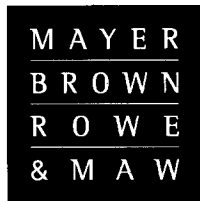


215222



Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrownrowe.com

Adrian L. Steel, Jr.
Direct Tel (202) 263-3237
Direct Fax (202) 263-5237
asteel@mayerbrownrowe.com

November 29, 2005

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 34794, BNSF Railway Company –
Acquisition and Operation Exemption – State of South
Dakota

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Verified Notice of Exemption filed on behalf of BNSF Railway Company. Also enclosed is a check in the amount of \$1,500 for the filing fee. The text of the pleading is contained on the enclosed disk.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

Enclosures

cc: Myles L. Tobin, Esq.
Sarah W. Bailiff, Esq.
Parties of Record (F.D. No. 34667)

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CONTAINS COLOR IMAGES

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOV 30 2005
RECEIVED

Finance Docket No. 34794

BNSF RAILWAY COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
STATE OF SOUTH DAKOTA

FILED
Office of Proceedings

NOV 30 2005

Part of
Public Record

VERIFIED NOTICE
OF EXEMPTION

Adrian L. Steel, Jr.
Robert M. Jenkins III
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006-1101
(202) 263-3237

Dated: November 29, 2005

FILED
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U.S. DEPT. OF JUSTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

▲
JUL 29 2005
RECEIVED

Finance Docket No. 34794

BNSF RAILWAY COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
STATE OF SOUTH DAKOTA

**VERIFIED NOTICE
OF EXEMPTION**

BNSF Railway Company ("BNSF") hereby files this Verified Notice of Exemption under 49 C.F.R. §§ 1150.31 et seq. The exemption covers BNSF's acquisition from the State of South Dakota ("State") and continued operation of certain railroad lines extending principally from Milepost 777.0 near Aberdeen, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 518.9 near Sioux City, Iowa to Milepost 649.7 near Mitchell, South Dakota; from Milepost 293.1 near Canton, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 74.1 to Milepost 68.8 in Sioux Falls, South Dakota; from Milepost 68.8 near Sioux Falls, South Dakota to Milepost 49.4 near Canton, South Dakota; and from Milepost 511.9 to Milepost 518.9 in Sioux City, Iowa. The lines covered by this exemption, referred to collectively as the "Core Lines", are described in full in the Operating Agreement between the State and Burlington Northern Railroad Company ("BN"), BNSF's predecessor, dated July 10, 1986, as amended. The total route miles being acquired is approximately 368 miles. A map showing the Core Lines is attached as Exhibit No. 1, and a copy of the Operating Agreement, as amended, is attached as Exhibit No. 2.

As the Board is aware, BNSF previously filed a Verified Notice of Exemption with respect to its acquisition and operation of the Core Lines in Finance Docket No. 34645 on December 23, 2004. On December 29, 2004, the State filed a petition seeking a stay of the notice of exemption, pending resolution of the State's forthcoming petition to partially reject or revoke the petition. After several subsequent pleadings by the parties, the Board rejected BNSF's exemption notice because, under the circumstances, the proposed transaction contemplated by BNSF was not appropriate for consideration under the 49 CFR § 1150.31 "class exemption" procedure, which is typically reserved for uncomplicated and noncontroversial cases. The Board held that the case was then both complicated and controversial. January 14, 2005 Decision at 2. The Board directed BNSF to either file a § 10502 petition or a § 10901 application. BNSF thereafter filed an application in Finance Docket No. 34667 on February 18, 2005. As a result of the parties' subsequent execution of a settlement agreement, the Board stayed that proceeding on May 25, 2005.

Given that the concerns expressed by the State about the proposed transaction have been resolved pursuant to the parties' settlement agreement, the transaction should no longer be considered unusually complicated or controversial. The State does not object to the processing of BNSF's Core Lines acquisition under this Verified Notice of Exemption.¹ See Exhibit 3 attached hereto. Moreover, interested parties and the public have been afforded the opportunity to comment on the proposed acquisition in Finance Docket No. 34667. See March 3, 2005 Decision. The only comments received in response to the Board's notice were from the State and John D. Fitzgerald, for and on behalf of United Transportation Union-General Committee of

¹ Indeed, a timely acquisition is a key term of the settlement, and, in the event the Core Lines cannot be acquired on or before December 15, 2005, the Settlement Agreement, by its terms, becomes null and void.

Adjustment, who asked that the BNSF application be approved without conditions. Any additional comments Mr. Fitzgerald may have² can be appropriately and fully considered in connection with this Verified Notice of Exemption pursuant to a petition to revoke, a procedure routinely employed when no other parties oppose the transaction. Finally, all parties of record in Finance Docket No. 34667 will be served by hand or next day delivery with this Notice. Accordingly, consideration of the transaction under the § 1150.31 class exemption procedure is appropriate.³

BNSF has provided common carrier rail service over these former Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee Road") lines since on or about July 6, 1981, pursuant to a predecessor agreement to the Operating Agreement. Prior to that time, the Milwaukee Road had entered bankruptcy in 1977, and had received approval from the Interstate Commerce Commission ("ICC") and the bankruptcy court to abandon the Core Lines in 1980. *Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company – Abandonment – In South Dakota, Iowa and Nebraska*, Docket No. AB-7 (Sub-No. 88) (ICC served May 14, 1980); *In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, No. 7-B-8999 (N.D. Ill., June 9, 1980), Order No. 342A. Pursuant to an agreement between the State and the Milwaukee Road trustee approved by the bankruptcy court

² In this regard, Mr. Fitzgerald's attorney, Gordon MacDougall, submitted a letter to the Board on October 31, 2005, in which he indicated that Mr. Fitzgerald "is not, at this time, in accord with BNSF's declared intent to dismiss its application and to convert the acquisition and operation to a series of notices of exemption."

³ BNSF will shortly withdraw the application in Finance Docket No. 34667 and seek dismissal of that proceeding.

on October 27, 1980, the State acquired the abandoned Core Lines from the Milwaukee Road estate in 1981.⁴ See *Simmons v. ICC*, 697 F.2d 326, 329-30 (D.C. Cir. 1982).

The State subsequently entered into the Operating Agreement with BN under which BN would provide rail service on the Core Lines and certain other State-owned rail lines. BN obtained a Modified Certificate of Public Convenience and Necessity ("Modified Certificate") from the ICC to operate the Core Lines. *Burlington Northern Railroad Company – Operations – In the States of IA and SD*, Finance Docket No. 29672 (ICC served August 17, 1981).

In June 2004, BNSF advised the State that it desired to exercise its option to purchase the Core Lines under Article 3, Section E.2 of the Operating Agreement. Litigation in state court over exercise of that option ensued, and ultimately an agreement between BNSF and the State dated as of April 25, 2005, resolved a number of pending disputes and litigation between the parties and provided for BNSF's purchase of the Core Lines ("Settlement Agreement"). The Settlement Agreement further provides, among other things, for the grant to the State or third parties of certain trackage, haulage, or other access rights over rail lines owned or to be acquired by BNSF in South Dakota.⁵ The grant of these various trackage, haulage and access rights are preconditions to BNSF's purchase of the Core Lines.

