone or both parties. If the party electing to provide service is not also the Manager of that section of Joint Trackage on which the customer to be served is located, such electing party shall provide its proposed rail service plan for the customer to the Manager in its notice of election on the manner in which service is to be provided, and the Manager shall within twenty-two (22) days of its receipt of such notice either (i) notify the electing party of its approval or disapproval of such rail service plan, which approval shall not be unreasonably withheld, or (ii) if the Manager disapproves of such rail service plan, submit to the electing party a revised rail service plan as to such customer. In the event such revised rail service plan is unacceptable to the electing party, the Manager shall provide service, comparable to its own, on behalf of the electing party on an interim basis at a fee determined by the election choices of this Agreement until the parties mutually agree upon a rail service plan or one is established by arbitration pursuant to Section 10 below. The non-Manager, having elected to initiate service pursuant to this Agreement or when already providing service to a customer under a previous election pursuant to the Settlement Agreement, shall have the right, upon one hundred eighty (180) days' notice to the Manager, to change its election; provided, however, that the Non-Manager (x) shall not change its election more often than once every five (5) years and (y) shall reimburse the Manager for any costs incurred by the Manager in connection with such changed election.

2.2 (a) A party to this Agreement ("Party X"), unless it elects in writing not to participate, shall pay fifty percent (50%) of the other party's ("Party Y") cost and expense of (1) constructing any connecting and access tracks and switches (each, a "New Customer Improvement") for new industries or facilities originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, a "New Customer Facility") upon Party X's election to serve a New Customer Facility, and/or (2) upgrades ("Existing Customer Improvements") to connecting and access tracks and switches required to serve an existing industry or facility originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, an "Existing Customer Facility") (New Customer Facilities and Existing Customer Facilities are hereinafter collectively referred to as "Customer Facilities", while Existing Customer Improvements and New Customer Improvements are hereinafter collectively referred to as "Improvements").

(b) Improvements that Party X elects to participate in the cost and expense of constructing shall progressively during construction become a part of the Joint Trackage either: (i) if the Improvement itself connects directly to any portion of the Joint Trackage defined in subsection (a) of the definition of BNSF Trackage or subsection (a) of the definition of UPRR Trackage, become a jointly owned part of the Joint Trackage; or (ii) if the Improvement itself does not connect directly as described in (i) above, become Customer Access Trackage. Party Y shall promptly execute the necessary conveyances to transfer one-half ownership of any Improvements that become jointly owned under the foregoing sentence. Should Party X decline to participate in the cost and expense of constructing Improvements, Party X shall be denied access to the Customer Facility served by such and the Improvements then shall not become a jointly owned part of the Joint Trackage (except that if any part of the same was already a part of the jointly owned Joint Trackage, it will remain so), but will become Customer Access Trackage.

(c) Should Party X elect at a later date to serve a Customer Facility served by Improvements the cost and expense of constructing it previously declined to participate in (and thus was denied access to), such right shall be granted to Party X by Party Y upon payment of fifty percent (50%) of Party Y's cost and expense of the Improvements plus per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date of use by Party X, such Improvements shall become part of the Joint Trackage as described in Section 2.2 (b) above. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

Section 3. MAINTENANCE, OPERATION, AND CONTROL

3.1 UPRR shall manage the UPRR Trackage and BNSF shall manage the BNSF Trackage. Manager shall have sole charge of the maintenance and repair of its respective portions of the Joint Trackage, including, without limitation, ordinary and routine replacement of ties, rails and other track and signal equipment, with its own supervisors, labor, materials and Equipment. Any work projects performed pursuant to this Section 3.1 shall become a part of the Joint Trackage or, in the case of retirements, shall be excluded from the Joint Trackage. By September 1 of each year during the term of this Agreement (1) UPRR will advise BNSF of its anticipated programmed maintenance on the UPRR Trackage for the succeeding calendar year, and (2) BNSF will advise UPRR of its

anticipated programmed maintenance on the BNSF Trackage for the succeeding calendar year.

3.2 Unless otherwise mutually agreed to by the parties in writing, Manager shall, (1) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Term Sheet, including any special instructions for the Joint Trackage as of the date of the Term Sheet, (2) maintain at least the physical capacity of the Joint Trackage as of the date of the Term Sheet (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (3) be responsible, as provided for in Section 5.1, for any Additions and Betterments to the Joint Trackage as shall be necessary to accommodate the traffic of the parties while maintaining existing service standards (including transit times) in effect on the date of the Term Sheet. Manager shall also make such Additions and Betterments to its respective portion of the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction. Additions and Betterments to the Joint Trackage that are for the exclusive benefit of User shall be performed by Manager at User's sole cost and expense. In the event that either party desires to perform Additions and Betterments to the Joint Trackage to improve it to a condition in excess of the standard set forth in this Section 3.2, such Additions and Betterments shall be referred to the Joint Service Standards Committee for approval. Any question or controversy arising with respect to the undertaking of Additions and Betterments pursuant to this Section 3.2 that cannot be resolved by the Joint Service Standards Committee within sixty (60) days following its submission shall be submitted for arbitration pursuant to Section 10 below.

3.3 Manager shall employ all persons necessary to construct, operate, maintain, repair and renew its respective portion of the Joint Trackage. Manager shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in management of the same. Manager shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Manager's personnel.

3.4 Field management of the Joint Trackage shall at all times be under the exclusive direction and control of Manager. Operation (including dispatching) of the Joint Trackage and the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of the CDC in accordance with the Consolidated Dispatching Center Agreement dated March 15, 1998, and such reasonable operating rules as Manager shall from time to time institute; provided, however, that in the management, operation (including dispatching) and maintenance of the Joint Trackage, Manager and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with the CDC's dispatching and signaling facilities. The parties

shall consult with each other prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

3.5 The Joint Service Standards Committee shall meet on a regular basis, including an annual meeting to be held on or about September 15 of each year during the term of this Agreement; provided, however, that during the first year of operation under this Agreement the Joint Services Standards Committee shall meet not less often than every three (3) months. Thereafter, the Joint Service Standards Committee shall meet when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between trains of Manager and trains of User, grievances over the handling of particular trains or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Joint Service Standards Committee may decide to consider. The Joint Service Standards Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Manager and User. Either party may request a special meeting of the Joint Service Standards Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Joint Service Standards Committee where appropriate to address immediate concerns of either party. It is expected that the work of the Joint Service Standards Committee shall be undertaken in a spirit of mutual cooperation consistent with the principle of non-discrimination in service expressed in this Agreement.

