

214552

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FILED

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AUG 17 2005

August 17, 2005

**SURFACE
TRANSPORTATION BOARD**

BY HAND DELIVERY

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**ENTERED
Office of Proceedings**

AUG 18 2005

**Part of
Public Record**



Re: Finance Docket No. 32299 (Sub-No. 1) Norfolk Southern Railway
Company—Consolidation of Operations—CSX Transportation,
Inc.

Dear Secretary Williams:

I enclose for filing in the public docket in the above-captioned proceedings an original and 10 copies each of:

1. Joint Petition For Supplemental Order; and
2. Joint Motion For Protective Order.

I also enclose a check for \$200 as the filing fee for the Joint Petition For Supplemental Order pursuant to 49 C.F.R. § 1002.2(f)(88) and a 3.5" floppy disc containing the text of the Joint Petition For Supplemental Order and Joint Motion For Protective Order.

Also enclosed in a separate envelope for filing under seal are an original and 10 copies each of the high confidential versions of the Newberry Operating Rights Agreement and the Newberry Switching Rights Agreement that are the subject of the Joint Petition For Supplemental Order and Joint Motion For Protective Order.

Sincerely,

Richard A. Allen

FEE RECEIVED

AUG 17 2005

**SURFACE
TRANSPORTATION BOARD**

Encl.

214552

Before The
Surface Transportation Board

Finance Docket No. 32299 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY
—CONSOLIDATION OF OPERATIONS—
CSX TRANSPORTATION, INC.

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TRANSPORTATION BOARD

JOINT PETITION FOR SUPPLEMENTAL ORDER

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Attorneys for CSX Transportation, Inc.

*Attorneys for Norfolk Southern Railway
Company*

Dated: August 17, 2005

FEE RECEIVED
AUG 17 2005
SURFACE
TRANSPORTATION BOARD

Before The
Surface Transportation Board

Finance Docket No. 32299 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY
—CONSOLIDATION OF OPERATIONS—
CSX TRANSPORTATION, INC.

JOINT PETITION FOR SUPPLEMENTAL ORDER

Norfolk Southern Railway Company (“NSR”) and CSX Transportation, Inc. (“CSXT”) hereby petition the Surface Transportation Board (the “Board”) to issue a supplemental order pursuant to 49 U.S.C. § 11327 to permit NSR and CSXT to carry out a minor modification to one aspect of a series of transactions approved by the Interstate Commerce Commission (“ICC”) in a decision served November 26, 1993 in this proceeding.¹ The desired modification, in sum, is to have CSXT, rather than NSR, perform switching services for both carriers in the Newberry, SC area, a change that the carriers have concluded will improve the efficiency of both carriers’ operations and service to customers in the Newberry area.

Three maps of the affected line are attached as Exhibit 1. The first map shows NSR's existing overhead trackage rights, that NSR is retaining. The second map shows the NSR operating rights where NSR is ceasing operations. The third map shows CSXT's new operating rights.

¹ *Norfolk Southern Railway Company—Consolidation of Operations—CSX Transportation, Inc.*, ICC Finance Docket No. 32299 (ICC served November 26, 1993) (the “*Coordination Decision*”).

Specifically, NSR and CSXT seek a supplemental order to permit a modification in the approved operations whereby (1) NSR will cease operations over CSXT trackage between Milepost 33.1 and Milepost 47.5 in Newberry County, SC, which NSR uses to perform switching services in the Newberry, SC area for both itself and CSXT; and (2) CSXT will acquire rights over NSR tracks to operate (i) between NSR Milepost V 47.1 and NSR Milepost V 49.0 in Newberry County, SC and (ii) between NSR Milepost V 42.0 and NSR Milepost V 36.0 in Prosperity, SC, for the sole purpose of performing switching operations for the customers of both carriers.

STATEMENT OF FACTS

On July 7, 1993, NSR and CSXT filed an Application pursuant to 49 U.S.C. §§ 11343 (§ 11323) *et seq.* and 49 C.F.R. Part 1180 seeking ICC approval for the consolidation of certain operations in the State of South Carolina. The proposed consolidation consisted of a series of trackage rights agreements, joint use agreements and operating agreements. Two of those agreements concerned operations in the Newberry, SC area, where both railroads have lines and serve customers. These were (1) a 1993 Newberry Operating Rights Agreement (attached as Exhibit 2), and (2) a 1993 Newberry Switching Agreement (attached as Exhibit 3). These agreements provided that NSR would perform switching services for both railroads in the Newberry area, switching cars between interchange track in Newberry owned by CSXT and customers located on the lines of both railroads in Newberry and nearby Prosperity. The 1993 Newberry Switching Agreement detailed the terms of NSR's switching services, and in the 1993 Newberry Operating Rights Agreement CSXT granted NSR operating rights

over certain CSXT lines in the Newberry area necessary to permit NSR to switch cars to and from CSXT customers in the area.²

In the *Coordination Decision*, the ICC approved the Application. The ICC found the transactions collectively to be a “minor transaction” under the ICC’s rules, and it stated that “it is clear that there will be no change in the competitive balance between NS and CSXT in South Carolina as a result of the consolidation of operations.” *Id.* at 3. The ICC concluded that “the proposed transaction meets the criteria of section 11344(d)(1). There is little, if any, likelihood that competition will be substantially lessened or that there will otherwise be anticompetitive consequences. Indeed, no party claims any anticompetitive consequences, and we see none.” *Id.* at 3.

Based on their experience under the agreements approved in 1993, NSR and CSXT have concluded that a minor modification to one aspect of the transactions – the switching at Newberry – would improve the efficiency of operations and enhance rail service to their customers. At Newberry, the vast majority of linehaul shipments are for the account of CSXT. Under the 1993 agreements, NSR has performed the local switching for both carriers with its own crews. CSXT has provided the locomotives and maintains most of the tracks used in the switching operations.

This arrangement has proven inefficient. CSXT and NSR agree that service to their respective customers at Newberry would be improved if CSXT, rather than NSR, were to provide all switching services to CSXT and NSR customers at Newberry and nearby Prosperity. They have therefore entered into two agreements – the 2005

² Among the other agreements for which approval was sought in the 1993 application was an agreement giving NSR overhead trackage rights over CSXT’s line between Columbia, SC and Newberry, SC and an agreement giving NSR haulage rights over CSXT’s lines between Columbia, Newberry and Spartanburg, SC. None of those agreements are altered or affected by this petition.

Newberry Operating Rights Agreement (attached as Exhibit 4) and the 2005 Newberry Switching Agreement (attached as Exhibit 5) – under which, upon the effectiveness of any required exemptions or approvals by the Board, CSXT will provide the switching for both railroads in the Newberry area, NSR will grant CSXT the operating rights over NSR lines necessary to perform such switching to and from NSR customers, and NSR will cease use of the operating rights over CSXT lines that it acquired in 1993 to perform the switching.³

Because these proposed changes will constitute a modification of arrangements reviewed and approved by the ICC in 1993, CSXT and NSR believe it appropriate to seek the Board's authorization of the changes via this petition for a supplemental order under 49 U.S.C. § 11327. To effect these changes, CSXT and NSR jointly file this petition to (1) permit the cessation of NSR's switching operations over CSXT's tracks as set forth in the 1993 Newberry Operating Rights Agreement and (2) permit the operation by CSXT over NSR track for the purpose of conducting switching operations as set forth in the 2005 Newberry Operating Rights Agreement.

These changes will improve service to customers in the Newberry area and will have no adverse effect on competition between NSR and CSXT. NSR and CSXT will continue to have the same commercial access to their customers in the Newberry area as they had before and to new facilities that may locate on their lines in the future. NSR cars switched by CSXT to customers on NSR lines will continue to be in the account of NSR, and CSXT cars switched to customers of CSXT lines will continue to be in the

³ As noted above, NSR will continue to use the previously granted overhead trackage rights to access NSR trackage for service beyond the scope of the 2005 Newberry Switching Agreement.

account of CSXT. CSXT switching service will simply replace NSR switching service in a more efficient and economical manner.

ARGUMENT

49 U.S.C. § 11327 provides: “When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.” *See, e.g.*, STB Finance Docket No. 33388 (Sub-No. 94), *CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, (Nov. 7, 2003). Although “cause” under this provision has been described as an “elastic concept,”⁴ petitioners submit that the circumstances presented here clearly satisfy it. As explained above, based on a dozen years of operating experience and the way that rail traffic in the Newberry area has evolved during that time, the two carriers serving that area have determined that replacing NSR with CSXT as the switching railroad for both carriers’ customers will make both carriers’ operations more efficient and economical, without harming competition, and have negotiated new agreements that will effect that improvement. As the ICC noted in Finance Docket No. 30703, *Soo Line R. Co. – Joint Use of Lines – Chesapeake and Ohio Ry. Co.* (August 22, 1986) at 9: “We have long recognized that operating arrangements designed by carriers to promote more efficient or economical operations promote the national transportation policy and should be encouraged.”

This relatively minor modification of the operating arrangements in Newberry should have no adverse effect on shippers. On the contrary, the only likely effect of the

⁴ *People of the State of Illinois v. ICC*, 713 F.2d 305, 310 (7th Cir. 1983) (quoting *Dinko v. Wall*, 531 F.2d 68, 75 (2d Cir. 1976)).

proposed changes in NSR and CSXT operations on shippers in the Newberry area will be to improve service to those shippers. There will be no change in the commercial access of both railroads to their customers in the Newberry area. The proposed operational change will not reduce the number of competitive options available to those customers, nor will it otherwise alter the competitive balance between the railroads in the area. If anything, by improving the service to those customers, the change will make both railroads more competitive with other transportation modes.

Nor should the transaction have a significant adverse effect on employees of the carriers, who will be protected from such effects in any event. In approving the 1993 agreements, the ICC found it appropriate to impose the employee protective conditions established in *Norfolk and Western Railway Co. –Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980). Petitioners believe that the same conditions continue to apply to any employees that may be adversely affected by the transaction approved in 1993 or by the modification to that transaction proposed here.

NSR expects that the proposed changes in operations will result in the abolishment of a three-man switching assignment currently performing switching services in Newberry and any employee adversely affected will be covered by the above-cited employee protective conditions. However, it is anticipated that the employees currently assigned to that job will exercise seniority to other positions in their seniority district. NSR will, of course, provide appropriate notice of the operational change.

There will be no adverse effect on CSXT's employees.