There will be no change in BNSF's operations on the Core Lines. However, since the Modified Certificate pursuant to which BNSF currently operates the Core Lines applies only to operations over State-owned lines, BNSF's Modified Certificate authority will no longer be valid

⁴ Since the Core Lines were abandoned, the Lines are no longer subject to the Board's jurisdiction, and the acquisition and operation of the Lines by a rail carrier (here BNSF) is subject to the prior approval requirements of 49 U.S.C. 10901 rather than those of 49 U.S.C. 11323. BNSF has therefore properly invoked the Board's notice of exemption procedures at 49 CFR Part 1150 Subpart D applicable to § 10901 acquisitions and operations.

⁵ To the extent these rights are within the STB's jurisdiction, they are or will be the subject of various notices of exemption being filed concurrently or subsequent to this Notice of Exemption.

once it acquires the Core Lines. Accordingly, this Notice of Exemption also seeks authority to continue to operate the Core Lines as well. Once it has acquired the Core Lines, BNSF will notify the appropriate parties that it will cease providing service under the Modified Certificate but will continue providing service pursuant to this Notice of Exemption.

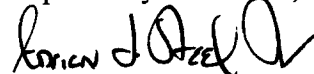
This acquisition will have no impact on rail labor. BNSF has been the common carrier on the Core Lines since 1981, and operations by the Milwaukee Road had ceased well before BNSF resumed service. BNSF's operations over the Core Lines will not change as a result of taking legal title. As a result, no employees will be adversely affected by this exemption.

Correspondence concerning this proceeding should be directed to the person below:

Adrian L. Steel, Jr.
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006-1101

I certify that the acquisition is not a transaction requiring the preparation of either an Environmental Report or a Historic Report under 49 C.F.R. § 1105.6(c)(2)(i) and § 1105.8(b)(1).

Respectfully submitted,



Adrian L. Steel, Jr.
Robert M. Jenkins III
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006-1101
(202) 263-3237 - Telephone
(202) 263-5237 - Fax

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34794

BNSF RAILWAY COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
STATE OF SOUTH DAKOTA

BNSF Railway Company ("BNSF") has filed a notice of exemption to acquire and operate certain railroad lines owned by the State of South Dakota ("State") as described in a July 10, 1986 Operating Agreement between BNSF's predecessor and the State. These lines include principally the lines from Milepost 777.0 near Aberdeen, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 518.9 near Sioux City, Iowa to Milepost 649.7 near Mitchell, South Dakota; from Milepost 293.1 near Canton, South Dakota to Milepost 650.6 near Mitchell, South Dakota; from Milepost 74.1 to Milepost 68.8 in Sioux Falls, South Dakota; from Milepost 68.8 near Sioux Falls, South Dakota to Milepost 49.4 near Canton, South Dakota; and from Milepost 511.9 to Milepost 518.9 in Sioux City, Iowa.

The acquisition authority will be effective on December 6, 2005, and operations under this exemption will begin on or after that date.

This notice is filed under 49 C.F.R. §§ 1150.31 et seq. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

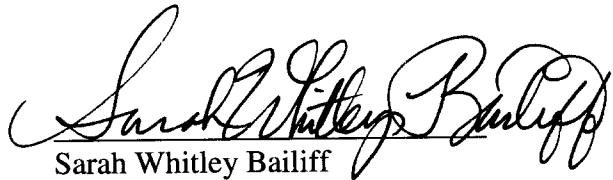
Dated:

By the Board,
Vernon A. Williams,
Secretary.

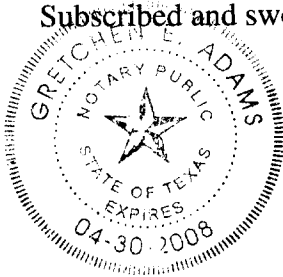
VERIFICATION

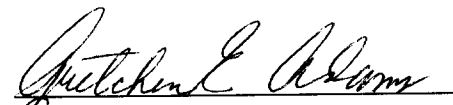
THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah Whitley Bailiff being duly sworn, deposes and says that she has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of her knowledge and belief.


Sarah Whitley Bailiff

Subscribed and sworn to before me this 22 day of November, 2005.




Notary Public

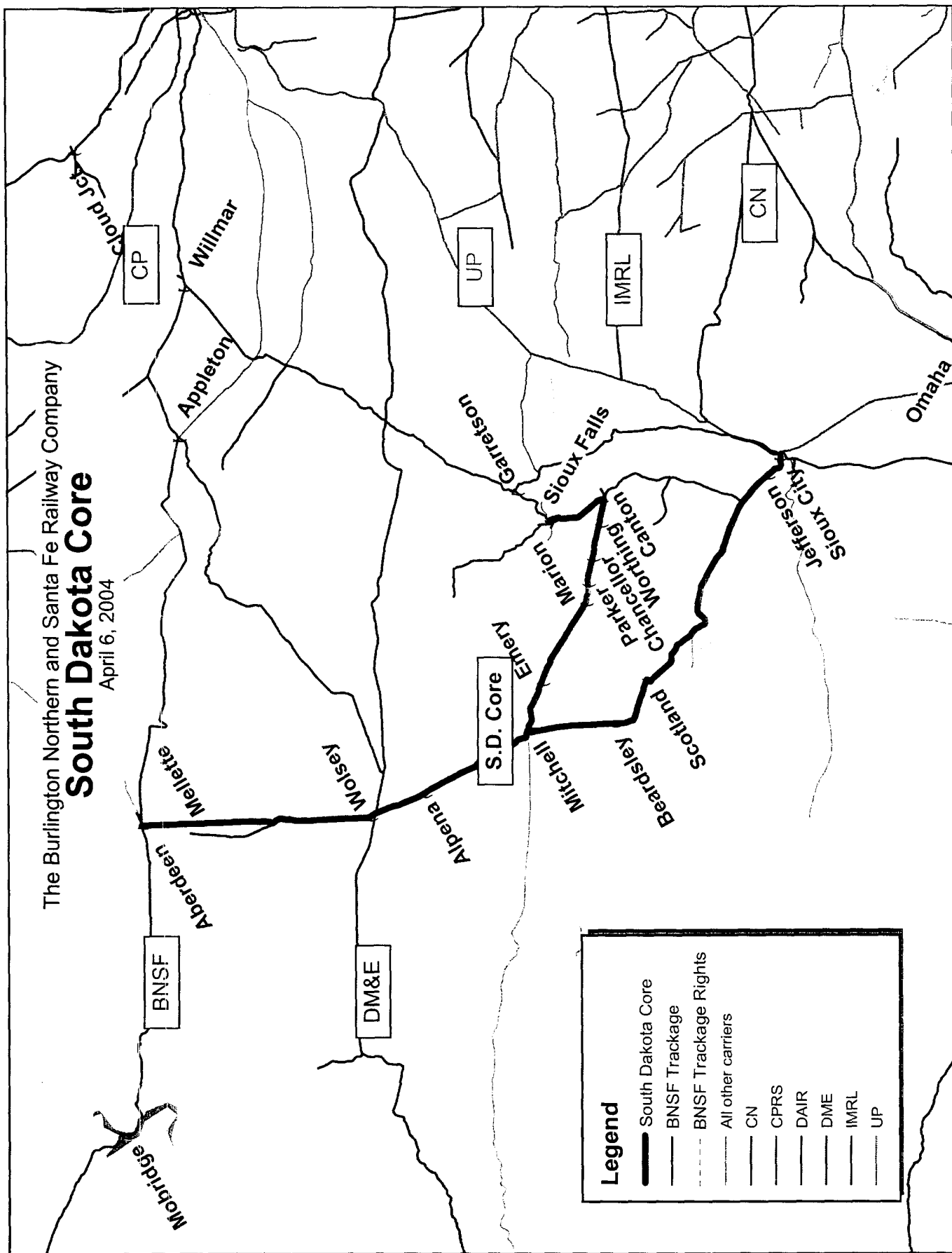
My Commission expires:

April 30, 2008

The Burlington Northern and Santa Fe Railway Company

South Dakota Core

April 6, 2004



OPERATING AGREEMENT
(As Amended)

BURLINGTON NORTHERN RAILROAD CO.
DOCKET NUMBER 22833

OFFICE OF SECRETARY
FORT WORTH, TEXAS

OPERATING AGREEMENT

BETWEEN

THE STATE OF SOUTH DAKOTA

AND

BURLINGTON NORTHERN RAILROAD COMPANY

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BN 22833

PREAMBLE

THIS AGREEMENT made and entered into this 1st day of July, 1986, by and between Burlington Northern Railroad Company of Fort Worth, Texas, a Delaware corporation, duly qualified to do business in the State of South Dakota, hereinafter called "BN" or "Operator", and the State of South Dakota, a body politic, by and through its South Dakota State Railroad Board, hereinafter called "State". WITNESSETH:

RECITALS

WHEREAS, the State is owner of the Rail Facilities described in Appendix 1 attached hereto and made a part hereof; and

WHEREAS, the State and BN have entered into an Operating Agreement dated December 22, 1981 in which BN agreed, inter alia, to become the operator of the Rail Facilities and to provide Rail Freight Service thereover, and pursuant to which BN has provided such Rail Freight Service; and

WHEREAS, the State and BN desire that, upon expiration of the Operating Agreement dated December 22, 1981, BN shall continue to be the operator of the Rail Facilities and provide Rail Freight Service thereover pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the State's permission for BN to use its Rail Facilities, BN's continued provision of Rail Freight Service, BN's payment to the State in the amounts set forth in ARTICLE 3E.1. hereof, and other good and valuable consideration, and upon the terms and conditions contained herein, BN and the State do hereby mutually agree as follows:

ARTICLE 1 - DEFINITIONS

The following words and phrases shall have the following meanings ascribed to them:

Federal Railroad Administration (FRA). The United States of America, Department of Transportation, Federal Railroad Administration.

FRA Class 2 Track Safety Standards. Those several applicable definitions of Class 2 found in 49 C.F.R. § 213, et seq., as amended.

Interstate Commerce Commission (ICC). The United States of America, Interstate Commerce Commission.

Line Segment(s). The individual railroad lines listed in Appendix 1 which comprise collectively the Rail Facilities.

Maintenance. The normal and regular work required to keep the Rail Facilities in the condition necessary to enable continued safe operations at the Maintenance Standard established in Article 5A herein, including, but not limited to, tie, rail and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control and other necessary repairs and work. Maintenance does not include the performance of major repairs occasioned by force majeure as defined in Article 10 herein.

Rail Carrier(s). A person, corporation or other organization providing transportation by railroad.

Rail Facilities. The track, bridges, switches, and related rail bed structures owned by the State and made available to the Operator hereunder, or any portion thereof, as described in Appendix 1. The term "Rail Facilities"

does not include right-of-way fences, buildings (except buildings used by Operator), overhead bridges, or industry or elevator tracks, unless otherwise designated in Appendix 1.

Rail Freight Service. The service to be provided by the Operator hereunder.

Rehabilitation. The work, in addition to Maintenance, including capital improvements, to improve or upgrade the condition of the Rail Facilities above and beyond their existing condition.

Shipper(s). Any individual or entity utilizing the Rail Freight Service provided by the Operator, including consignees.

System. The Burlington Northern Railroad Company railroad system.

ARTICLE 2 - RAIL FACILITIES

A. Facility Description. The State shall provide the Rail Facilities described in Appendix 1 hereto.

B. Operational Rights. The State hereby grants and permits the Operator use of any and all of the State's rights and licenses in the Rail Facilities owned by the State as may be necessary for the purpose of providing Rail Freight Service. The rights granted the Operator herein relate solely to the provision of Rail Freight Service and all related activities over facilities owned by the State, and the Operator may not use such facilities for any other purpose without the prior written authorization of the State. Nothing in this Article shall be construed as in any sense relieving the Operator of its responsibilities pursuant to Article 6 hereto.

C. Administration of Rail Facilities. Notwithstanding any other provision to this Agreement, the State shall retain sole responsibility for the management of State owned Rail Facilities and equipment, other than in connection with provision of Rail Freight Service and all related activities. The State shall have the right to make such Rail Facilities available for use by third parties, subject to prior approval by the Operator; provided, however, that such use by third parties shall not materially interfere with the provision of Rail Freight Service by Operator.

D. State Inspection. The State or its duly authorized representative, upon reasonable notice to the Operator, shall have the right to inspect any and all Rail Facilities for the purpose of verifying the Operator's compliance with the terms and conditions of this Agreement.

E. Other Operations. Nothing in this Agreement shall be construed so as to prohibit the State or any of its subdivisions from contracting separately for operations by the Operator or by third parties over State owned trackage not included in the Rail Facilities described in Appendix 1 hereto.

ARTICLE 3 - OPERATIONS

A. Provision of Rail Freight Service. The Operator hereby agrees to provide transportation of freight by railroad to and from points on the Rail Facilities at the levels and frequencies performed by the Operator over the remainder of its System under similar transportation circumstances. Rates and charges to be paid by South Dakota shippers for such service shall be established by the Operator on the same basis as those rates and charges paid to BN by shippers which are similarly situated.

B. Control. The Operator shall be responsible for the management, operation, and control of the Rail Freight Service, including, but not limited to, the provision of locomotives, cars and other equipment, the dispatching and scheduling of trains, employment and assignment of crews and other employees, publishing of transportation, accessorial and demurrage rates and charges in appropriate tariffs, agreeing to divisions, per diem and other accounting and operating agreements with other railroads, and the performance of Maintenance as provided in Article 5 hereto. The Operator will endeavor to provide such service in an efficient manner.

C. Operating Rules and Regulations. The Operator shall have the exclusive authority to promulgate and adopt rules and regulations for the operation of the Rail Freight Service.

D. Labor Agreements. The Operator shall have exclusive responsibility for the negotiation and implementation, as required, of labor agreements and arrangements relative to the Operator's performance hereunder, and nothing in this Agreement shall be construed as to give rise to any contractual or other legal relationship between the State and any labor organization.

E. Rental Payments and Purchase Option.

1. Rental Payments. BN agrees to pay rental payments to the State for use of the Rail Facilities during the term of this Agreement in accordance with the following provisions of this ARTICLE 3E.1.

(a) For all traffic originated or terminated on the Rail Facilities during each calendar year, beginning January 1, 1987, excluding coal, BN will make annual rental payments equal to the amount derived by multiplying the gross freight revenues earned from such traffic, by the appropriate percentage set forth below:

<u>For that Portion of Gross Freight Revenue:</u>	<u>Percentage</u>
\$20 Million and under	0%
Between \$20 and \$25 Million	5%
Between \$25 and \$30 Million	6%
In excess of \$30 Million	7%

Example

Gross freight revenue is \$35 million in 1988. Payments are:

First \$20 Million x 0% = 0
\$5 Million x 5% = \$250,000
\$5 Million x 6% = 300,000
\$5 Million x 7% = 350,000
Total Rental Payment \$900,000

For purposes of this Article, traffic which originated or terminated on the Napa to Platte line or the Mitchell to Chamberlain line and which was interchanged to or from the BN is considered to be traffic which originated or terminated on the Rail Facilities.