3.6 The annual Additions and Betterments program for the next year shall be prepared and submitted by the Manager to the Joint Service Standards Committee prior to September 1 of each year during the term of this Agreement.

3.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other party for loss, damage or expense caused by or resulting from such interruption or delay.

3.8 Manager may from time to time provide any track or tracks other than those delineated in Exhibit A to this Agreement for use by User hereunder provided there shall at all times be afforded User a continuous route of equal utility for the operation of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, this Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

3.9 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes such labor, fuel or train and other supplies to the other party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

3.10 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

3.11 Except as otherwise may be provided in this Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Manager, they shall be required to pass the applicable rules examinations required by Manager of its own employees. Manager shall delegate to specified User officers the conduct of such examinations in the event User chooses to conduct such examinations. If an officer of Manager conducts such examinations of employees of User, User shall pay Manager a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations.

3.12 If any employee of a party shall neglect, refuse or fail to abide by rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of the other party, be prohibited by the party employing such employee from working on the Joint Trackage. 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, then upon such notice presented in writing, the parties 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 a party's employees shall be given by the officers of such party, and such investigation shall be conducted in accordance with the terms and conditions of labor agreements between such party and its employees. If, in the judgment of the party not employing such employee, the result of such investigation warrants, such employee shall, upon written request by such party, be withdrawn by the employing party from service on the Joint Trackage, and the employing party shall release and indemnify the other party from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User 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 thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

3.13 If any Equipment of User is bad ordered en route on the Joint Trackage and (1) it is necessary that it be set out, and (2) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired and picked up by User. Manager may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Manager while in any manner so engaged or while en route to or returning to Manager's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Manager's employees after repairing such bad ordered Equipment for User move directly to perform service for Manager's benefit rather than return to Manager's terminal, then User's exclusive time and liability will end when Manager's employees depart for work to be performed for Manager's benefit. In the case of such repairs by Manager to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR") (the "Interchange Rules"), in effect on the date of performance of the repairs. Manager shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under the Interchange Rules, and Manager shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Manager also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under the Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 7 of this Agreement.

3.14 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Manager, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case employees of User shall consult with and be governed by the directions of Manager. Manager reserves the right to rerail Equipment of User when, in the judgment of Manager, Manager deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 9 of this Agreement. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.15 In the event Equipment of either party shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among such party's employees, or due to mechanical failure of such Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 3.13), or to any other cause not resulting from an accident or derailment (including the failure of such party to promptly repair and clear bad ordered Equipment pursuant to Section 3.13), and such Equipment is unable to proceed, or if a train of either party fails to maintain the speed required by Manager on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of a party's trains on the Joint Trackage, the other party shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew the train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. Any Equipment or Employee of a party so furnished shall for purposes of liability be considered the Sole Property and Sole Employee of the other party. The reasonable costs and expenses of rendering such assistance shall be borne by the party receiving assistance from the other party. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.16 User, at Manager's request, shall be responsible for reporting to Manager the statistical data called for in this Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

3.17 User shall have the right to establish crew points at various locations along the Joint Trackage as may be mutually agreed to in writing between the parties from time to time. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Manager may require User to construct additional trackage in the vicinity of such location as may be required in the reasonable judgment of Manager, the cost and expense of which shall be borne by User. In the event such trackage is constructed at the cost and expense of User, and Manager shall choose to use such trackage, Manager shall pay User fifty percent (50%) of the cost of constructing such trackage, plus interest as calculated pursuant to Section 2.2 above. In addition, Manager shall lease to User by separate written agreement, existing facilities, for office, locker, change and lunchroom purposes by User's personnel upon request of User to Manager, and as reasonably available, or property as reasonably available for User to establish its own facilities.

3.18 The terms and conditions applicable to the management of the real property underlying the Joint Trackage which is subject to the Property Exchange Agreement shall be contained in a separate agreement to be entered into between the parties.

Section 4. ADMISSION OF THIRD PARTIES; PROVISION OF HAULAGE SERVICES.

4.1 Except for rights in existence on February 12, 1998, neither party shall admit a third party to the use of the Joint Trackage or provide haulage services thereover without the prior written consent of the other party; provided, however, that either party may use L&D as its agent to provide service over the Joint Trackage without obtaining the prior written consent of the other party with the following understandings:

- (a) Any agreement entered into between either party and L&D subsequent to the effective date hereof shall fully comply with all terms and conditions of this Agreement;
- (b) BNSF shall assume and guarantee all liabilities arising from L&D's operations as BNSF's agent;
- (c) UPRR shall assume and guarantee all liabilities arising from L&D's operations as UPRR's agent;
- (d) L&D usage of the Joint Trackage for the benefit of one party shall be considered the usage of such party for purposes of allocating liability and calculating the parties' respective usage shares;
- (e) L&D usage of the Joint Trackage for the benefit of both parties shall be considered the usage of each party to the extent each benefits from such usage (e.g., on a GTM proportion basis) for purposes of allocating and calculating the parties' respective usage shares; and
- (f) Either party may interchange with L&D at Lafayette, Louisiana and other locations as agreed by the parties in writing from time to time.

As of the date hereof, UPRR shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&D pay any additional rental or other fee if traffic is routed via BNSF.

Section 5. ADDITIONS AND BETTERMENTS

5.1 Manager shall construct such Additions and Betterments to the Joint Trackage with an estimated cost of One Hundred Thousand Dollars (\$100,000) or less per project as Manager or User shall deem desirable for the safe, efficient and economical use of the Joint Trackage by both parties. Before commencing construction of Additions and Betterments with an estimated cost greater than One Hundred Thousand Dollars (\$100,000) per project for use by both parties, Manager shall secure the written approval of User. Neither party shall unreasonably withhold its written approval of any project

proposed by the other party for the safe, efficient and economical use of the Joint Trackage by both parties. All Additions and Betterments to the Joint Trackage shall progressively during construction become part of the Joint Trackage. Manager shall have the right to include as a part of the cost of Additions and Betterments any engineering costs related to Additions and Betterments to the Joint Trackage.