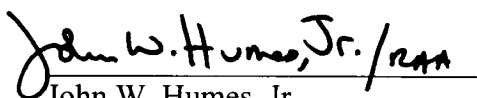
PROPOSED SCHEDULE

NSR and CSXT have served this petition on the parties to the *Coordination Decision*, and also on the Governor, Public Service Commission, and Department of Transportation of the State of South Carolina and the Secretary of the United States Department of Transportation, the Attorney General of the United States, and the Federal Trade Commission. NSR and CSXT respectfully request the Board to publish notice of this petition in the Federal Register within 30 days of the filing date. Comments would be due 20 days thereafter, with responses to comments due 35 days after publication. NSR and CSXT respectfully request the Board to serve a decision within 45 days of the filing of responses.

CONCLUSION

For the foregoing reasons, the Board should grant the petition of NSR and CSXT for a supplemental order pursuant to 49 U.S.C. §11327 to authorize the modification described above to the transactions approved by the ICC in the *Coordination Decision* – specifically, the cessation of NSR’s operating rights for switching purposes over CSXT trackage in Newberry County, SC as specified in Exhibit 2, the termination of NSR’s switching operations as specified in Exhibit 3, the acquisition by CSXT of operating rights for switching purposes over NSR trackage in Newberry County, SC as specified in Exhibit 4 and the commencement of CSXT switching operations as specified in Exhibit 5. NSR and CSXT also respectfully request the Board to adopt the procedural schedule proposed in this petition.

Respectfully submitted,



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Three Commercial Place
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(757) 629-2838

Attorneys for CSX Transportation, Inc.

Attorneys for Norfolk Southern Railway Company

Dated: August 17, 2005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Petition for Supplemental Order was mailed via first class mail, postage prepaid, on August 17, 2005, to the following:

James Brunkenhoefer
United Transportation Union
304 Pennsylvania Avenue, S.E.
Washington, D.C. 20003-1130

Governor Mark Sanford
Office of the Governor
P.O. Box 2267
Columbia, S.C. 29211

Harold A. Ross
General Counsel
Brotherhood of Locomotive Engineers
and Trainmen
2319 Stoneybrook Drive
North Olmsted, OH 44070

Public Services Commission of
South Carolina
101 Executive Drive, Suite 100
Columbia, S.C. 29210

Tom Brennan
Staff Attorney
Brotherhood of Locomotive Engineers
and Trainmen
1370 Ontario Street, Mezzanine
Cleveland, OH 44113

The South Carolina Department Of
Transportation
955 Park Street
P.O. Box 191
Columbia, S.C. 29202-0191

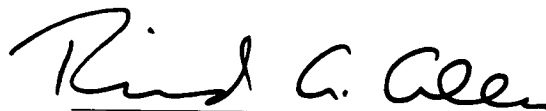
Chief Counsel
Federal Railroad Administration
400 7th Street, S.W.
Room 8201
Washington, D.C. 20590

Attorney General Of The United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

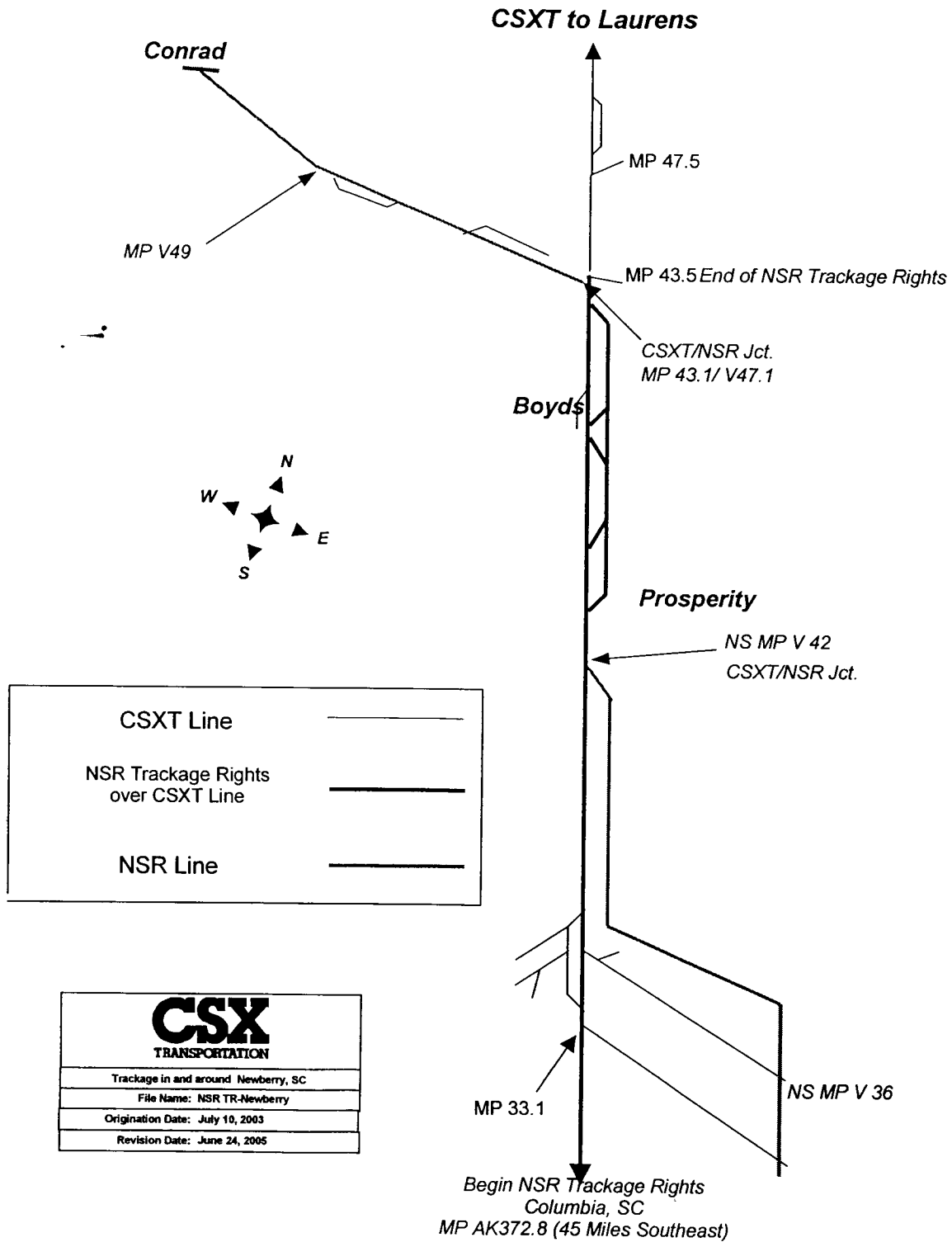
Office of the Secretary
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Nicholas J. DiMichael
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036-1600