All rental payments shall be made by BN as soon as practicable after BN has determined its settled revenues for the preceding year, but in no event later than July 1 of each succeeding year.

The revenue figures hereinabove stated shall be adjusted effective July 1, 1987 and each July 1 thereafter to recognize the increase or decrease in the cost of labor and material as reflected in the Annual Indexes of Chargeout Prices and Wage Rates (1967=100), Series RCR, included in indexes of Railroad Material Prices and Wage Rates and supplements combined (excluding fuel) thereto, issued by

the Association of American Railroads. In making such determination, indexes for the Western District shall be used. The material prices, wage rates and supplements combined (excluding fuel) index figure for the calendar year 1985 shall be taken as the base.

2. Option to Purchase Rail Facilities. BN shall have the option to purchase the entire Rail Facilities, which for purposes of this section includes right-of-way fences, buildings not used by the Operator, overhead bridges, and industry and elevator tracks, at any time during the term of this Agreement, provided that, at such time, BN is not in default hereunder. BN may elect to purchase the entire Rail Facilities by paying to the State an amount equal to the purchase price, which the State paid to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for the rail facilities plus any state funds that were used for Rehabilitation of the Rail Facilities. Federal funds used in the Rehabilitation of said Rail Facilities shall not be considered in determining purchase price.

If BN exercises its option to purchase the Rail Facilities pursuant to this Article, the BN purchase of the Rail Facilities is subject to any encumbrances against the property except that the State shall warrant that no encumbrances exist which would deprive BN of use and enjoyment of the Rail Facilities as a railroad. If the BN exercises its option to purchase the Rail Facilities pursuant to this ARTICLE 3E.2., BN agrees that it will provide Rail Freight Service on the Rail Facilities for a period of not less than ten (10) years following BN's purchase thereof. Provided, however, nothing contained herein shall preclude BN from discontinuing rail service

over any Line Segment or Segments, or from permitting third party use thereof.

The State further agrees that, if the Rail Facilities are purchased by BN, the State will use its best efforts to secure an exemption for BN from railroad taxes levied by the State of South Dakota on the Rail Facilities for a period of five (5) years after the purchase is finalized.

F. Service on Mitchell to Chamberlain Line Segment. BN shall provide Rail Freight Service over that portion of the Canton to Chamberlain Line Segment between Mitchell and Chamberlain, South Dakota, through December 31, 1986, and after that date the Line Segment between Mitchell and Chamberlain shall no longer be considered a part of the Rail Facilities and BN shall have no responsibility as Operator to provide Rail Freight Service thereover. Any termination of Rail Freight Service on the Mitchell to Chamberlain Line Segment shall be accomplished in accordance with the laws and Interstate Commerce Commission regulations applicable thereto, and shall in no way modify the Operator's obligation to provide Rail Freight Service over the remaining Rail Facilities pursuant to this Agreement, which obligation shall continue in full force and effect.

ARTICLE 4 - ADDITIONS TO RAIL FACILITY

A. Additions to the Rail Facilities. The State hereby grants to Operator the right to make such Additions to the Rail Facilities as Operator may require to perform the Rail Freight Service, at Operator's sole expense, unless otherwise mutually agreed. The term "Addition(s)" as used herein shall mean capital improvements which are in addition to the Rail Facilities. Operator shall own and have the right to remove any of said Additions which

can be removed without causing the Rail Facilities to be less serviceable than before said Addition was made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made shall become the property of the State and a part of the Rail Facilities.

ARTICLE 5 - MAINTENANCE

A. Maintenance Standard. The State shall have no obligation to perform any Maintenance of the Rail Facilities. Operator shall be obligated to perform Maintenance of the Rail Facilities in accordance with FRA Class 2 Track Safety Standards.

B. Responsibility. The Operator shall be responsible for the performance of Maintenance required to keep the Maintenance Standard contained in Article 5A in effect. Operator acknowledges the assignment to it of responsibility for purposes of compliance with 49 C.F.R. § 213, et seq. and shall conduct routine inspections of the Rail Facilities in accordance with 49 C.F.R. § 213, et seq. for the term of this Agreement. Maintenance performed by the Operator pursuant to this Article shall not materially interfere with Rail Freight Service.

C. State Remedies. Should the State determine that the Operator is in default of its obligations under this Article, the State shall provide the Operator with notice of such default pursuant to Article 12 hereto. In the event that the Operator fails to cure such default to the satisfaction and acceptance of the State within thirty (30) days of receipt of such notice, the

State shall have the right to terminate this Agreement and enter upon the Rail Facilities. The exercise of such right shall not impair any other rights of the State for default in law or equity.

ARTICLE 6 - LEGAL RELATIONSHIPS AND RESPONSIBILITY TO PUBLIC

A. Laws to be Observed. The Operator shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees identified herein. The Operator shall at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and shall protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the Operator or its employees, agents, or subcontractors.

B. Permits, Licenses, and Taxes. The Operator shall procure all permits and licenses, obtain any and all necessary safety waivers, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of this Agreement; provided, however, that the Operator shall be exempt, pursuant to SDCL 10-28-24 (S.B. 236, Section 13, March 7, 1981), from railroad taxes levied by the State of South Dakota. The Operator shall defend, indemnify and hold harmless the State and its representatives from any liability resulting from the Operator's, or its

vendors' or subcontractors', failure to make timely payment of, or to pay, any such items or similar items, or failure to comply with the reporting, return or other procedural requirements with respect to their payment. Any interest, penalties, or other liabilities arising from such failure shall be solely for the Operator's account.

C. Public Convenience and Safety. The Operator shall at all times conduct operations in connection with performance of Rail Freight Service so as to ensure the safety and protection of the general public, residents along the Rail Facilities and their property. Operator shall be responsible for maintaining the facilities included in each Line Segment in safe working condition, except to the extent that applicable law places this responsibility on any governmental authority, and shall comply with all laws, ordinances, rules, regulations, final orders and decrees applicable to such facilities. Operator shall provide upgrading of such facilities, or new or additional facilities, as may be required by appropriate governmental authority, to the same extent provided by Operator over the remainder of its System under similar transportation circumstances. Nothing herein shall be construed as prohibiting or estopping the Operator from contesting in good faith any such laws, ordinances, rules, regulations, or final orders and decrees applicable to such facilities.

D. Liability of the Operator. The Operator shall indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property, including State owned property,

on account of any negligent act, omission, neglect, or misconduct of the Operator, its representatives, officers, employees, agents, or subcontractors; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright, or from any claims or amounts arising or recovered under any "Workmen's Compensation Act", comparable law, or any other law, ordinance, or order or decree; or from any liens or claims for which the State might be or become liable, or to which the State's property might be or become subject, which are chargeable to the Operator or any of its subcontractors, representatives, officers, employees or agents, except any liens imposed on the State's property by the Federal Government arising from the use of Federal monies for Rehabilitation of the Rail Facilities. The Operator shall have and maintain adequate insurance to fulfill its obligations under this Article.

E. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no liability upon any employees of the State, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

F. Assignment. Neither party shall assign its rights or delegate its duties under this Agreement or any part thereof except as provided in Article 6G.