5.2 Either party shall have the right to construct, or have constructed for it, Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage and facilities connecting to the Joint Trackage, provided that such construction is performed in such a manner as not to impair the other party's use of the Joint Trackage. Except as provided in Section 5.3 below, the party not constructing, or having the construction performed for it, shall have the right to jointly use such industrial trackage or other trackage and facilities or any portion thereof (1) as soon as it is placed in service and upon payment of one-half of the cost of construction, or (2) at any time subsequent to such construction by payment of an amount equal to (a) one-half of such cost of construction, plus Additions and Betterments, less retirements, and (b) per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date such party's use commences, said Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage or facilities shall become part of the Joint Trackage. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate.) Upon the exercise of such election to take use and the payment as prescribed, such industrial trackage or other trackage and facilities or portion thereof shall be deemed equally jointly owned, and become a part of the Joint Trackage.

5.3 Either party shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, along the Joint Trackage pursuant to the following terms and conditions:

- (a) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;

- (b) Such exclusively owned or leased ~~and used facilities~~ shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and
- (c) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value, except for properties identified in Exhibit "C" .

Each party has identified in Exhibit "C" any area or areas where it currently anticipates it will need such exclusively owned or leased and used facilities. Each party hereby agrees to reserve for the construction of such exclusively owned or leased and used facilities property currently owned by it at the area(s) identified with its name in Exhibit "C".

Section 6. SETTLEMENT AGREEMENT ESCROW ACCOUNT

Notwithstanding any other provision of this Agreement to the contrary, UPRR shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement up to the amount in the escrow account established pursuant to Section 10c of the Settlement Agreement (approximately principal of \$10.5 million plus interest) (the "Escrow Account"). After the expenditures equal the amount in the Escrow Account, further expenditures shall be allocated as set forth above in this Agreement.

Section 7. COMPENSATION AND BILLING

7.1 Accounting as prescribed by the STB from time to time will be followed for purposes of this Agreement, except as provided in Sections 1.1 and 7.5.

7.2 Each of the parties shall bear one-half of the costs properly chargeable to capital account and its cost (or other accounting treatment) for retirement of its one-half of any depreciable property in connection with the Joint Trackage. Either party incurring costs properly chargeable to capital account in constructing Additions and Betterments or Improvements to the Joint Trackage shall progressively bill the other party hereto one-half of the cost incurred subject to adjustment when the Roadway Completion Report is received. The progressive billing shall be made not more frequently than monthly within thirty (30) days of the close of the month in which the billing party charges its fifty percent

(50%) of the cost to its appropriate capital account and the amount of such progressive billing shall not exceed the fifty percent (50%) so charged by the billing party.

7.3. Except as otherwise provided in Section 7.5, Manager will, on the first day of each month, render to User a bill for User's estimated share of the estimated cost incurred by Manager in controlling operations over, maintaining, repairing and renewing the Joint Trackage for that month. User shall pay that bill by the twentieth day of the same month. Each party shall furnish to the other within fifteen (15) days subsequent to the close of each calendar month during the term of this Agreement a statement of its usage (in GTMs) of the Joint Trackage during such month. Since User's actual GTM Handled Proportion for the month will not be known until the end of the month and since the actual costs will similarly not be known until some later date, the bill rendered to User shall be an estimate derived from the latest preceding month for which actual cost and User's actual GTM Handled Proportion of such cost is known. Promptly after identifying the actual costs and User's actual GTM Handled Proportion for the month covered by the estimated bill, Manager shall render to User a statement showing User's actual GTM Handled Proportion of such actual cost for the month. In the event User's actual GTM Handled Proportion of such cost for any month shall exceed its estimated payment for that month, Manager shall include a bill for such difference with a statement of actual cost and User shall pay said bill within thirty (30) days of its receipt thereof. In the event User's actual GTM Handled Proportion of such cost for any month shall be less than its estimated payment for that month, Manager shall include a refund payment for such difference with a statement of actual cost. In the event User shall fail to provide Manager with User's GTMs for any particular month by the 15th day as provided for in this Section, Manager may compute User's actual GTM Handled Proportion by using the latest monthly GTM Handled Proportion available and make the appropriate adjustment in subsequent monthly billing.

7.4 Each of the parties hereto shall pay one-half of any taxes or assessments levied by any governmental body, municipal or otherwise, on the Joint Trackage.

7.5 The parties hereto agree that the current cost of replacement in kind of track materials replaced under AFE or similar programmed work authority will be shared between them on an annual Gross Ton Mile Proportion for the calendar year in which the expense is incurred for the replacement in kind.

7.6 In the event either party hereto shall fail to receive any monies due from the other party hereto within the time period specified in this Agreement, or if not specified, within thirty (30) days of receipt of billing, the party so failing shall add an amount to the payment of such delinquent monies equal to 1/365th of the sum of the (1) effective annual rate of return on 180-day U. S. Treasury Bills plus (2) two percent (2%), for each day the payment is delinquent commencing with the date the payment was due and continuing until and including the date the payment is received. The rate of return on the first issue of

such Treasury Bills in January of any year shall be used for the period January through June 30 of such year, and in July of any year shall be used for the period July 1 through December 31 of such year. The delinquent payment additive provided for herein shall be (1) compounded monthly, and (2) the lesser of (a) the amount calculated as set forth above, or (b) the maximum amount permitted by law.