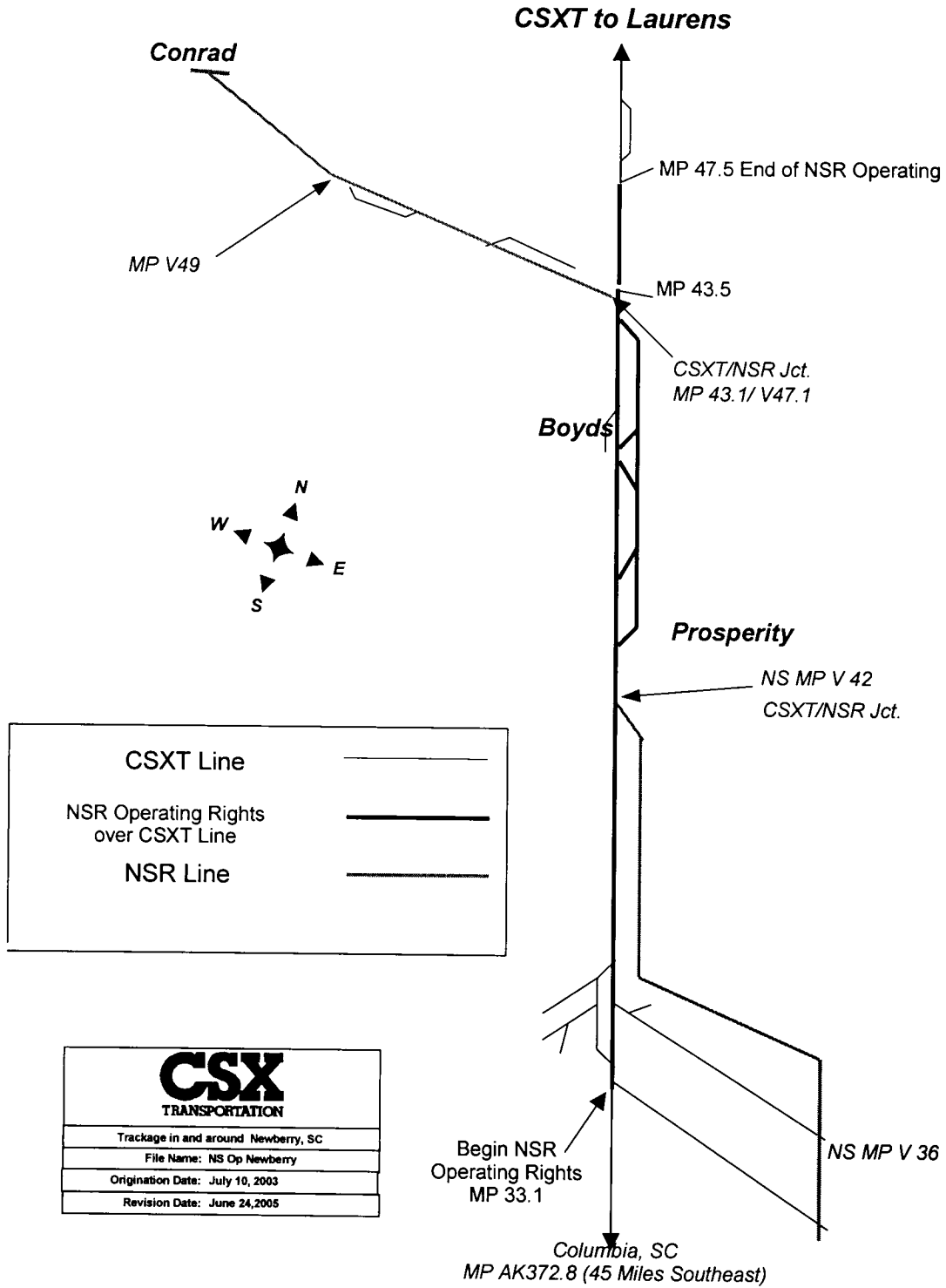


Richard A. Allen

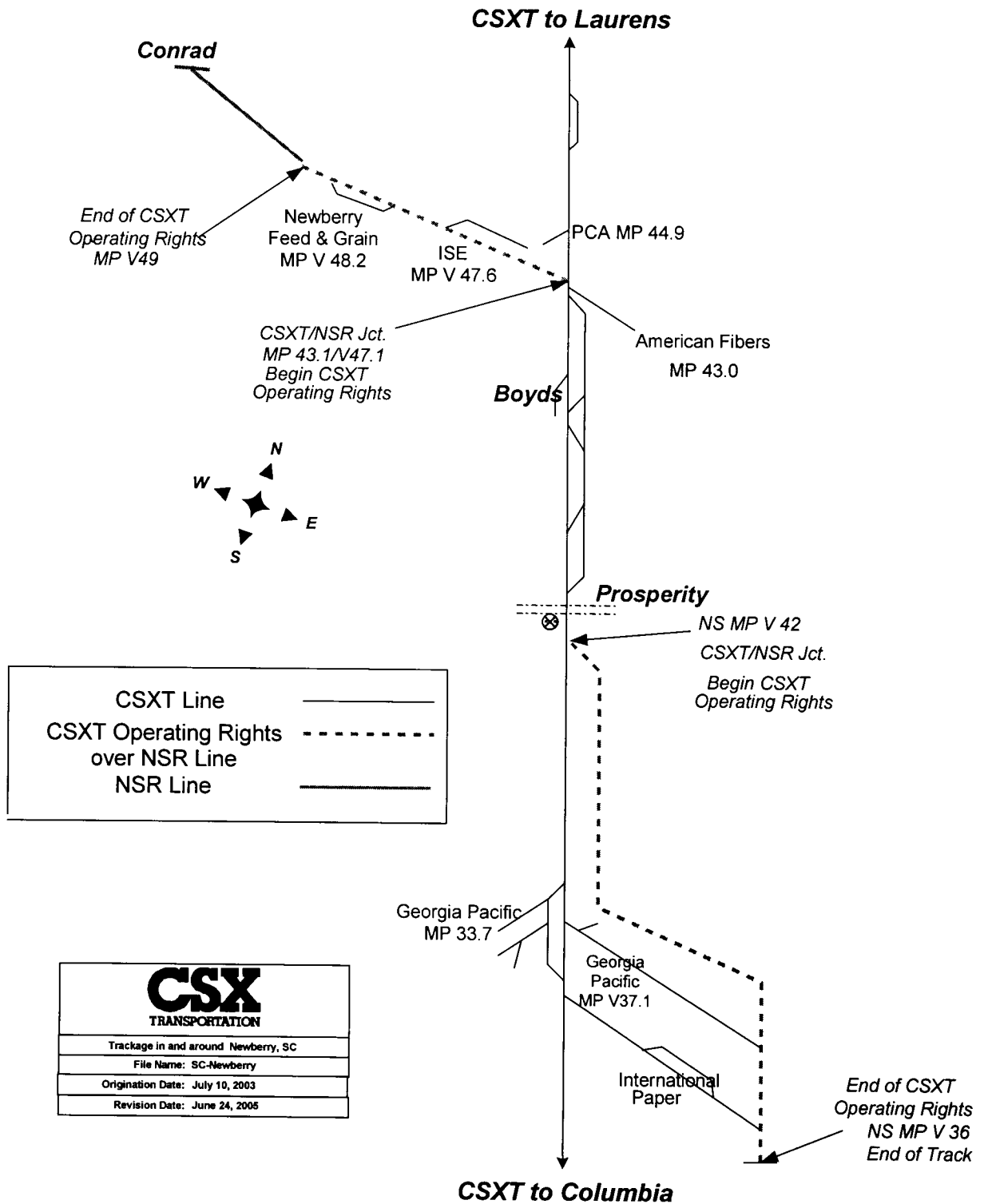
**Current NSR Trackage Rights in Newberry
To Be Retained**



**Current NSR Operating Rights in Newberry
To Be Terminated**



**Proposed Operating Rights
CSXT over NSR Line at Newberry, SC
(Not to Scale)**



A G R E E M E N T

THIS AGREEMENT, entered into as of this 11th day of May 1983, by and between CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "Owner" or "CSXT") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, (hereinafter referred to as "User" or "NS");

WITNESSETH:

WHEREAS, in the interest of economy and efficiency of operations, the parties hereto have entered into an agreement as of the same date hereof authorizing NS to act as the agent of CSXT in order to serve the plants of certain industries located on CSXT's railroad at Newberry, South Carolina; and

WHEREAS, for the conduct of their business, CSXT is willing to permit NS to operate over certain CSXT trackage in order to access the industries and to be able to pick up and set out traffic at Newberry;

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

2977-61¹

SECTION 1. GRANT OF OPERATING RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Operating Rights") over CSXT's trackage between MP 33.1 and MP 47.5, including necessary head and tail operating room, at Newberry, South Carolina, hereinafter referred to as the "Subject Trackage", shown on Drawing No. 930426, dated April 26, 1993, attached hereto and made a part hereof as Exhibit I, in order to serve those industries as detailed in Exhibit II also attached hereto and made a part hereof.

SECTION 2. GENERAL CONDITIONS - FORM A

Except as otherwise may be provided below, this Agreement is subject to and shall be governed by the "General Conditions - Form "A", attached hereto, made a part hereof and incorporated herein by reference with the same force and effect as if set forth at length herein.

SECTION 3. COMPENSATION

- (a) For the use it makes of the Subject Trackage, User shall pay to Owner in advance an annual rental in the amount of TEN THOUSAND DOLLARS (\$10,000.00).

SECTION 4. RESTRICTION ON USE

The Operating Rights herein granted are granted for the sole purpose of User using same for picking up and setting out industrial traffic at Newberry and serving the industries as detailed in the Exhibit II. NS will not perform any other local freight service whatsoever at any point located on the Subject Trackage at Newberry under this Agreement.

SECTION 5. CLEARANCE CONFIRMATION

Before locomotives owned or under control of User enter onto Owner's trackage, User shall request permission from Owner's dispatcher or other designated representative at Jacksonville, Florida, or such other location as Owner may designate. Further, User shall ascertain that said trackage is clear and shall await confirmation from said representative, that such permission has been issued to allow User's movements on or over Owner's trackage. Upon User completing its operations and clearing Owner's trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared Owner's trackage. Once User has notified the Owner's representative that it has cleared Owner's trackage, User shall not reenter Owner's trackage without again obtaining permission from the Owner's representative. User shall provide and maintain at its expense all communication facilities needed and as may be required by Owner to permit User to use Owner's trackage.

SECTION 6. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

SECTION 7. TERM

- (a) This Agreement shall be effective the day and year first above written or, in the event Interstate Commerce Commission approval is required, on the effective date such approval is secured, and shall continue in full force and effect for an initial term of thirty (30) years unless otherwise terminated by mutual consent.
- (b) This Agreement may be renewed for an additional thirty (30) year term under the same terms and conditions hereof subject to any adjustments agreed upon by CSXT and NS that may be reasonable and equitable in the light of any changed circumstance arising during the initial term. If the adjustments cannot be mutually agreed to, the parties shall

submit the matter to arbitration for settlement in accordance with Article 10 of the attached General Conditions - Form A.

- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

SECTION 8. NOTICE

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

(a) If to Owner: Assistant Vice President Joint Facilities
CSX Transportation, Inc. J310
500 Water Street
Jacksonville, FL 32202

(b) If to User: Vice President Transportation
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

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

WITNESS

G. W. Rota

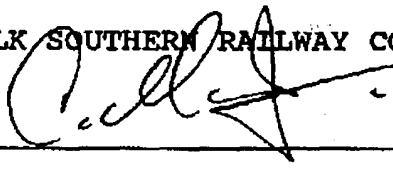
CSX TRANSPORTATION, INC.

By 
Title
Assistant Vice President
Joint Facilities

WITNESS

Jamie H Burnett

NORFOLK SOUTHERN RAILWAY COMPANY

By 
Title

Approved as to legal form


Charles M. Rosenger

GENERAL CONDITIONS - FORM A

ARTICLE 1. USE OF SUBJECT TRACKAGE

- (a) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of storage, servicing cars or equipment, or the making or breaking up of trains; however, nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- (c) Owner shall have exclusive control of the management and operation of the Subject Trackage.

ARTICLE 2. MAINTENANCE OF Subject Trackage

Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for

the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

ARTICLE 3. MANAGEMENT AND OPERATIONS

- (a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its officers, agents, and employees under such laws, rules, and regulations by any public authority or

court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are

deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

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

(e) The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(f) In the event that a train of User shall be forced to stop on the Subject Trackage, and such stoppage is due to

insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

- (g) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

ARTICLE 4. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in either the account of CSXT or NS while in User's trains on the Subject Trackage shall be assumed by such party and reported and paid by it directly to the owner of such cars.

ARTICLE 5. LIABILITY

The responsibility between the parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, resulting from, arising out of, incidental to or occurring in connection with this Agreement, shall be apportioned as follows:

- (a) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, either NS or CSXT only being involved; then that party shall assume all liability therefor and bear all cost and expense in connection therewith, and shall forever protect, defend, indemnify and save harmless the other party and its directors, officers, agents and employees from and against any such liability, cost and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of such other party or its directors, officers, agents or employees.
- (b) Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the

environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, both NS and CSXT being involved; then each party hereto agrees to separately assume and bear all liability, cost, and expense for loss of and damage to all cars (including without limitation lading), in its own account moved in such trains. The parties further agree that all liability, cost, and expense for injury to or death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation trains, locomotives, equipment and trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation so occurring shall be borne as follows: total liability, cost and expense arising not otherwise borne separately by the parties as provided above shall be first equally divided by the number of trains involved and then (i) that portion of said liability, cost and expense apportioned to any train(s) which is (are) handling cars, both empty and loaded, only in the account of CSXT shall be borne solely by CSXT, (ii) that portion of said liability, cost and expense apportioned to any train(s) which is (are) handling cars, both empty and loaded, only in the account of NS shall be borne solely by NS, and (iii) that portion of said liability, cost and expense which is apportioned to any train(s) handling cars, both empty and loaded, in the

accounts of both parties shall be shared and borne by each party hereto in proportion to the number of cars, both empty and loaded, which each party has in its own account in each such train.

- (c) The foregoing Subsections (a) and (b) shall apply equally to those situations in which an engine (or engines) is being moved light by NS crews under this Agreement to or from a coupling with CSXT and/or NS cars, in which case the number of CSXT and/or NS cars just previously handled by NS or about to be handled by NS with said engine(s) shall be the basis for determining the extent of proportional liability.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions; then that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.
- (e) In every case of death or injury suffered by an employee of either CSXT or NS, when compensation to such employee or employee's dependents is required to be paid under any

workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of this Article, pilots furnished by Owner to User pursuant to Article 3(c) of these General Conditions shall be considered as the employees of User while such pilots are on board or getting on or off trains of User or while reporting to or from trains of User used in service covered by this Agreement.
- (g) Whenever circumstances require wrecking service or wrecking train service in connection with this Agreement, CSXT shall perform such service as promptly as possible, and the cost thereof shall be borne as provided in this Article 5.