G. Subcontracts. With the prior written approval of the State, which approval shall not be unreasonably withheld, the Operator shall have the

right, so long as it is not in default hereunder, to enter into subcontracts for the performance of all or a portion of its agreements, duties and obligations under this Agreement. Any such subcontract (i) shall be in accordance with all applicable laws and regulations, including those of the Interstate Commerce Commission; (ii) shall not conflict with any term or provision of this Agreement; (iii) shall in no way affect the State's rights under this Agreement and, under the express terms of the subcontract, the rights of the subcontractor shall be subject and subordinate to the terms of, and the rights of the State under, this Agreement; and (iv) the period of any such subcontract (including any option by the subcontractor to extend such period) shall be for a period not longer than the term of this Agreement. No subcontract permitted by this Article 6G shall affect or reduce any of the obligations of the Operator hereunder or relieve or release the Operator from such obligations, or create any contractual relationship between the State and any subcontractor or labor organization, and this Agreement and all obligations of the Operator hereunder shall continue in full force and effect as the obligations of a principal and not those of a surety.

H. Amendment. No term or provision of this Agreement may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided, however, that when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.

I. Governing Law. Except as expressly provided herein, this Agreement shall be governed in all respects by the law of the State of South Dakota, and any recourse shall be to the State Courts of the State of South Dakota, provided, however, that if the State Courts do not have subject matter jurisdiction over an issue, recourse may be had to a Federal Court located in South Dakota.

J. Conduct Pending Dispute. In the event of any dispute between the State and the Operator arising out of, or relating to, the performance of this Agreement, which dispute is the subject of an action brought in good faith by any party hereto, as provided in Article 6I of this Agreement, Rail Freight Service and any and all other obligations of the Operator and of the State hereunder shall be performed in the manner they were performed prior to the bringing of such action, pending final determination of such action by the Court, and the expiration of the time for any appeal, or the determination of any such appeal, if taken.

ARTICLE 7 - RECORDS AND REPORTS

A. Records. The Operator shall maintain records of operations and activities conducted pursuant to this Agreement to the same extent and in the same form and detail as those normally maintained by the Operator with respect to other identifiable portions of its System.

B. State Inspection. Upon reasonable notice, the Operator shall allow the State or its authorized representatives to inspect the operations and activities of the Operator pursuant to this Agreement, and to examine applicable records of the Operator at BN's principal place of business during normal business hours, for the purpose of verifying the Operator's compliance

with the terms and conditions of this Agreement and the amount of traffic moved by the Operator over the Rail Facilities and the gross freight revenues earned therefrom; provided, however, that the Operator may refuse the State or its representatives access to records which the Operator is required to keep confidential pursuant to the express terms of any law, ordinance, decree or regulation of any governmental authority with jurisdiction over the Operator.

C. State Responsibility for Records. The State, as owner of the Rail Facilities, shall be responsible for all records relating to track construction agreements, property acquisition agreements, track leases, property leases and all other property related transactions respecting the Rail Facilities. The State shall provide BN with notice of each such transaction. The State agrees to insert provisions in each agreement between the State and an industry or elevator to the effect that said industry or elevator will hold the State and BN harmless for liability occurring as a result of BN rail operation over the leased facilities, such provisions to be as protective to the State and BN as those provisions contained in BN's standard form of similar type of agreement, appended hereto as Appendix 2.

ARTICLE 8 - CONTRACT TERM, RENEWAL AND RENEGOTIATION

A. Term. This Agreement shall be in effect from July 1, 1986, until July 1, 2001, provided, however, that this Agreement may be terminated in accordance with the provisions of Article 8.B or Article 9.

B. Optional Termination. Either the Operator or the State may terminate this Agreement after five (5) years from the Effective Date hereof, by notifying the other party of its intent to do so by certified mail at least one hundred eighty (180) days prior to the end of five years of operations

hereunder, and such termination shall be without cost or liability to either party.

Either the Operator or the State may terminate this Agreement after ten (10) years from the Effective Date hereof, by notifying the other party of its intent to do so by certified mail at least one hundred eighty (180) days prior to the end of ten years of operations hereunder, and such termination shall be without cost or liability to either party.

ARTICLE 9 - TERMINATION

A. Termination For Fault. Subject to Article 6J hereto, should either the Operator or the State substantially fail to perform their obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement. The exercise of such right shall not impair any other rights of the terminating party under this Agreement or any rights of action against the defaulting party for the recovery of damages. For purposes of this provision, a substantial failure to perform on the part of the Operator shall be deemed to include, but shall not be limited to, the insolvency of the Operator, appointment of a receiver of any part of the property of the Operator, any assignment by the Operator for the benefit of creditors, the filing of a petition in bankruptcy or insolvency laws or any laws relating to the relief of debtors or readjustment of indebtedness, by or against the Operator, or the attachment or distraint of any of the assets of the Operator at any time pursuant to any court order or other legal process.

B. Termination by Governmental Action. In the event that a final order or decree of a governmental authority or Court is rendered which requires, or would require if applied to Operator, BN to adopt or implement labor agreements or arrangements, with respect to compensation, rules governing working conditions, and fringe benefits, including protective arrangements, which are significantly different from, and inconsistent with, any existing agreements or arrangements presently in effect on the Rail Facilities, and which are imposed solely on account of and with respect to its performance of this Agreement, the Operator shall have the right, at its option, to terminate this Agreement by notifying the State of its intent to do so by certified mail thirty (30) days after the time for any appeal of such order has expired, or the determination of any such appeal, if taken, and such termination shall be effective on the sixtieth day following receipt of such notice by the State.

C. Termination Upon Purchase By Operator. This Agreement shall terminate upon the execution by the State and Operator of a purchase agreement in which the Operator exercises its option to purchase the entire Rail Facilities and accompanying fences, buildings, bridges, and tracks pursuant to ARTICLE 3E.2. of this Agreement.

ARTICLE 10 - FORCE MAJEURE

A. Force Majeure. The parties will be excused from performance of any of their respective obligations hereunder where such performance is prevented by any event beyond their respective control, and which is without the fault or negligence of either party, which shall include, without limitation, any actions of any federal, State or local agency or instrumentality; acts of God; strikes or other labor troubles; explosions; fires, or vandalism; provided,

however, that actions of the State shall not excuse the State from performance of its obligations hereunder.

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

A. The Operator. The Operator represents and warrants as of the Effective Date of this Agreement the following:

1. The Operator is a corporation duly organized in the State of Delaware, and validly existing and in good standing under the laws of the State of South Dakota, and is duly qualified to do business in each jurisdiction where the utilization of Railroad Facilities requires such qualification;
2. The Operator has the full power and authority to enter into this Agreement and to carry out the functions which it shall have undertaken in this Agreement;
3. All corporate and other proceedings required to be taken by or on the part of the Operator to authorize the Operator to enter into this Agreement and perform the Rail Freight Service shall have been or will be duly taken; and
4. The execution of this Agreement and the provision of Rail Freight Service will not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

B. The State. The State represents and warrants the following:

1. The State has been granted, by its legislature, the power and authority to enter into this Agreement and to carry out its obligations under this Agreement;
2. The entering into and performance of this Agreement on the part of the State does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body;
3. The State has duly and validly acquired the rights to use the Rail Facilities and has made those rights available to the Operator; and
4. There exist no legally binding restrictions on use of the Rail Facilities which would preclude performance of this Agreement by the Operator; provided, however, that this Agreement shall be subject to existing trackage rights approved by the IOC.