7.7 Bills containing clerical errors will not be deemed a valid reason for delaying payments. Any bills containing minor errors (errors of less than \$5,000) shall be paid subject to adjustment in subsequent billing. Bills containing major errors (errors of \$5,000 or more) may be reduced by the amount of the major error. Adjustments of clerical errors of less than \$5,000 requested by either party and not made within sixty (60) days after receipt of such request shall thereafter become subject to the same delinquent payment additive provided for in Section 7.6. Disputed items in excess of \$5,000 shall be subject to the same delinquent payment additive as provided in Section 7.6 if payment is due and withheld, or a similar credit if paid and subsequently refunded; provided, however, that no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month in which the expense covered thereby is incurred, except that there will not be any time limitation in connection with liability and casualty claims or capital expenditures and related operating expenses accounted for under authority for AFEs or in the case of claims disputed as to amount or liability. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims. Notwithstanding the delinquent payment additive provisions hereinbefore provided, in the event either of the parties shall fail to make one or more payments within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or nonpayment shall constitute a default and thereafter the party hereto not in default shall have the right to exercise any and all of the actions, remedies or privileges hereinafter provided for defaults.

7.8 Except as otherwise specifically provided for in this Agreement, bills rendered pursuant hereto shall be prepared in conformance with the standard practices of the party rendering the bill. Such billings, including surcharges, Equipment rental and other rates, will be based on cost, and such surcharges, Equipment rental and other rates will be subject to revision from time to time to reflect changes in costs. A one percent (1%) surcharge will be applied in lieu of the material surcharge in the billing party's standard billing practice to material placed under AFE or similar programmed work authority when the material is delivered to the job site from suppliers or processors such as rail welders or tie treaters and not from existing stock. Secondhand material prices, including, without limitation, rail, shall be equal to fifty percent (50%) of the cost of new materials at the time the materials are applied to or released from the Joint Trackage. Scrap materials shall be priced at the current market scrap prices received by Manager at the time of removal from

the Joint Trackage. Either of the parties shall have the option to receive fifty percent (50%) of the amount(s) received from the salvage of any retired depreciable property or a portion of the salvage from any retired non-depreciable facilities equal to its GTM Handled Proportion for the calendar year in which the retirement occurred in lieu of receiving a credit for the value of the salvage in the maintenance and operation bills. For the purposes of this Section, salvage from track materials replaced in kind or the value thereof shall be apportioned on an annual GTM Handled Proportion basis for the calendar year in which salvage occurred.

7.9 So much of the books, accounts, and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the other party hereto.

Section 8. COMPLIANCE WITH LAWS

8.1 With respect to operation of Equipment on the Joint Trackage pursuant to this Agreement, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

8.2 Each party (i) agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials") and covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 8.2 and Section 8.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by a party to this Agreement (the "Derailing Party") carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of the Derailing Party. The Derailing Party shall also immediately advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Manager, if other than the Derailing Party.

Manager shall assume responsibility for cleaning up any release of Hazardous Materials from Equipment involved in a Derailment on that section of the Joint Trackage for which it provides Management Services in accordance with all federal, state, or local regulatory requirements. The Derailing Party may have representatives at the

scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 9 of this Agreement.

If a Hazardous Materials release caused by a Derailment results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by a party to this Agreement or a third party), Manager shall assume responsibility for emergency cleanup conducted to prevent further damage. The Derailing Party shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 9 of this Agreement.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment, the Derailing Party shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Manager, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 9 of this Agreement. Transfers of Hazardous Materials by a Derailing Party shall only be conducted after being authorized by Manager.

8.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 9 of this Agreement.

8.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 8.2 and 8.3 of this Agreement.

Section 9. LIABILITY

9.1. The provisions of this Section 9 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 9, no provisions hereof shall be deemed to deprive either party of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this

Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 9 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

9.2 The parties agree that for the purposes of this Section 9:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by one party to assist in operating Equipment of the other party shall be considered the Sole Employees of such other party while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;
- (c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;
- (d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

- (e) **"Loss and/or Damage"** shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except (other than as provided in Section 9.5(c)) liability for punitive and exemplary damages. Loss and/or Damage shall 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. 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;
- (f) Operating Employees of a party whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 9.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) **"Third Party"** shall mean any person or entity other than (i) a party hereto, (ii) a Sole Employee of either party, (iii) a Joint Employee, or (iv) an invitee of either party;
- (i) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a Third Party. Without limiting the generality of the foregoing, neither of the

~~parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;~~

- (j) For the purpose of this Section 9, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

9.3 The parties agree that:

- (a) ~~Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 9, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgments shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;~~
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by Third Party or Parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9;
- (d) User shall provide written notice to the other party of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;
- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 9 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 9.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 9, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows:
If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were

involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Manager shall investigate and defend such claim or suit unless resulting from an incident covered under Section 9.5(c) in which case said Section shall govern; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

9.4 The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or derailment.

9.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property).
- (b) Loss and/or Damage to Third Parties or their property (other than Third Parties involved in any crossing accident on the Joint

Trackage), to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

- (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, or only one party is involved (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property), that party shall bear and pay all of such Loss and/or Damage.
- (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, or occurs in such a way that it cannot be determined how such Loss and/or Damage came about, such Loss and/or Damage (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property) shall be apportioned between the two (2) parties to this Agreement, and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ten miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of this Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of this Agreement. User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.
- (c) As to claims by Third Parties against either party hereto for grade crossing accidents, it is understood and agreed that a number of vehicular crossings of the Joint Trackage presently exist, or may be constructed. Each party agrees, as an equal owner of the Joint Trackage, to accept all crossings in whatever condition they may be during the term of this Agreement, and that neither party will assert any claim, demand or cause of action against the other party hereto that a crossing is inadequate, defective, or extra hazardous. In any crossing accident on the Joint Trackage in which only one party's Sole Property is involved, that party will investigate, defend,

indemnify, and hold harmless the other from and against any claim, demand or cause of action by any Third Party for actual damages arising out of the crossing accident on the Joint Trackage. Notwithstanding anything in this Section to the contrary, in any crossing accident in which only one party's Sole Property is involved, and that same party, pursuant to this Agreement, is responsible for maintenance of the portion of the Joint Trackage on which the crossing accident occurred, then that party will additionally investigate, defend, indemnify, and hold harmless the other party from and against any claim by a Third Party for punitive damages arising from the crossing accident.