ARTICLE 6. INVESTIGATION

- (a) Except as provided in Subarticle (b) hereof, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated,

adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

- (b) Each party will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.
- (c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- (d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- (e) Excluding freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability

under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

- (f) It is understood that nothing in this Article 6 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 5.

ARTICLE 7. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by User within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.
- (b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 8. DEFAULT

In the event of any substantial failure on the part of either party hereto to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other party, such other party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver of any prior breach thereof, to terminate the Operating Rights and User's use of the Subject Trackage. The exercise of such right by either party shall not impair its rights under this Agreement or any cause or causes of action it may have against the other party for the recovery of damages.

ARTICLE 9. REGULATORY APPROVAL

Should this Agreement require the prior approval of the Interstate Commerce Commission (ICC), both CSXT and NS will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval.

ARTICLE 10. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected

jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of antitrust or criminal laws.

ARTICLE 11. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

ARTICLE 12. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the

benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.

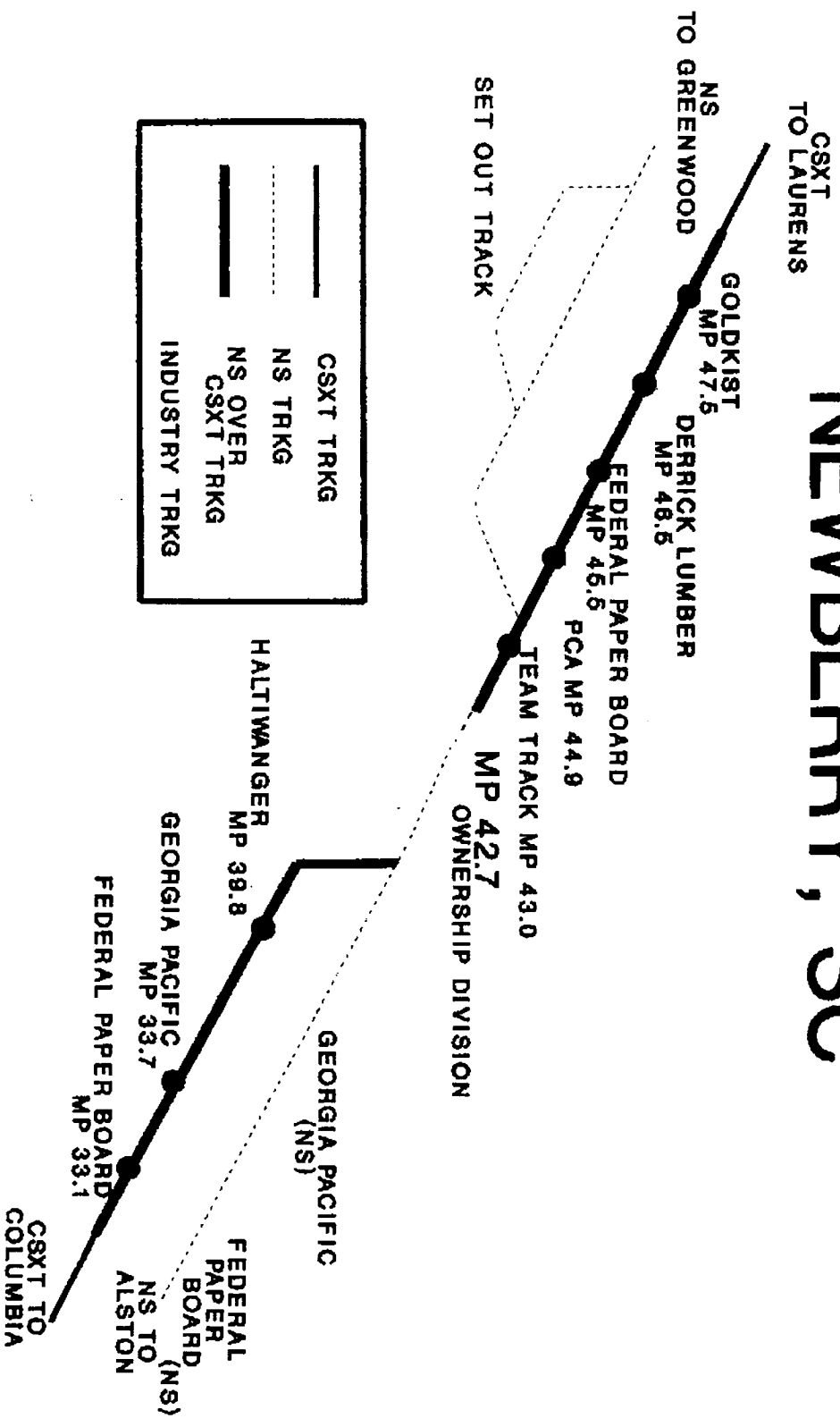
- (b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.
- (d) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by both parties to this Agreement.
- (e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account

of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

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

EXHIBIT I

NEWBERRY, SC



DRAWING NO. 930426 DATE: APRIL 26, 1993

JOINT OPERATION AGREEMENT

THIS AGREEMENT, made this 11th day of May, 1993, by and between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT", and the NORFOLK SOUTHERN RAILWAY COMPANY, hereinafter referred to as "NS";

WITNESSETH:

WHEREAS, in the interest of economy and efficiency of operations, NS will abandon and discontinue certain of its operations in the Newberry, South Carolina area; and

WHEREAS, such abandonment and discontinuance by NS will necessitate the handling of certain CSXT and NS traffic in trains of NS in the Newberry area; and

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

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

SECTION 1. CAR HANDLING

NS agrees to move in its trains, with its own crews, locomotive power, fuel and end-of-train devices (ETD), CSXT's

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loaded and empty freight cars over CSXT's and NS's railroad in the Newberry, South Carolina area. The industries to which NS will handle CSXT cars are detailed in attached Exhibit I. The loaded and empty freight cars of CSXT moved by NS pursuant to this Agreement shall be handled in regularly scheduled NS trains and shall be limited to cars that are in the waybill and car hire accounts of CSXT; provided, however, NS may also handle cars in its own account in trains covered by this Agreement. The aforesaid loaded and empty freight cars in CSXT's account to be moved by NS pursuant to this Agreement are hereinafter referred to as "CSXT cars". The use of CSXT's tracks by NS are covered by a separate agreement of even date.

SECTION 2. FREIGHT REVENUE AND CAR HIRE

All CSXT cars shall remain in the accounts of CSXT at all times while being moved by NS, and NS shall be deemed an agent of CSXT for the purpose of such movement. CSXT cars and lading being moved in trains by NS pursuant to this Agreement shall be the sole property of CSXT. NS shall not participate or appear in any rates, routes or divisions pertaining to CSXT cars, and NS shall not be entitled to or be responsible for any freight charges pertaining to CSXT cars. CSXT shall pay and collect or cause to be paid and collected all car hire and mileage charges pertaining to CSXT cars, and NS shall have no

responsibility for any such car hire or mileage charges however incurred.

SECTION 3. INTERCHANGE RESTRICTION

Except as otherwise provided for in this agreement, NS shall not be required to originate, terminate or interchange any CSXT cars at any point or station along the lines of railroad at Newberry. Unless NS otherwise agrees, CSXT shall not publish, or cause to be so published, any rate, route or division to or from any point or station on NS that may be involved with NS's movement of CSXT cars covered by this Agreement.

SECTION 4. DELIVERY AND RECEIPT OF CARS

CSXT and NS shall make such arrangements as may be necessary for the transfer of CSXT cars to and from NS at Newberry. CSXT cars shall be picked up by NS at Newberry in blocks and size limitations as reasonably specified by NS. Tracks designated for pickup and delivery of CSXT cars shall be determined by the authorized representatives of CSXT and NS. For the movement of all traffic covered by this Agreement, NS will not and hereby does not warrant schedule guarantees, but shall provide service without prejudice or partiality on a non-discriminatory basis with its own traffic.

SECTION 5. CAR INFORMATION AND RESTRICTIONS

CSXT will arrange to have all of its cars moving pursuant to this Agreement delivered to NS accompanied or preceded by movement waybill(s), indicating, as a minimum, the car initial and number associated with car type code, the origin and destination, and route of movement while on NS. CSXT and NS agree that the above information will be exchanged via electronic data methods at the time the Association of American Railroads (AAR) defines the reporting procedures. CSXT shall also furnish NS with proper documentation for all of its hazardous material cars to be moved by NS which shall fully comply with the requirements stipulated by the U. S. Department of Transportation's (DOT) Hazardous Materials Regulations, Section 49 CTR of the Code of Federal Regulations. Such documentation shall include the proper DOT shipping destination for each loaded or residue hazardous material car. CSXT cars shall comply with the clearance rules and regulations of NS and shall not exceed the width, height, weight or other restrictions and capacities of NS's trackage as published in the Railway Line Clearances. CSXT cars requiring speed restrictions or other movement restrictions below the maximum authorized freight speeds and restrictions as provided by NS's operating rules and regulations will not be moved by NS unless NS's prior consent to so do is obtained by CSXT.

SECTION 6. ACCOUNTING RECORDS

The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be retained for a period of three (3) years and shall be open at all reasonable times to inspection by the other party during such period. These records shall include train consist (list) indicating car initial and number with associated car type code.

SECTION 7. ACCEPTANCE OF CARS

CSXT cars shall be deemed received from CSXT by NS when NS couples onto such cars and deemed delivered when set out and uncoupled by NS on the agreed upon tracks at Newberry.

SECTION 8. REPAIRS AND LADING ADJUSTMENTS

(a) CSXT shall reimburse NS upon presentation of invoices therefor, the full cost and expense (including additives and fringes in accordance with NS's accounting procedures) of any inspections performed by NS in connection with the movement of CSXT cars, and for any repairs and or adjustments to or transfers of lading performed by NS to CSXT cars determined by NS to be crippled or defective.

(b) If any CSXT cars are bad ordered enroute and it is necessary that they be set out, such cars, after being promptly repaired, shall be returned or delivered to CSXT. NS shall at the expense of CSXT, furnish required labor and material, and perform light repairs on such bad ordered equipment to make it safe for movement. The employees and equipment of NS while in any manner so engaged or while enroute to or returning from such repair assignment shall be considered sole CSXT employees and exclusive CSXT equipment. In the case of such repairs by NS to CSXT cars, billing therefor shall be in accordance with the Field and Office Manuals of the AAR Interchange Rules, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. NS shall prepare and submit billing directly to and collect from the car owners for car owner responsibility items as determined under said Interchange Rules and NS shall prepare and submit billing directly to and collect from CSXT for handling line responsibility items as determined under said Interchange Rules. NS shall also submit billing to and collect from CSXT any charges for repair to freight cars that are car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

SECTION 9. COMPENSATION

In addition to those charges mentioned in Section 8, CSXT agrees to pay NS:

1. \$29.00 for each loaded and empty CSXT car handled by NS at Newberry for the first six months from the effective date of this Agreement. After said six months, CSXT and NS will jointly conduct a switching study to determine NS's actual cost for handling each loaded and empty CSXT car, and the agreed upon rate, hereinafter referred to as the "Current Charge", will be retroactive to the effective date of this Agreement.