ARTICLE 12 - NOTICES

A. Notices. Except as expressly provided otherwise, all notices or other communications hereunder shall be in writing and shall be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first-class, postage prepaid to the person specified herein as entitled to receive such notice, or to their duly authorized representative, unless notice of a change of address is given pursuant to the provisions of this Article.

For the State:

Director, Division of Railroads
Department of Transportation
State of South Dakota
Pierre, South Dakota 57501

For the Operator:

Vice President, Twin Cities Region
Burlington Northern Railroad Company
176 East Fifth Street
St. Paul, Minnesota 55101

cc: Senior Vice President
Regional Operations - East
Burlington Northern Railroad Co.
9401 Indian Creek Parkway
Overland Park, Kansas 66210

The date of any such notice shall be the date of delivery as prescribed by this Article.

ARTICLE 13 - INTERPRETATION

A. References to Articles. All references to articles or sections include all subarticles or subsections under the Article referenced, and references to subarticles similarly include references to sub-subarticles.

B. Referenced Standards. All references specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the effective date of this Agreement, except where a particular issue is indicated. Municipality, utility and railroad standards shall govern except as otherwise provided herein.

C. Severability. In the event any article, section, subarticle, paragraph, sentence, clause, or phrase contained herein shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other articles, sections, subarticles, paragraphs,

sentences, clauses, or phrases of this Agreement, which shall remain in full force and effect as if the article, section, subarticle, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally a part thereof, provided, however, that if the foregoing determination, declaration, or adjudication results in a material detriment to either party, under the terms of this Agreement, that party may, upon thirty (30) days written notice to the other party, terminate this Agreement without incurring further liability.

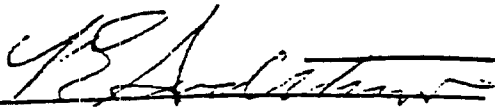
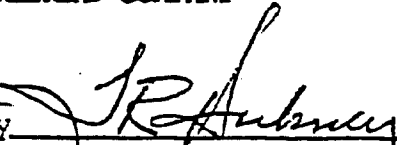
D. Effect of Headings. The headings and titles to provisions contained herein are for convenience only, and shall not be deemed to modify or affect the rights and duties of the parties to this Agreement.

E. Entire Agreement. This Agreement and the Appendices attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreements between the parties are hereby abrogated and withdrawn except as provided herein.

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

ATTEST:

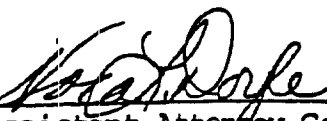
BURLINGTON NORTHERN
RAILROAD COMPANY

 By 
Vice President

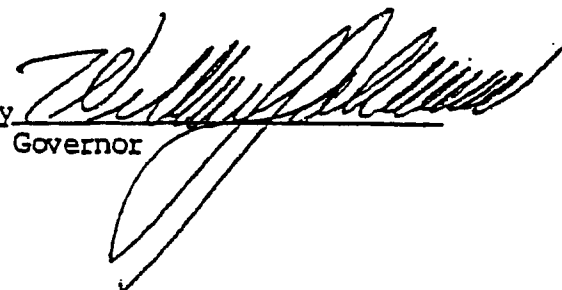
(SEAL)

APPROVED AS TO LEGAL FORM

STATE OF SOUTH DAKOTA

By 
Assistant Attorney General

By 
Chairman, South Dakota State
Railroad Board

By 
Governor

APPENDIX 1

ABERDEEN TO MITCHELL

Commencing at the North line of the NW 1/4 of the NW 1/4 of Section 25, and the NE 1/4 of the NE 1/4 of Section 26, Township 123 North, Range 64 West of the 5th P.M., also known as Milepost 777.0 and additionally known as Railroad Engineer's Survey Station Number 105+40.2N and additionally known as Melgaard Road and extending in a Southerly direction a distance of approximately 126.4 miles in and through the Counties of Brown, Spink, Beadle, Jerauld, Sanborn and Davison and terminating at the intersection with the Canton to Mitchell Line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6, and additionally known as Railroad Engineer's Survey Station Number 6434+08 containing a gross area of 2,055 acres, more or less, all of which is more particularly described on those certain right of way and track maps designated V.S.D. 11/ 1 through 32, inclusive, and on station maps V.S.D. 11/ S-3 (Warner); V.S.D. 11/ S-4 (Duxbury); V.S.D. 11/ S-5 (Mellette); V.S.D. 11/ S-8 (Ashton); V.S.D. 11/ S-10 (Redfield); V.S.D. 11/ S-13 (Tulare); V.S.D. 11/ S-14 (Spottswood); V.S.D. 11/ S-15 (Bonilla); V.S.D. 11/ S-19 (Wolsey); V.S.D. 11/ S-21 (Virgil); V.S.D. 11/ S-23 (Alpena); V.S.D. 11/ S-25 (Woonsocket); V.S.D. 11/ S-27 (Cuthbert); V.S.D. 11/ S-29 (Letcher); and V.S.D. 11/ S-30 (Loomis); all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

B. Termination by Governmental Action. In the event that a final order or decree of a governmental authority or Court is rendered which requires, or would require if applied to Operator, BN to adopt or implement labor agreements or arrangements, with respect to compensation, rules governing working conditions, and fringe benefits, including protective arrangements, which are significantly different from, and inconsistent with, any existing agreements or arrangements presently in effect on the Rail Facilities, and which are imposed solely on account of and with respect to its performance of this Agreement, the Operator shall have the right, at its option, to terminate this Agreement by notifying the State of its intent to do so by certified mail thirty (30) days after the time for any appeal of such order has expired, or the determination of any such appeal, if taken, and such termination shall be effective on the sixtieth day following receipt of such notice by the State.

C. Termination Upon Purchase By Operator. This Agreement shall terminate upon the execution by the State and Operator of a purchase agreement in which the Operator exercises its option to purchase the entire Rail Facilities and accompanying fences, buildings, bridges, and tracks pursuant to ARTICLE 3E.2. of this Agreement.

ARTICLE 10 - FORCE MAJEURE

A. Force Majeure. The parties will be excused from performance of any of their respective obligations hereunder where such performance is prevented by any event beyond their respective control, and which is without the fault or negligence of either party, which shall include, without limitation, any actions of any federal, State or local agency or instrumentality; acts of God; strikes or other labor troubles; explosions; fires, or vandalism; provided,

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Aberdeen	290,291,1157
Warner	695,897,917,1196,1201,TEL12
Duxbury	1063
Mellette	296,898,1011,T163
Ashton	300,301
Redfield	636,676,1083,1133,T162
Tulare	308,310,1070,T161
Bonilla	934,970
Wolsey	808,815,918,1001
Alpena	936,985,1047,1084,1134
Woonsocket	328,785,931,986,1039,1079,1098,1135,T156
Letcher	337,669,670,677,TEL10
Loomis	694,850,915
Mitchell	480,794,795,854,855,926,1038,1092,1160,1256 T204,T205