- (d) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in this Section 9.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable or allocated fault for the acts or omissions (negligent or otherwise) of any other party's Employee.

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

Section 10. ARBITRATION, PROCEEDINGS AND AWARD

10.1 If at any time a question or controversy shall arise between the parties hereto touching the construction of any part of this Agreement or concerning the business or manner of transacting business carried on under its provisions, or concerning the

observance or performance of any of the conditions herein contained, or the rights or obligations of any party under or arising from this Agreement upon which question or point in controversy the parties cannot agree, such question or controversy shall be submitted for arbitration to a disinterested person or persons familiar with such business and experienced in railway management as hereinafter provided. Such question or controversy shall be submitted to a single competent disinterested arbitrator if the parties hereto are able to agree upon such single arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party to such question or controversy. If such single arbitrator cannot be agreed upon before the expiration of such period of twenty (20) days, such arbitration shall be had before a board of three competent and disinterested persons to be named as follows: The party demanding such arbitration shall give the other party notice of demand, stating specifically the question or questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualifications to act as one (1) arbitrator. The party hereto to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator having like qualifications, the party making the demand may make such selection. The first and second arbitrators chosen shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief Judge (or Judge acting as Chief Judge) of the United States District Court for the Southern District of the State of Texas.

10.2 Upon the selection of the single arbitrator if there shall be just one (1), or upon completion of the selection of such board of three (3) arbitrators, the said arbitrator, or board, shall proceed at once with reasonable diligence to inquire into and determine the questions and controversies at issue as disclosed in the notice of arbitration and shall give to both parties reasonable notice of the time and place (of which the arbitrator or arbitrators shall be the judge) where the arbitrator or arbitrators may take such evidence as may be deemed reasonable or as either party may submit, without requiring witnesses to be sworn, and may hear arguments of counsel or others. If any arbitrator shall decline or fail to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering the evidence and hearing the testimony and arguments which may be submitted by each party, said single arbitrator, or the majority of such board of arbitrators (as the case may be), shall state such decision or award in writing within ninety (90) days of the final submissions by the parties, which decision or award, when delivered to both parties, shall be final, binding and conclusive upon both parties, and each party hereby expressly agrees to be bound conclusively thereby as to any of the matters submitted to arbitration. Until the single

arbitrator, or board of arbitrators, as the case may be, shall issue the first decision or make the first award upon any question or controversy so submitted for arbitration, the business, settlements and payments to be transacted and made under the terms of this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such questions. Immediately after such first decision or award, each party shall forthwith make such changes in the conduct of its business, or such payments or restitution, as the case may be, as are in and by such decision or award required of it to be made.

10.3 The books and papers of both parties as far as they relate to any matter submitted to arbitration shall be open to the examination of the arbitrator or arbitrators, as the case may be. 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.

Section 11. DEFAULT

11.1. In the event of default by either of the parties with respect to the payment of monies due the other pursuant to the terms of this Agreement, the party to whom such money is owed shall have the right to offset against any monies whatsoever, except divisions of revenues, it may then or thereafter owe the party in default. This right to offset shall be in addition to any other rights or remedies available to the party not in default and shall prevail notwithstanding provisions, if any, in any other agreements to the contrary.

11.2. In the event either of the parties shall fail to make one or more payments of monies due the other party pursuant to this Agreement within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or non-payment shall constitute a non-payment default. In the event of a non-payment default, and provided the non-defaulting party delivers notice of its intention to rely on this Section 11.2 in connection with such default to the other party in default not less than thirty (30) or no more than sixty (60) days prior to the expiration of the six month default period specifying the bill or bills payment of which is overdue, the non-defaulting party may file an application with the appropriate authorities, if necessary, seeking authority for the party in default to cease operations over the Joint Trackage. The party in default shall cooperate with the non-defaulting party in seeking authority for such cessation of operations, and if such authority is obtained, or if such authority is not required, the party in default shall cease operations over the Joint Trackage as quickly as it can legally do so and continue such cessation until the default has been cured.

Section 12. NOTICES

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

If intended for UPRR:

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

With a copy to:

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

If intended for BNSF:

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

With a copy to:

-AVP Joint Facilities
2600 Lou Menk Drive
P. O. Box 961034
Ft. Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 12.

Section 13. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 14. EFFECTIVE DATE AND TERM

This Agreement shall become effective as of the date first hereinabove written and shall remain in full force and effect for a term of ninety-nine (99) years.

Section 15. LAWS GOVERNING

This Agreement shall be interpreted in accordance with the laws of the State of Texas.

Section 16. ASSIGNABILITY

16.1 Except as provided in the sentence immediately following, this Agreement and any rights granted hereunder may not be assigned in whole or in part by either party hereto without the prior written consent of the other. This Agreement may be assigned by either party without the prior written consent of the other only (1) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (2) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties

16.2 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 in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 17. ENTIRETY, AMENDMENTS, AND WAIVERS