- (a) The Current Charge shall be revised upward or downward each year, beginning with the payment for the month of July 1994, to compensate for 75% of the increase or decrease in the cost of labor and material, including fuel, as reflected in the "Annual Indexes of Charge-Out Prices and Wage Rates (1977=100)", included in the "AAR Railroad Cost Indexes" and supplements thereto. In making such determination, final "Material prices, wage rates and supplements combined (including fuel)" indexes for the East District (former Eastern and Southern Districts

combined), shall be used.

- (b) The Current Charge shall be revised by calculating the percentage of increase or decrease in the index of the year to be revised (1993 Index for the first annual adjustment) as related to the index for the previous year (1992 Index for the first annual adjustment); then multiplying this percentage of increase or decrease by 75% and applying it to the Current Charge.
- (c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (including fuel)" final index figure for 1992; "B" to be the "Material prices, wage rates and supplements combined (including fuel)" final index figure for 1993; "C" to be the Current Charge; "D" to be the percent of increase or decrease; and "E" to be the adjusted revised percent of increase or decrease; then the revised Current Charge would be determined by the following formula:

$$(1) \frac{(B - A)}{A} = D$$

$$(2) D \times 75\% = E$$

$$(3) (C \times E) + C = \text{revised Current Charge, effective July 1 of year being revised.}$$

- (d) In the event the base for the "Annual Indexes of Chargeout Prices and Wage Rates" issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues the "Annual Indexes of Chargeout Prices and Wage Rates", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as outlined in Section 15.
- (e) At the option of either party hereto, the Current Charge provided for in this Section 9 shall be open for reevaluation/study every two (2) years from six months after the effective date of this Agreement. In the event the parties fail to reach agreement upon reevaluation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Section 9 until the matter is settled or submitted to binding arbitration as outlined in Section 15.
- (f) NS shall on or about the tenth day of each month render billing to CSXT for the previous month's car

handling service computed in accordance with the terms and conditions of this Agreement. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Nos.)

(g) All payments called for under this Agreement shall be made by CSXT within sixty (60) days after receipt of bill therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(h) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 9(f), shall include direct labor and material costs, together with the surcharges, overhead percentages and

equipment rentals as specified by NS at the time any work is performed by NS for CSXT.

SECTION 10. LIABILITY

Solely as between the parties hereto, the responsibility for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person whomsoever, resulting from, arising out of, incidental to or occurring in connection with operations under this Agreement, shall be apportioned as follows without regard to consideration of fault or negligence:

- (a) Whenever any loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs with only one train being involved and such train is handling cars, empty or loaded, in only NS' account or cars in NS' account as well as cars in CSXT's account; then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account moved in such train, and the parties hereto further agree that injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including, without limitation, the trains, locomotive(s), equipment or trackage, so occurring

shall be either: (i) borne solely by NS if the train is handling cars, loaded or empty, only in NS' account, and (ii) borne by each party hereto in proportion to the number of cars, both empty and loaded, which each party hereto has in its own account in such train, if the train is handling cars in the accounts of both parties hereto.

- (b) Whenever any loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs with more than one train being involved such trains are handling cars, empty or loaded, in only NS' account and/or cars in the accounts of both parties hereto, then each party hereto agrees to assume and bear all liability, cost and expense for all cars, empty and loaded, including lading, in its own account moved in such trains; and the parties further agree that liability cost and expense for injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including, without limitation, trains, locomotives, equipment or trackage, so occurring shall be borne by each party hereto on the basis of the number of cars in its account, both empty and loaded, in such trains.

- (c) Whenever any loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs with a train of CSXT and a train of another carrier not a party to this Agreement being involved and such CSXT train is handling cars, empty and loaded, in only NS' account and/or in the accounts of both parties hereto, then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account moved in the CSXT train: and the parties hereto further agree to assume and bear all other liability, cost and expense incurred by CSXT as a result thereof in proportion to the total number of cars, both empty and loaded, which each party has in its own account in the CSXT train so involved.
- (d) In every case of death or injury suffered by an employee of either party, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal workmen's compensation, occupational disease, employers' liability or other law, and NS under the provisions of this Agreement, is required to pay same or a portion of same in installments over a period of time, NS and/or CSXT shall not be released from paying any such future installments by reason of the

expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (e) No settlement for which NS is to be held liable under this Agreement shall be made without the written concurrence of NS if such settlement exceeds \$35,000. CSXT agrees that it will, upon request from NS, institute or defend, in its name, any action relating to a claim for loss, damage, destruction, injury or death.
- (f) Each party hereto agrees to indemnify and save harmless the other party hereto from and against all liabilities, costs and expenses which it has agreed to assume and bear under this Section 10. Furthermore, each party hereto agrees to indemnify and save harmless the other party for any legal fees or expenses incurred by it in connection with a liability, cost and expense assumed by the other party hereto in this Section 10.
- (g) CSXT shall promptly notify NS of any accident or incident which results in or could result in an action, claim, suit, or demand against NS by CSXT or any third party or which results in or could result in any indemnification or claim for indemnification by CSXT against NS. Such notice shall include all available details with respect to time, place and

circumstances and details of all investigations made. CSXT shall sue its best efforts to notify NS as provided above; however, failure to provide such notice of defects or errors in such notice promptly or at all shall not have the liability of NS to CSXT under this Agreement.

- (h) Whenever circumstances require wrecking service or wrecking train service in connection with CSXT's handling of NS cars, CSXT shall perform such service as promptly as possible, and the cost thereof shall be borne as provided in this Section 10.

SECTION 11. REGULATORY APPROVAL

- (a) Should this Agreement require the prior approval of the Interstate Commerce Commission (ICC), CSXT at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. NS will assist and support efforts of CSXT to secure any necessary ICC approval of this Agreement.
- (b) Should the ICC at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; CSXT, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 12. TERM

- (a) This Agreement shall be effective the day and year first above written or, in the event ICC approval is required, on the effective date such approval is secured, and shall continue in full force and effect for an initial term of thirty (30) years; provided, however that CSXT shall have the right, on giving twelve (12) months' advance notice to NS, to terminate this Agreement.
- (b) CSXT shall have the right to renew this Agreement for an additional thirty (30) year term (subject to CSXT's right to terminate as provided above) under the same terms and conditions hereof by giving written notice thereof to NS at least six (6) months before expiration of the initial term subject to any adjustments agreed upon by CSXT and NS that may be reasonable and equitable in the light of any changed circumstance arising during the initial term. If the adjustments cannot be mutually agreed to, the parties shall submit the matter to arbitration for settlement in accordance with Section 15.
- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligation

assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

SECTION 13. GOVERNING LAWS

Each party hereto shall comply with all applicable laws, rules, regulations, and orders promulgated by any government or governmental agency which affects service under this Agreement. If any fine, penalty, cost or charge is imposed or assessed on or against either party by reason of failure to so comply, the party so failing shall promptly reimburse and indemnify the other party for or on account of such attorneys' fees incurred in connection therewith, and shall defend any action free of cost, charge or expense other party.

SECTION 14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party.

SECTION 15. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of antitrust or criminal laws.

SECTION 16. NOTICES

All notices required to be given by either party to the other shall be in writing and addressed as follows:

To CSXT: Assistant Vice President Joint Facilities CSX
Transportation, Inc., 500 Water Street J310,
Jacksonville, FL 32202

To NS: Vice President - Transportation, Norfolk
Southern Railway Company, Three Commercial
Place, Norfolk, VA 23510-2191

SECTION 17. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Agreement and the attachment annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by both parties to this Agreement.

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

(e) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective officers the day and year first above written.

WITNESS:

CSX TRANSPORTATION, INC.

A.W. Roth By: Sam J. Quinn
(Title) VP & Chief Transportation Officer

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

James By: C. M. Rosenberg
(Title)

(8502A-04)

Approved as to legal form
Charles M. Rosenberg
Charles M. Rosenberg

EXHIBIT I
NEWBERRY, SC

<u>Industry</u>	<u>CSXT MP</u>	<u>Railroad on Which Industry is Located</u>
Goldkist Industries	47.5	CSXT
Darrick Lumber	46.5	CSXT
Federal Paper Board (Two (2) Tracks)	45.5	CSXT
PCA	44.9	CSXT
CSXT Team Track	43.0	CSXT
Haltiwanger Lumber	39.8	CSXT
Georgia Pacific (Only one side of plant served by NS - CSXT serves both sides)	33.7	CSXT/NS
Federal Paper Board	33.1	CSXT/NS

Source: new April 29, 1993

NEWBERRY, SOUTH CAROLINA OPERATING AGREEMENT
BETWEEN
CSX TRANSPORTATION, INC.
AND
NORFOLK SOUTHERN RAILWAY COMPANY

This AGREEMENT, entered into as of this 12th day of August, 2005, between CSX TRANSPORTATION, INC., a Virginia corporation, whose principal place of business is Jacksonville, Florida (hereinafter referred to as "USER" or "CSXT") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, (hereinafter referred to as "OWNER" or "NSR");

WITNESSETH:

WHEREAS, on May 11, 1993, NSR and CSXT entered into multiple agreements covering various operations in South Carolina collectively known as the "Carolina Plan;" and

WHEREAS, the Interstate Commerce Commission approved the "Carolina Plan" in *Norfolk Southern Railway Company—Consolidation of Operations—CSX Transportation, Inc.*, ICC Finance Docket No. 32299 (ICC served November 26, 1993) ("*Finance Docket No. 32299*"); and

WHEREAS, subsequent to implementation of certain sections of the "Carolina Plan" governing operations in the Newberry area, CSXT and NSR, in the interest and economy and efficiency of operations, desire to terminate the following agreements, each dated as of May 11, 1993:

Newberry Joint Operations Agreement:

NSR switching of certain CSXT traffic in trains of NSR in the Newberry area (the "Newberry Switching Agreement");

Newberry Operating Rights Agreement:

NSR operating rights over CSXT's Main Track between CSXT MP 33.1 and MP 47.5, including necessary head and tail operating room at Newberry to exchange cars with CSXT as necessary to perform switching by NSR to certain customers in the Newberry area (the "Newberry Operating Rights Agreement"); and

WHEREAS, CSXT will switch NSR cars, as well as CSXT cars, to and from the industries located in the Newberry area and;

WHEREAS, CSXT shall provide switching for NSR under the Switching Agreement limited to the locations between 1) NSR MP V 47.1 (CSXT Connection at Newberry) and MP V 49.0, and 2) NSR MP V 42.0 (CSXT Connection at Prosperity) and MP V 36.0 (end of track) (together referred to as the "Subject Trackage") as depicted in Exhibit B hereto; and

WHEREAS, for the conduct of their business in the Newberry Area, NSR is willing to permit CSXT to operate over the Subject Trackage in order to access the industries; and

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

ARTICLE 1. GRANT OF OPERATING RIGHTS

Subject to the terms and conditions herein provided, NSR hereby grants to CSXT the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Operating Rights") over NSR's trackage between

- i. NSR MP V 47.1 (CSXT Connection at Newberry) and MP V 49.0,
- ii. NSR MP V 42.0 (CSXT Connection at Prosperity) and MP V 36.0 (end of track)

as depicted in Exhibit B, including necessary head and tail operating room, at Newberry, South Carolina, hereinafter referred to as the "Subject Trackage".