NORTH SIOUX CITY TO MITCHELL

Commencing at the Iowa-South Dakota border located at the centerline of the Big Sioux River in Section 14, Township 89 North, Range 48 West of the 5th P.M., also known as Milepost 518.9, and additionally known as Railroad Engineer's Survey Station Number 305+51N, and extending in a northwesterly direction a distance of approximately 130.8 miles in and through the Counties of Union, Clay, Yankton, Bon Homme, Hutchinson and Davison and terminating at the intersection with Canton to Mitchell Line in the NE 1/4 of the SW 1/4 of Section 22, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 649.7, and additionally known as Railroad Engineer's Survey Station Number 0+00, containing a gross area of 1801.8 acres, more or less, all of which is more particularly described on those certain right of way and track maps designated V.S.D. 21/ 8 and 9; V.S.D. 22/ 1 through 22, inclusive; V.S.D. 22A/ 1 through 12, inclusive, and on station maps V.S.D. 21/ S-8 (Scotland); V.S.D. 22/ S-1a, S-1b (West Yard); V.S.D. 22/ S-1c (McCook); V.S.D. 22/ S-2 (Jefferson); V.S.D. 22/ S-4 (Elk Point); V.S.D. 22/ S-6 (Burbank); V.S.D. 22/ S-8a, S-8b (Vermillion); V.S.D. 22/ S-10 (Meckling); V.S.D. 22/ S-12 (Gayville); V.S.D. 22/ S-13 (Fullerville); V.S.D. 22/ S-14a, S-14b, S-15, S-22 (Yankton); V.S.D. 22/ S-17 (Utica); V.S.D. 22/ S-18 (Lesterville); V.S.D. 22/ S-20 (Plumb); V.S.D. 22A/ S-2 (Kaylor); V.S.D. 22A/ S-4 (Tripp); V.S.D. 22A/ S-5 (Beardsley); V.S.D. 22A/ S-7 (Parkston); V.S.D. 22A/ S-8 (Dimock); and V.S.D. 22A/ S-9 (Ethan), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Ethan	412,678,766,804,1090
Dimock	753,T113
Parkston	514,515,884,908,988,1000,1069,1076,1093,1156,1182 T114,T115,T116,T117
Beardsley	357,790,T118
Tripp	796,929,938,951,1002,1099,1153,1154,1169,T172,T120
Kaylor	924,963,1042,1107,T121
Scotland	768,769,774,852,853,867,900,932,953,1104,1159 1175,1197,1257,T122,T177
Lesterville	849,1031,1165
Yankton	581,585,647,652,698,752,771,799,907,1143,1176, 1209,1216,T126
Fullerville	846
Gayville	800,964,1200
Meckling	464,465,466,1190

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Vermillion	630,679,818,952,961,998,1016,1027,T175
Burbank	1012
Elk Point	402,403,950,1057,1074
Jefferson	922,1233
West Yard	683,797,1024,1127

CANTON TO MITCHELL

Commencing east of Canton, located 285 feet east of the west line of the SW 1/4 of the SE 1/4 of Section 18, Township 98 North, Range 48 West of the 5th P.M., also known as Milepost 293.1, and additionally known as Railroad Engineer's Survey Station Number 6588+96, and extending in a Westerly direction a distance of approximately 81.50 miles in and through the Counties of Lincoln, Turner, Hutchinson, McCook, Hanson and Davison and terminating at the intersection with the Aberdeen to Mitchell line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6, and additionally known as Railroad Engineer's Survey Station Number 2861+00, containing a gross area of 1,403 acres, more or less, and also including the western leg of the west wye at Canton also known as Milepost 295.3 and additionally known as Railroad Engineer's Survey Station 6707+92, and extending in a northerly direction to Milepost 50.5, also known as Railroad Engineer's Survey Station 3512+88 connecting with the Sioux Falls to Canton line, all of which is more particularly described on right of way and track maps designated V.S.D. 19/ 1 through 21b, inclusive, and on station maps V.S.D. 19/ S-1a, S-1b (Canton); V.S.D. 19/ S-4 (Worthing); V.S.D. 19/ S-5 (Lennox); V.S.D. 19/ S-6 (Chancellor); V.S.D. 19/ S-8 (Parker); V.S.D. 19/ S-10 (Marion); V.S.D. 19/ S-12 (Dolton); V.S.D. 19/ S-14 (Bridgewater); V.S.D. 19/ S-16 (Emery); V.S.D. 19/ S-18 (Alexandria); V.S.D. 19/ S-19 (Burton); and V.S.D. 19/ S-21a, S-21b (Mitchell), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Canton	237,238,870,871,894,913,914,977,1028,1072,1129 1222,T201,T202,T203
Worthing	816,955,1078,T130
Lennox	436,438,773,974,1091,1198,1199
Chancellor	997,1013,1054,1089,1162,1255,T133,T134,T210
Parker	899,901,1106,1167,1194,1205,T135
Marion	449,650,666,767,865,883,906,935,1050,1060,1075 1095,1117,1136,1137,1139,1140,1166,1193,T136
Dolton	876,1123
Bridgewater	1035,1036,1065,1087,1141,1172,1195,T139,T140,T194
Emery	409,705,857,965,1189,1202,1251,T141,T143
Alexandria	352,653,971,1122,1171,T144,T145,T146
Mitchell	101,482,686,792,814,962,968,1032,1046,1049,1150, 1207,1212,1218,1219,T207

STIOUX FALLS

Commencing at the North Line of the NW 1/4 of the NW 1/4 of Section 33, Township 102 North, Range 49 West of the 5th P.M., also known as Milepost 74.1, and additionally known as Railroad Engineer's Survey Station Number 6807+96, and extending in a Southerly direction a distance of approximately 5.3 miles in Minnehaha County to a point of termination at the South line of the SW 1/4 of the NE 1/4 of Section 22, Township 101 North, Range 49 West of the 5th P.M., also known as Milepost 68.8 and additionally known as Railroad Engineer's Survey Station Number 4478+79, containing a gross area of 72 acres, more or less, and also including the connecting track to and the lead track in the Sioux Empire Industrial Park which begins at Milepost 73.8, also known as Railroad Survey Station Number 6822+32 and extending a distance of 4,506 feet, which includes Tract 2 of Block Eleven of the Sioux Empire Development Park One Addition and Tract R-1 of the Sioux Empire Development Park Two Addition to the City of Sioux Falls, all of which is more particularly described on right of way and track maps designated V.S.D. 17/ 8 and 9 on station maps V.S.D. 17/ S-8, S-9a, S-9b and S-9c (Sioux Falls), all of which are included herein and made a part hereof by reference. Excepting therefrom that portion of the S 1/2 of the NW 1/4 of Section 16, Township 101 North, Range 49 West of the 5th P.M. lying East of Phillips Avenue, north of 6th Street and southwesterly of a line 25 feet southwesterly of and parallel to the centerline of the main track, being the site of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's depot and freight house facility. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Sioux Falls	245,757,895,1058,1080,1101

STIOUX FALLS TO CANTON

Commencing at a point on the North line of the NW 1/4 of the SE 1/4 of Section 22, Township 101 North, Range 49 West of the 5th P.M., also known as Milepost 68.8 and additionally known as Railroad Engineer's Survey Station Number 4478+79, and extending in a Southerly direction a distance of approximately 18.7 miles in and through the Counties of Minnehaha and Lincoln to a point of termination at the intersection with the Canton to Elk Point line in the NE 1/4 of the NW 1/4 of Section 24, Township 98 North, Range 49 West of the 5th P.M., also known as Milepost 49.4, and additionally known as Railroad Engineer's Survey Station Number 97+08.5, containing a gross area of 243 acres, more or less, all of which is more particularly described on those right of way and track maps designated V.S.D. 17/ 9 through 14, inclusive, and on station maps V.S.D. 17/ S-11 (Harrisburg); and V.S.D. 17/ S-14 (Canton); all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Canton	238,980,1026,1040,1102,1238,T200
Harrisburg	759,941,1120,1131,T211