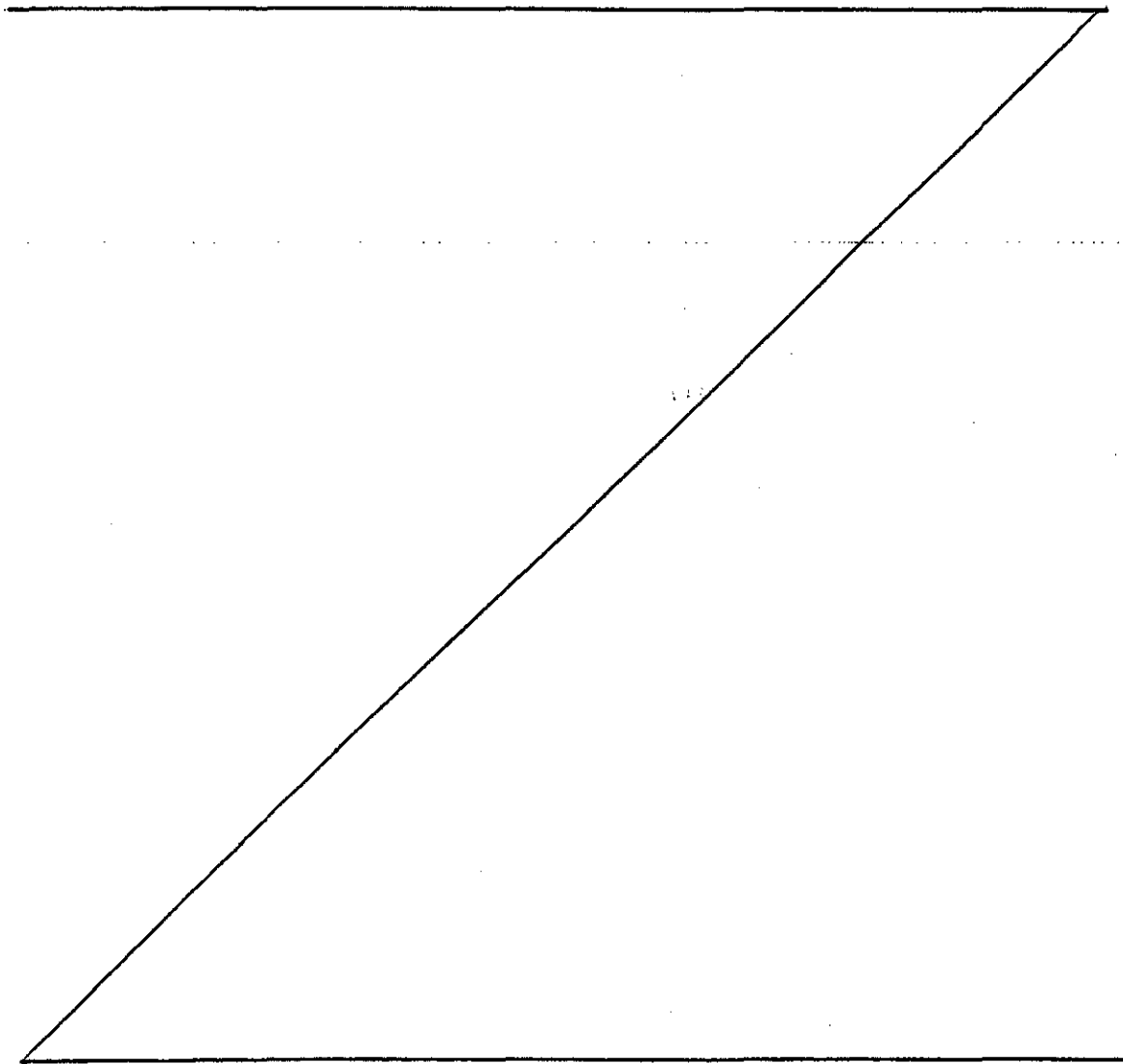
~~17.1 This Agreement is entered into to implement certain provisions of the~~ Term Sheet. The provisions of the Term Sheet shall govern in the event of any conflict with the provisions of this Agreement except as to Sections 3 and 9. Notwithstanding the first sentence of this Section 17.1, nothing in this Agreement shall affect, expand or diminish the rights and obligations of the parties under the Property Exchange Agreement and the Purchase and Sale Agreement. All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

17.2 The parties acknowledge that they have previously entered into a trackage rights agreement dated June 1, 1996 (the "June 1, 1996 Agreement"), providing for BNSF operation over UPRR trackage between Houston, Texas and Iowa Junction, Louisiana as well as BNSF operation over UPRR's Baytown Branch, and (2) a trackage rights agreement dated September 10, 1998 (the "September 10, 1998 Agreement"), providing for BNSF operation over UPRR trackage between Beaumont, Texas and Port Arthur, Texas. The June 1, 1996 Agreement and the September 10, 1998 Agreement will be modified, by actions separate from this Agreement, to reflect changes required by the Term Sheet and shall continue in existence pursuant to their terms as so modified. The agreement between UPRR and BNSF dated as of June 1, 1996, by which BNSF granted UPRR trackage rights over BNSF trackage between Iowa Junction, Louisiana (BNSF MP205.3) and Avondale, Louisiana (BNSF MP 14.94) is hereby terminated.

17.3 Any branches and spurs constructed after the date of this Agreement (i) on the former SP Lafayette Subdivision between Dawes, Texas (MP 353.0) and Avondale,

Louisiana (MP 14.94), or (ii) on its former SP branches and spurs, shall be treated as Improvements and governed by this Agreement. Obtaining any STB approval required for such construction shall be the responsibility of the constructing party.

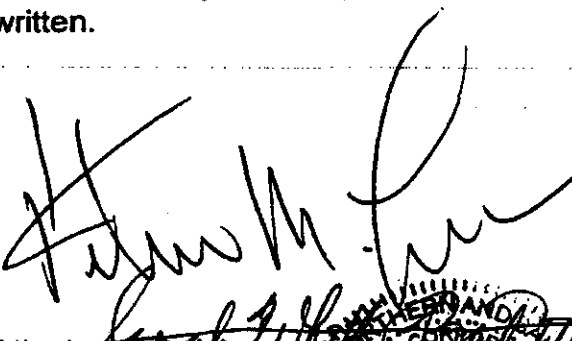
17.4 The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligations or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

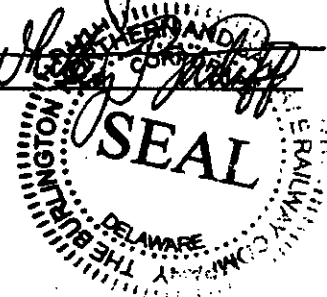


Section 18. GOVERNMENTAL APPROVAL

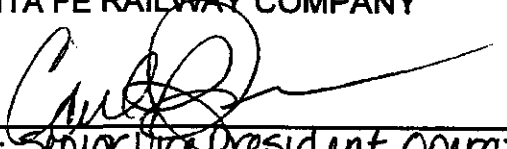
In the event that service to any Customer Facilities hereunder requires the operation by one party over trackage of the other which is subject to the jurisdiction of the STB, the party proposing to so operate shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the operations to be carried on and any agreement between the parties with respect thereto. The other party, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. Each of the parties agrees to cooperate fully to procure all such necessary consent, approval, or authority.