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage, so long as it does not materially interfere with User's use of the Subject Trackage under this Agreement and the Switching Agreement.
- B. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

The Operating Rights herein granted are granted for the sole purpose of User using same for switching customers in accordance with Switching Agreement, including staging of trains, making and breaking up trains, shoving into customers and other duties necessary in the switching operation.

ARTICLE 4. CLEARANCE CONFIRMATION

Before locomotives owned or under control of User enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative. Further, User shall ascertain that said trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon User completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from the Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use the Subject Trackage.

ARTICLE 5. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.

ARTICLE 6. COMPENSATION

These Operating Rights are granted in conjunction with Switching Agreement{

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ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in ARTICLE 11, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any claim or damages resulting from any such failure or neglect. Owner shall have no claim against User for loss or damage to Owners customers that result from the failure or neglect of Owner to maintain, repair or renew the Subject Trackage.

- B. Any additional maintenance, additions, or betterments beyond that normally maintained by NS for CSXT use pursuant to the Switching Agreement shall be performed pursuant to separate agreement between the parties hereto.

ARTICLE 8. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- D. Owner may conduct an investigation at its option if a User's employee working on the Subject Trackage is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits

provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.

- E. If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on the Subject Trackage pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over the Subject Trackage.
- H. It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- I. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of User shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or

otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 9. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be governed by the terms of the Switching Agreement.

ARTICLE 10. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of ARTICLE 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by CSXT at the time of such wreck, shall be promptly delivered to it.

ARTICLE 11. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgements,

litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both Owner and User, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified

shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- H. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads ("AAR") as to the handling of any claims for the loss or damage to lading.
- I. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then the party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 12. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits,

allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

- G. It is understood that nothing in this ARTICLE 12 shall modify or waive the conditions, obligations, assumptions or apportionments provided in ARTICLE 11.

ARTICLE 13. TERM AND TERMINATION

- A. This Agreement shall take effect on the thirtieth day following the receipt from the Surface Transportation Board of any required approvals or exemptions (the "Effective Date") and continue in full force and effect until thirty (30) years from May 11, 1993, the effective date of said Carolina Plan, and continue in effect thereafter until terminated by either party upon one (1) year written notice. Termination shall be governed by the terms of said Carolina Plan, except that NSR, at its sole election, may terminate or suspend this agreement upon one (1) year written notice to CSXT, whereupon NSR shall commence direct service with NSR trains, locomotives, cars, equipment and crews to industries located on the Subject Trackage and cited for in this Agreement.
- B. NS shall have the right to renew this Agreement for an additional thirty (30) year term (subject to NSR's right to terminate as provided above) under the same terms and conditions hereof by giving written notice thereof to CSXT at least six (6) months before expiration of the initial term subject to any adjustments agreed upon by CSXT and NSR that may be reasonable and equitable in the light of any changed circumstance arising during the initial term. If the adjustments cannot be mutually agreed to, the parties shall submit the matter to arbitration for settlement in accordance with ARTICLE 17.
- C. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the termination hereof.
- D. In accordance with Section 7 "Term" Paragraph (a) of the Newberry Operating Rights Agreement, the parties hereto mutually agree to terminate the Newberry Operating Rights Agreement, and said Newberry Operating Rights Agreement shall have no further force and effect as of the Effective Date of the STB decision to approve CSXT's and NSR's Joint Petition amending the Consolidation of Operations in the Newberry, South Carolina Area.

ARTICLE 14. REGULATORY APPROVAL

This Agreement is contingent upon the parties securing from the Surface Transportation Board any necessary approval or exemption. This Agreement is a modification of the South Carolina Consolidation of Operations, the approval of which was obtained in ICC Finance Docket No. 32299. Should the Surface Transportation Board place conditions on approval, or exemption from approval, of this Agreement, that are unacceptable to either party, in its respective sole discretion, then said party may decline to permit this Agreement to become effective.

Each party shall bear its costs (including but not limited to attorneys' fees) for filing of any application for approval, petition for exemption or Notice of Exemption with the Surface Transportation Board, but each of NSR and CSX shall bear one-half of the cost of the STB filing fee(s) related to the same. NSR and CSXT agree to cooperate fully to procure all such necessary consent, approval, exemption or authority, and not to file any document with the Surface Transportation Board without the other party's prior review and approval.

ARTICLE 15. ABANDONMENT OF SUBJECT TRACKAGE

- A. Notwithstanding the provisions of ARTICLE 13, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Subject Trackage (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Subject Trackage or portion thereof shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Subject Trackage or portion thereof and that it desires to discontinue its use thereof:
 - (i). User fails to submit an offer of financial assistance to purchase the Subject Trackage or portion thereof within the time prescribed by statute and applicable regulations, or

- (ii). User, having made an offer of financial assistance to purchase the Subject Trackage or portion thereof, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
- (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application, petition for exemption or notice of exemption with the proper regulatory authority seeking approval or exemption of the discontinuance of its operations over the Subject Trackage or portion thereof. If User does not promptly file an application, petition for exemption or notice of exemption seeking approval or exemption of the discontinuance of User's operations over the Subject Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application, petition for exemption or notice of exemption filed by Owner is granted but an application, petition for exemption or notice of exemption filed by User under Subsection C above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage or portion thereof to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Subject Trackage under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application, petition for exemption or notice of exemption for authority to abandon is denied, User shall withdraw any application, petition for exemption or notice of exemption it has filed under Subsection C above.
- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this ARTICLE 15 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 16. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, terrorism, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 17. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

ARTICLE 19. NOTICE

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

If to Owner:	Vice President Transportation Operations
	Norfolk Southern Railway Company
	Three Commercial Place
	Norfolk, Virginia 23510-2191

If to User: AVP Passenger & Joint Facility Contracts
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

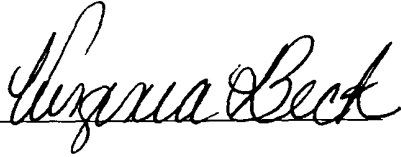
Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 20. GENERAL PROVISIONS

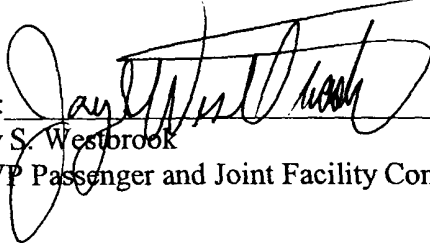
- A. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in ~~the railroad industry.~~
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary, affiliate company or counsel, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

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

Witness for CSXT:



CSX TRANSPORTATION, INC.

By: 
Jay S. Westbrook
AVP Passenger and Joint Facility Contracts

Witness for NSR:



NORFOLK SOUTHERN RAILWAY COMPANY

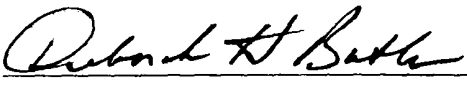
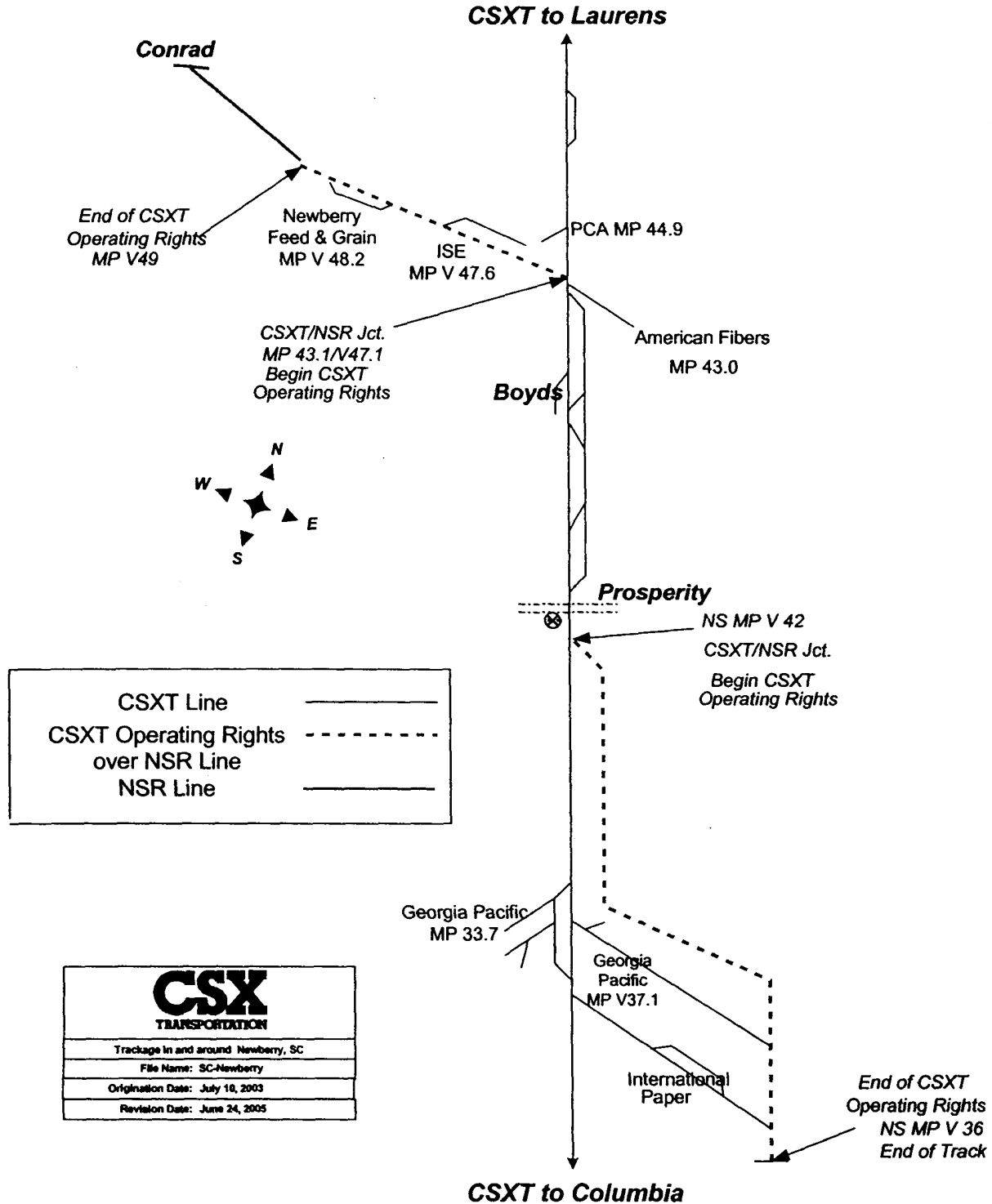
By: 
Name: Deborah H Butler
Title: VP Customer Service

Exhibit B
Subject Trackage
CSXT over NSR at Newberry, SC
(Not to Scale)



NEWBERRY, SOUTH CAROLINA SWITCHING AGREEMENT
BETWEEN
CSX TRANSPORTATION, INC.
AND
NORFOLK SOUTHERN RAILWAY COMPANY

This AGREEMENT, entered into as of this 12th day of August, 2005, between CSX TRANSPORTATION, INC., a Virginia corporation, whose principal place of business is Jacksonville, Florida (hereinafter referred to as "CSXT") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, (hereinafter referred to as "NSR");

WITNESSETH:

WHEREAS, on May 11, 1993, NSR and CSXT entered into multiple agreements covering various operations in South Carolina collectively known as the "Carolina Plan;" and

WHEREAS, the Interstate Commerce Commission approved the "Carolina Plan" in *Norfolk Southern Railway Company—Consolidation of Operations—CSX Transportation, Inc.*, ICC Finance Docket No. 32299 (ICC served November 26, 1993) ("*Finance Docket No. 32299*"); and

WHEREAS, CSXT and NSR have entered the Newberry, South Carolina Operating Agreement of even date herewith (the "Operating Agreement"); and

WHEREAS, subsequent to implementation of certain sections of the "Carolina Plan" governing operations in the Newberry area, CSXT and NSR, in the interest of economy and efficiency of operations, desire to terminate the following agreements, each dated as of May 11, 1993:

Newberry Joint Operations Agreement:

NSR switching of certain CSXT traffic in trains of NSR in the Newberry area (the "Newberry Switching Agreement");

Newberry Operating Rights Agreement:

NSR operating rights over CSXT's Main Track between CSXT MP 33.1 and MP 47.5, including necessary head and tail operating room at Newberry to exchange cars with CSXT as necessary to perform switching by NSR to certain customers in the Newberry area (the "Newberry Operating Rights Agreement"); and

WHEREAS, CSXT and NSR wish to enter into a new agreement whereby CSXT will switch NSR cars, as well as CSXT cars, to and from the industries located in the Newberry area and;

WHEREAS, CSXT shall provide switching for NSR under this Agreement limited to the locations between 1) NSR MP V 47.1 (CSXT Connection at Newberry) and MP V 49.0, and 2) NSR MP V 42.0 (CSXT Connection at Prosperity) and MP V 36.0 (end of track) (together referred to the as "NSR Line") as depicted in Exhibit B hereto; and

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

ARTICLE 1. SWITCHING

- A. CSXT shall perform switching of CSXT loaded and empty cars, and switching of loaded and empty NSR cars (hereinafter NSR cars are referred to as "Switch Cars"), to and from the industries (each hereinafter referred to as "Industry") located along the NSR Line in Newberry, SC, said industries as specified in a current list thereof, which is set forth in Exhibit A, attached hereto, and made a part hereof. CSXT shall provide services as necessary to handle such traffic between each Industry and mutually agreed upon trackage at the location(s) specified in Exhibit B. CSXT shall use its own crews and locomotives to perform said services.
- B. Notwithstanding the foregoing, NSR shall continue to move loaded and empty cars and/or trains, to and from the facility now operated by International Paper at Conrad, SC, regardless of the entity that is operating that facility, and to additional customers as may hereinafter locate along NSR's trackage between MP V49.0 and Conrad, MP V60.0.
- C. Subject to the terms and conditions herein provided, by separate agreement of even date hereto NSR has granted CSXT the right to operate its trains, locomotives, cars and equipment with its own crews over those portions of the NSR Line as necessary to handle Switch Cars as herein contemplated, and for operating convenience, to handle its own cars in trains carrying Switch Cars.
- D. This Agreement is not intended to expand or contract either CSXT's or NSR's existing commercial access to or right to serve or switch any Industry on the NSR Line. If, after execution of this Agreement, a new facility (including a transload facility) is established, an existing facility expands or an existing facility changes ownership (in each case, a "New Facility") and CSXT would have had no commercial access to the New Facility in the absence of this Agreement, then CSXT will serve the New Facility solely for the purpose of handling Switch Cars, and CSXT shall not have commercial access to said New Facility.
- E. Notwithstanding anything in this Agreement to the contrary, Switch Cars shall remain in NSR's account, for purposes of revenue, car hire and claims for loss and damage to lading, at all times while being moved by CSXT pursuant to this Agreement. CSXT shall not participate or appear in any rates, routes or divisions pertaining to Switch Cars, and CSXT shall not be entitled to or be responsible for any freight charges pertaining to Switch Cars. NSR shall pay and collect or cause to be paid and collected all car hire and mileage charges pertaining to Switch Cars, and CSXT shall have no responsibility for any car hire or mileage charges accruing to Switch Cars howsoever incurred. CSXT shall be entitled to and shall collect all applicable demurrage charges that may be assessed towards an Industry.

- F. Maintenance and operation, including dispatching, of the NSR Line shall remain the responsibility of. NSR. CSXT trains, when supplying said services to an Industry on the NSR Line, shall be given priority equal to that of NSR trains on the NSR Line. NSR shall not be held liable for delays or damages, monetary or otherwise, for delays incurred account unavailability of track time or unserviceable track on NSR. NSR shall make its best efforts to minimize delays due to dispatching or track maintenance. In the event CSXT, in its sole discretion, determines the NSR Line is unsafe to operate over, CSXT may refuse to handle Switch Cars over the NSR Line until the trackage and or its appurtenances are repaired to CSXT's satisfaction. In the event of such temporary service discontinuance by CSXT, NSR shall have no claim against CSXT for loss or damage of any kind resulting directly or indirectly therefrom.

ARTICLE 2. DELIVERY AND RECEIPT OF CARS

- A. Movement of and compensation for Switch Cars handled under this Agreement between Columbia and Newberry shall be handled by CSXT under the terms and conditions of a separate haulage agreement between the parties hereto.
- B. Prior to delivery of any Switch Car in accordance with ARTICLE 2.A., NSR shall provide CSXT an electronic 417 and 418 with suitable information necessary for the handling of Switch Cars including the Switch Car indicator, including:
- (1) Car initial and number,
 - (2) Loaded or empty status,
 - (3) Destination station and consignee on inbound movements,
 - (4) Origin and shipper as supplied by the shipper on outbound movements,
 - (5) All required hazardous materials information, and
 - (6) Any other information as agreed between the parties to be necessary or convenient for the safe, efficient handling of Switch Cars.
- C. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective Switch Cars in order to move them off the NSR Line, such work shall be done by CSXT, and NSR shall reimburse CSXT for the cost thereof.

ARTICLE 3. INTERCHANGE RESTRICTION

Because this Agreement is not intended to expand CSXT's commercial access to customers, CSXT shall not publish, or cause to be published, unless NSR otherwise agrees, any rate, route or division to or from any point or station on NSR that may be involved with CSXT's movement of Switch Cars covered by this Agreement except where Industry is jointly served by both railroads.

ARTICLE 4. INTERRUPTION, DELAY

In the event the use of trackage in performing the referenced switching services shall be

interrupted or traffic delayed at any time from any cause, neither CSXT nor NSR shall have any claim, pursuant to this Agreement, against the other for liability of any kind from such interruption or delay.

ARTICLE 5. COMPENSATION

- A. NSR shall pay CSXT a mutually agreed upon interim rate for each loaded and empty Switch Car handled by CSXT for the account of NSR to and from an Industry. [

B.

- C. The Current Charge, or the Interim Charge as the case may be, shall be revised upward or downward each year, beginning with the bill rendered for the service month of July following the effective date of this Agreement, [

- D. The Current Charge shall be revised by calculating the percentage of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

- E. In the event the base for _____ shall be changed from _____ appropriate revision shall be made. If _____ discontinues _____ an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to arbitration.
- F. CSXT shall keep and maintain an accurate account of all loaded and empty Switch Cars handled by it for the account of NSR, and shall at the end of each month, render an itemized bill, including such backup, computed in accordance with the provisions herein, to NSR for payment, to attention of the following:
- Manager, Miscellaneous Billing – Box 34
Norfolk Southern Railway Company
110 Franklin Road, SE
Roanoke, Virginia 24042.
- G. Compensation as provided for herein shall be in lieu of any tariff switching charges that are or may become effective during the term of this Agreement.
- H. Car hire shall be the responsibility of NSR.
- I. NSR shall pay each itemized bill within thirty (30) days from receipt thereof, and any errors or omissions in such bills shall be adjusted in subsequent billing.
- J. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other parties.

ARTICLE 6. LIABILITY

The responsibility between the parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, arising out of, incidental to or occurring in connection with this Agreement, also expressly including, without limitation, all liabilities arising after the effective date hereof under the Federal Employers Liability Act and environmental laws, as well as legal fees, arbitration expenses and awards or expenses, but excluding consequential damages of any party hereto (which are always borne by the party which sustained them) and excluding claims for exemplary and punitive damages, each hereinafter referred to as a Loss, shall be apportioned as follows without regard to consideration of fault or negligence:

- A. Whenever a Loss occurs with only one train operated by CSXT being involved, and such train is handling only Switch Cars in NSR's account, empty or loaded, or Switch Cars in NSR's account as well as cars in CSXT's account, then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account being handled in such train, and the parties hereto further agree that a Loss arising from an injury to or death of any person or persons whomsoever and loss, damage or destruction of all other

property, including without limitation, the train(s), locomotive(s), equipment or trackage, so occurring shall be either: (i) borne solely by NSR if the train is handling only Switch Cars, or (ii) borne by each party hereto in proportion to the number of cars, both empty and loaded, which each party hereto has in its own account in such train, if the train is handling cars in the accounts of both parties hereto.