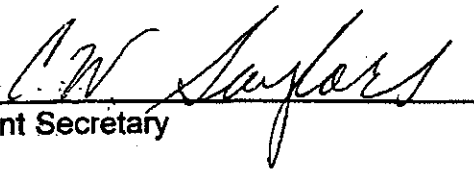
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first hereinabove written.

Attest: 
 Assistant Secretary

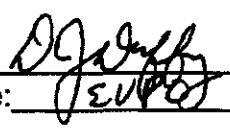


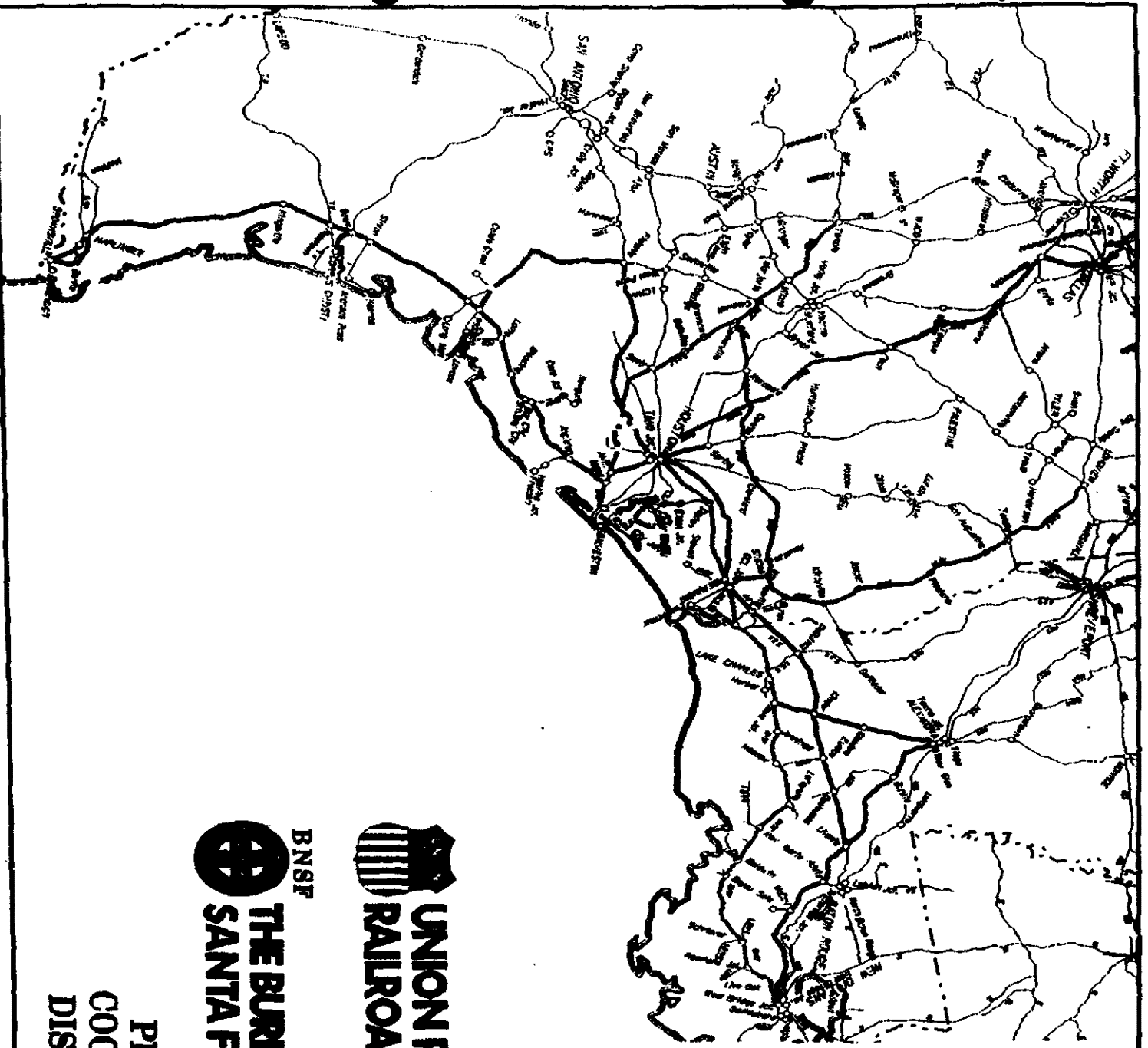
THE BURLINGTON NORTHERN AND
 SANTA FE RAILWAY COMPANY

By: 
 Title: Senior Vice President Operations

Attest: 
 Assistant Secretary

UNION PACIFIC RAILROAD COMPANY

By: 
 Title: General Counsel



BNSF
THE BURLINGTON NORTHERN & SANTA FE RAILWAY

EXHIBIT "A"
PROPOSED
COORDINATED
DISPATCHING

Dated February 12, 1993 FILE: 0-030, 0-04
 PFS: MOW

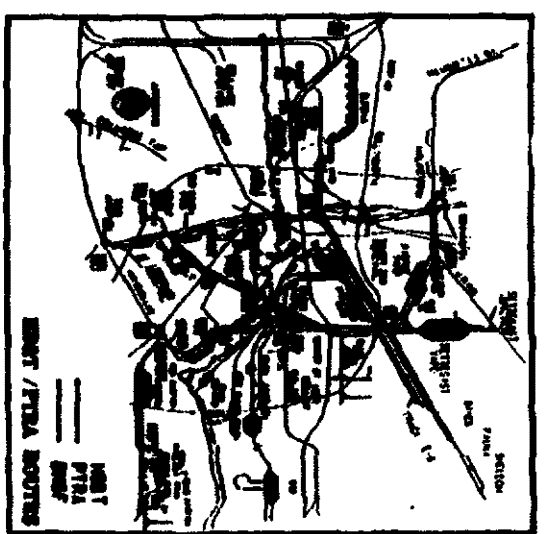
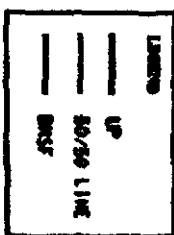


EXHIBIT B*

<u>Between:</u>	<u>Mileage</u>	<u>Roundtrip</u>	<u>Charges</u> <u>On/Off+Miles+Recip=Total/Car</u>
Origin and Destination	15	30	$\$100 + \$15 + \$130 = \245
Reciprocal Switch (per load) within Switching District	--	--	$NA + NA + \$130 = \130

* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with Settlement Agreement

EXHIBIT "C"

UP Dayton, TX – south side of mainline between MP 326.92 and MP 330.36
Orange, TX – south side of mainline between MP 258.21 and MP 258.91
Brimstone, LA – north side of mainline between MP 232.13 and 234.63
Lockmoor, LA – north side of mainline between MP 223.54 and 224.34
Lake Charles, LA – north side of mainline between MP 215.42 and MP 217.73

BNSF

Sheldon, TX -- in the vicinity of MP 343, sufficient property east of the San Jacinto
Bridge
Orange, TX – north side of main line between MP 255 and MP 259.
Lockmoor, TX – south side of main line between MP 222 and MP 226.

BNSF

D. B. VALENTINE
AVP Contracts & Joint Facilities

The Burlington Northern
and Santa Fe Railway Company

2600 Lou Menk Drive
PO Box 961034
Fort Worth, TX 76161
Phone 817 352-4963
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November 4, 2003

Mr. George M. Sturm
General Manager Joint Facilities
Union Pacific Railroad Company
1416 Dodge Street Room 1200
Omaha, NE 68179

Dear George:

As a follow-up to my letter of September 8, and your letter of October 20, concerning compensation for the Joint Line Agreement dated September 1, 2000 between Dawes and Avondale, and resolution of several other issues between BNSF and UP including 1) Riverside to Daggett interest rental base additions; 2) Omaha Bridge counts for 1996; 3) Cheyenne interchange; and 4) HB&T car-mile/GTM rate, BNSF proposes the following as a negotiated settlement:

1. Effective October 1, 2003, the GTM Rate for UP Trackage covered by the Joint Line Agreement to include ordinary and capital maintenance and dispatching shall be set at 2.4 mills.
2. Effective October 1, 2003, the GTM Rate for BNSF Trackage covered by the Joint Line Agreement to include ordinary and capital maintenance and dispatching shall be set at 2.95 mills.
3. For each Movable Bridge Structure on the Joint Line that is automated, and bridge operators are no longer required, the applicable mill rate will be reduced by 0.06 mills. The date that any reduction would take effect would be the first day of the first full month following automation of the bridge and elimination of the need for bridge operators. Notwithstanding the first sentence of this paragraph, under no circumstance shall the GTM Rate for UP's use of the BNSF Trackage be less than the GTM Rate paid by BNSF for use of the UP Trackage. For the purposes of this letter agreement, Movable Bridge Structures shall be defined as those types of bridges that have draw, swing, lift or any other movable spans necessary for the passage of waterway vessels at waterway and railroad junctions along the Joint Line.
4. The rates in paragraphs 1, 2 and 3 shall be adjusted annually beginning on October 1, 2004, based on 100% of the change in the RCAF-U for the two prior years, but under no circumstances shall the adjusted rate be less than the initial base rate.

5. For the period September 1, 2000 through September 30, 2003 the GTM Rate for both the BNSF Trackage and the UP Trackage, as such are defined in the Agreement, shall be set at the rates provided for in the letter agreement between UP and BNSF, dated September 12, 2000.

6. Catastrophic expense for respective UP Trackage and BNSF Trackage over \$100,000 per incident shall be apportioned based on the prior 12-month GTM proportion.

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BNSF believes this comprehensive offer addresses the past and ongoing differential in the cost of operating and maintaining our respective portions of the Dawes to Avondale Joint Line. In addition, it will save our respective companies the cost of expensive third party handling of the Riverside to Daggett interest rental base issue. This is a comprehensive settlement and should only be considered as a package deal by UP. If UP is in agreement with this proposal, please execute this letter on behalf of BNSF and send a copy to me our file. BNSF will work with your designee to prepare the proper amendments to the applicable agreements.

If you have any questions in this regard, please do not hesitate to call me.

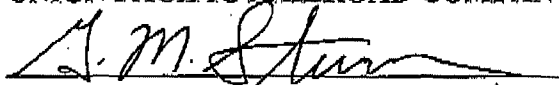
Sincerely,



D. B. Valentine

ACCEPTED AND AGREED:

UNION PACIFIC RAILROAD COMPANY



Title: *Gen. Mgr. JT. Facilities*

Exhibit E

The types of information and data BNSF would need to obtain through discovery to determine the appropriate method for calculating the *SSW Methodology* interest rental component include, but are not limited to, the following:

1. Timetables and track charts
2. Book gross investment and accumulated depreciation by asset category for assets on the Rosebluff Lead
3. Valuation maps
4. Land deeds and easement information
5. Valuations and/or appraisals
6. Historic line sales information
7. Traffic and revenue (waybill) data
8. Capital budget
9. Property taxes
10. Insurance payments
11. Traffic and revenue forecasts
12. Historical capital expenditures related to the Rosebluff Lead (10 years)
13. Operating expenses related to operations of the Rosebluff Lead
14. Maintenance of way related planned capital expenditures
15. Inventories of all physical assets and facilities owned by UP and/or KCS along the Rosebluff Lead
 - a. Rails
 - b. Ties
 - c. Ballast
 - d. Turnouts
 - e. Grading

- f. Bridges and culverts
- g. Communications systems
- h. Signal systems
- i. Crossings/crossing protection
- j. Detectors
- k. Fencing

16. Construction unit costs

17. Inflation forecasts

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2019, I served the forgoing BNSF's Compensation Information (BNSF-139) by electronic mail on counsel for UP and KCS.

A handwritten signature in black ink, appearing to read 'Peter W. Denton', with a long horizontal flourish extending to the right.

Peter W. Denton
Attorney for BNSF Railway Company