- B. Whenever a Loss occurs with more than one train operated by CSXT being involved, and any or all of such trains are handling only Switch Cars in NSR's account or Switch Cars in NSR's account as well as cars in CSXT's account; then each party hereto agrees to assume and bear all Losses for all cars, empty and loaded, including lading, in its own account handled in such trains, and the parties further agree that a Loss arising from an injury to or death of any person or persons whomsoever and Loss of all other property, including, without limitation, trains, locomotives, equipment or trackage, so occurring shall be borne as follows: said Loss shall be first equally divided by the number of trains involved and then (i) that portion of said Loss apportioned to any train(s) which is (are) handling only cars, whether empty or loaded, in the account of CSXT shall be borne solely by CSXT, (ii) that portion of said Loss apportioned to any train(s) which is (are) handling only Switch Cars in NSR's account shall be borne solely by NSR, and (iii) that portion of said Loss apportioned to any train(s) which is (are) handling cars, both empty and loaded, in the accounts of both parties shall be shared and borne by each party hereto in proportion to the number of cars, both empty and loaded, which each party has in its own account in each such train.
- C. Whenever a Loss occurs with the train(s) of CSXT and another railroad or other company that is not a party to this Agreement being involved and any of such CSXT train(s) is (are) handling only Switch Cars in NSR's account, and/or Switch Cars as well as cars in CSXT's account; then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account handled in the CSXT train(s), and the parties hereto further agree as between themselves that all other liability, cost and expense incurred by CSXT as a result thereof shall be shared by both parties hereto in proportion to the total number of cars, both empty and loaded, which each party has in its own account in the CSXT trains so involved, excluding any cost and expense paid by said other railroad.
- D. Notwithstanding any of the foregoing provisions of this ARTICLE 6, when any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with one or more trains of CSXT being involved, and any or all of such trains are handling only Switch Cars in NSR's account or Switch Cars as well as cars in CSXT's account, then, as between themselves: (i) CSXT shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which was being transported in the car or cars of, or in the account of CSXT, and from which there was a release; (ii) NSR shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which was being transported in NSR cars and from which there was a release; (iii) responsibility for

any such damage or destruction to the environment which results from a substance in the cars of, or in cars in the account of, both CSXT and NSR from which there was a release shall be shared by both parties hereto in proportion to the total number of cars which each party had in its accounts, containing the same substance and from which there was a release; and (iv) in the event of damage to the locomotive(s) resulting in damage or destruction to the environment which results solely from fuel or lubricants being released from subject locomotives, responsibility shall be shared by both parties hereto in proportion to the total number of cars which each party had in its accounts handled on train involved.

- E. In every case of death or injury suffered by an employee of CSXT or NSR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal workmen's compensation, occupational disease, employers' liability or other law, and NSR, under this Agreement, is required to pay same or a portion of same in installments over a period of time, NSR shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. Each party hereto agrees to indemnify and save harmless the other party hereto from and against all liabilities, costs, and expenses which it has agreed to assume under this ARTICLE 6.
- G. CSXT shall notify NSR of any event which results in or could result in an action, claim, suit or demand against NSR by CSXT or any third party or which results in or could result in any indemnification or claim for indemnification by CSXT against NSR. Such notice shall include all available details with respect to time, place and circumstances and details of all investigations made. Notwithstanding the foregoing, liability allocated pursuant to this ARTICLE 6 shall not be vitiated by any failure to provide the notice set forth in this ARTICLE 6G.
- H. Whenever circumstances require wrecking service or wrecking train service in connection with the switching or transportation of Switch Cars subject to this Agreement, each party shall be responsible for the performance of such service as promptly as possible on trackage of its ownership, and the cost thereof shall be borne as provided in this ARTICLE 6
- I. Each party shall investigate, adjust and defend all cargo related claim liability filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract.
- J. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

- K. Excluding cargo related claim liability filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (\$35,000).
- L. Exceptions: Each party shall assume and bear all responsibility for Loss caused by acts or omissions of any of its employees while such employees are under the influence of drugs or alcohol. In such event, the provisions of ARTICLE 6A through ARTICLE 6E of this Agreement shall not apply to any such Loss.

ARTICLE 7. EMPLOYEE CLAIMS

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

ARTICLE 8. ARBITRATION

Any irreconcilable dispute arising among the parties with respect to this Agreement shall be submitted to the American Arbitration Association for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

ARTICLE 9. TERM AND TERMINATION

- A. This Agreement shall take effect on the thirtieth day following the receipt from the Surface Transportation Board of any required approvals or exemptions (the "Effective Date") and continue in full force and effect until thirty (30) years from May 11, 1993, the effective date of said Carolina Plan, and continue in effect thereafter until terminated by either party upon six (6) month written notice. Termination shall be governed by the terms of said Carolina Plan, except that NSR, at its sole election, may terminate or suspend this agreement upon six (6)

month written notice to CSXT, whereupon NSR shall commence direct service with NSR trains, locomotive, cars, equipment and crews to Industries located on the NSR Line and cited for in this Agreement. CSXT agrees that the trackage rights between Columbia, SC and Newberry, SC granted NSR pursuant to the Trackage Rights Agreement between the parties hereto dated May 11, 1993, include ingress and egress to the NSR Line, said NSR Line connecting to CSXT's line at NSR MP V42.0 and at NSR MP V47.1.

- B. NSR shall have the right to renew this Agreement for an additional thirty (30) year term (subject to NSR's right to terminate as provided above) under the same terms and conditions hereof by giving written notice thereof to CSXT at least six (6) months before expiration of the initial term subject to any adjustments agreed upon by CSXT and NSR that may be reasonable and equitable in the light of any changed circumstance arising during the initial term. If the adjustments cannot be mutually agreed to, the parties shall submit the matter to arbitration for settlement in accordance with ARTICLE 8.
- C. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the termination hereof.

ARTICLE 10. PRIOR AGREEMENTS

Effective with the Effective Date, this Agreement encompasses any and all understandings between the parties hereto as to switching of cars at Newberry, SC, and terminates, as of the Effective Date of this Agreement, the Newberry Joint Operations Agreement. In accordance with Section 12 paragraph (a) of the Newberry Joint Operations Agreement, CSXT and NSR hereto agrees to waive the twelve (12) months notice, and said 1993 Agreement is terminated and of no further force and effect as of the Effective Date of the STB decision to approve CSXT's and NSR's Joint Petition amending the Consolidation of Operations in the Newberry, South Carolina Area. The act of entering into this Agreement shall not release any party hereto from any liability or obligation that may have been incurred by or that might have accrued against it under any other Agreement during the term thereof.

ARTICLE 11. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm or corporation without obtaining the prior written consent of the other party.

ARTICLE 12. NOTICE

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

If to CSXT: AVP-Passenger and Joint Facility Contracts
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, Florida 32202

If to NSR: Vice President Transportation Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 13. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right in any other party to recover by way of damages or otherwise against any of the parties hereto.
- B. All ARTICLE headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- C. This Agreement and any attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings among the parties with respect to the subject matter hereof.
- D. No term or provisions of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by all parties to this Agreement.
- E. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases railroad industry.
- F. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

ARTICLE 14. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either NSR or CSXT to any party other than

each party's respective parent corporation, subsidiaries and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other party.

ARTICLE 15. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that all of its indemnity commitments in this Agreement in favor of the other party shall also extend to and indemnify the parent corporation, the subsidiaries and affiliates of the other party, and all of its directors, officers, agents and employees.

ARTICLE 16. FORCE MAJEURE

CSXT shall not be responsible to NSR for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, terrorism, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

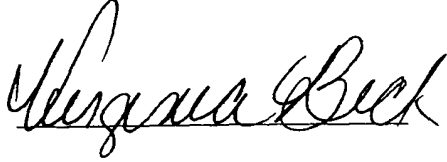
ARTICLE 17. GOVERNMENT APPROVALS; RELATED AGREEMENTS

This Agreement is contingent upon the parties securing from the Surface Transportation Board any necessary approval or exemption. This Agreement is a modification of the South Carolina Consolidation of Operations, the approval of which was obtained in ICC Finance Docket No. 32299. Should the Surface Transportation Board place conditions on approval, or exemption from approval, of this Agreement, that are unacceptable to either party, in its respective sole discretion, then said party may decline to permit this Agreement to become effective.

Each party shall bear its costs (including but not limited to attorneys' fees) for filing of any application for approval or Notice of Exemption with the Surface Transportation Board, but each of NSR and CSX shall bear one-half of the cost of the STB filing fee(s) related to the same. NSR and CSXT agree to cooperate fully to procure all such necessary consent, approval, authority or exemption, and not to file any document with the Surface Transportation Board without the other party's prior review and approval.

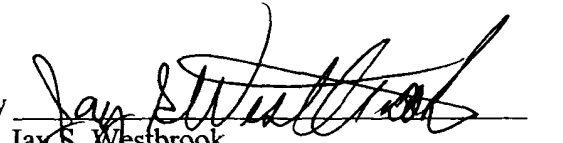
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective officers.

WITNESS



CSX TRANSPORTATION, INC.

By


Jay S. Westbrook
AVP - Passenger and Joint Facility Contracts

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY



By

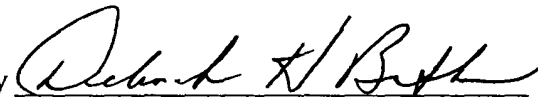

Name: Deborah H. Butler
Title: VP CUSTOMER SERVICE

EXHIBIT A

Jointly-Served NSR-CSXT Industries switched by CSXT at Newberry, SC pursuant to this agreement:

<u>Industry</u>	<u>Milepost</u>	<u>Railroad on Which Industry is Located</u>
Georgia Pacific	33.7	CSXT
	V 37.1	NSR
(Only one side of plant is served by NSR – CSXT serves both sides. This agreement does not grant NSR access to, or any right to switch, the side of the plant not currently served by NSR)		
Federal Paper Board	33.1	CSXT
(International Paper)	V 37.1	NSR

NSR-Only Industries to be switched by CSXT for NSR at Newberry, SC pursuant to this Agreement:

Newberry Feed and Grain	V 48.2	NSR
ISE	V 47.6	NSR

CSXT Industries located on CSXT at Newberry that are open to Reciprocal Switch shall be governed by the terms and conditions of a separate haulage agreement between the Parties hereto and CSXT's governing Tariff, and are not governed by this Agreement:

Packing Corporation of America	V 43.0	CSXT
America Fiber & Finishing Company	V 43.0	CSXT

Note – This includes Industries as may locate, change names or ownership, including transloading operations, as may be located on the NSR Line in the future.

Exhibit B
NSR Line
CSXT over NSR at Newberry, SC
(Not to Scale)