SIoux CITY LINE

Commencing with the intersection with the West Line of Charles Street in the SE 1/4 of Section 27, Township 98 North, Range 47 West of the 5th P.M., in the City of Sioux City, Woodbury County, Iowa, also known as Milepost 511.90, and additionally known as Railroad Engineer's Survey Station Number 74+13.7 and extending in a westerly direction through Woodbury County to the Iowa-South Dakota border, located at the centerline of the Big Sioux River in Section 14, Township 89 North, Range 48 West of the 5th P.M., also known as Milepost 518.9, and additionally known as Railroad Engineer's Survey Station Number 295+61S, containing a gross area of 80 acres, more or less, all of which is more particularly described on that certain right of way and track map designated V. Iowa 19/ 23 and 24; and on station maps V. Iowa 19/ S-23b, S-23c, S-23d, S-24a, S-24b and S-24c (Sioux City), all of which are included herein and made a part hereof by reference. This line is referred to herein as the "Sioux City Line". The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Sioux City	471,473,619,620,641,642,643,644,645,682,869,1103

MITCHELL TO CHAMBERLAIN

Commencing at the intersection with the Aberdeen to Mitchell Line in the NW 1/4 of Section 21, Township 103 North, Range 60 West of the 5th P.M., also known as Milepost 650.6 and additionally known as Railroad Engineer's Survey Station Number 2861+00, and extending in a Westerly direction a distance of approximately 68.8 miles in and through the Counties of Davison, Aurora and Brule and terminating at the Easterly line of the Missouri River Bridge in the SW 1/4 of Section 21, Township 104 North, Range 71 West of the 5th P.M., also known as Milepost 442.4, and additionally known as Railroad Engineer's Survey Station Number 222+17, containing a gross area of 1,559 acres, more or less, all of which is more particularly described on right of way and track maps designated V.S.D. 19 /S-21a through 38B, inclusive, and on station maps V.S.D. 19/ S-21a, S-21b (Mitchell); V.S.D. 19/ S-23 (Betts); V.S.D. 19/S-24 (Mt. Vernon); V.S.D. 19/ S-27 (Plankinton); V.S.D. 19/ S-30 (White Lake); V.S.D. 19/ S-33 (Kimball); V.S.D. 19/ S-36 (Pukwana); and V.S.D. 19/ S-38A, S-38B (Chamberlain), all of which are included herein and made a part hereof by reference. The aforementioned is subject to the following pre-existing leases:

STATION	LEASES OF RECORD BY STATE OF SOUTH DAKOTA LEASE NUMBER
Betts	999
Mt. Vernon	944,T185
Plankinton	519,866,1125,1168,1235,1237
White Lake	561,563,564,568,798,1048,1246
Kimbell	432,701,979,1014,1163,1164,1244
Pukwana	530,754,847,1114,1155
Chamberlain	377,378,381,382,680,681,788,916,921,987,993,994, 1088,1183,1188,T151

APPENDIX 2

Contract Transmittal



BNSF
Burlington Northern Santa Fe

Complete the form and send with original contract to:
BNSF Corporate Support, Contract Records, 4929
Northeast Parkway, Fort Worth, TX 76106-1818. See
attached instructions for more information.

ONLY ORIGINAL CONTRACT WITH ORIGINAL SIGNATURES ARE TO BE SUBMITTED

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

FORM SUBMITTED BY:	PHONE NUMBER	FAX NUMBER	DATE SUBMITTED
Michael J. Galassi	817-352-4937	817-352-7219	1/21/04

DEPARTMENT	LOCATION	CONTRACT SIGNED BY:	OFFICER CODE
Contracts & Joint Facilities	Fl. Worth, TX	John T. Hall	Misc

☐ NEW CONTRACT

Complete the following:

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

☒ AMENDMENT

Complete the following:

ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	AMENDMENT DATE (mm/dd/yyyy)
BN22833	07/01/1986	08/07/1991

☐ CANCELLATION

Complete the following:

ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yyyy)	TERMINATION DATE (mm/dd/yyyy)
		07/01/2020

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

CONTRACT PARTIES (OTHER THAN BNSF)

State of South Dakota

DESCRIPTION OF THE CONTRACT

Operating Agreement between BN(SF) and the State of SD. Amendment among other items extended the term to 7/1/2020, changed the rental payment terms, provided for the purchase by BN(SF) of the Appleton, MN - Ortonville, SD line segment

CONTRACT LOCATION		LINE SEGMENT / MILEPOST INFORMATION					
STATE	CITY	LINE SEG. #	FROM MP #	TO MP #	LINE SEG #	FROM MP #	TO MP #
SD							

DOT #	FEDERAL FUNDED (Y,N)	FEDERAL PROJECT ID #	STATE PROJECT ID #

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

BNSF BILLS OTHER PARTY? (Y,N)

IF YES, ATTACH EXTRA COPY OF
CONTRACT FOR ACCT. DISTRIBUTION

NOTE: NO OTHER DISTRIBUTION WILL
BE MADE

SUBMITTING DEPT. IS RESPONSIBLE FOR
NOTIFYING CORPORATE SUPPORT WHEN
CONTRACT IS CANCELLED.

CONTRACT NO. (ASSIGNED BY CORPORATE SUPPORT.)

BN 22833.01

Docket # 14524
Control # 22833

7/1/81

AMENDMENT TO OPERATING AGREEMENT
BETWEEN THE STATE OF SOUTH DAKOTA AND
BURLINGTON NORTHERN RAILROAD COMPANY

PREAMBLE

This Amendment Agreement, made and entered into this ____ day of _____, 1991, by and between Burlington Northern Railroad Company of Fort Worth, Texas, a Delaware Corporation, duly qualified to do business in the State of South Dakota, hereinafter called "BN" or "Operator", and the State of South Dakota, a body politic, by and through its South Dakota State Railroad Board, hereinafter called "State".

WITNESSETH:

RECITALS

WHEREAS, the State and BN have entered into an Operating Agreement, dated July 10, 1986, hereinafter "Operating Agreement", in which BN agreed, inter alia, to become the Operator of the Rail Facilities and to provide Rail Freight Service thereover, and pursuant to which BN has provided such Rail Freight Service; and

WHEREAS, the State and BN desire that the Operating Agreement be amended pursuant to ARTICLE 6H. thereof.

NOW THEREFORE, in consideration of the State's agreement to modify the rental provisions of the Operating Agreement and BN's performance of certain rail construction and acquisition projects, and for other good and valuable consideration, and upon the terms and conditions contained herein, BN and the State do hereby mutually agree to amend the Operating Agreement as follows:

Section 1. Scope of Amendment.

BN and the State agree that the Operating Agreement shall remain in full force and effect in all respects except as specifically amended in the following sections of this Amendment Agreement.

Section 2. Amendment of ARTICLE 3E.1 (Rental Payments) of the Operating Agreement.

BN agrees to continue to calculate rental payments to be made to the State for the use of the Rail Facilities during the term of the Operating Agreement in accordance with the provisions of ARTICLE 3E.1 of the Operating Agreement. However, the actual amount of the rental payment will be determined in accordance with the terms of this Section 2.

After BN has calculated the rental payment under the formula set forth in ARTICLE 3E.1 of the Operating Agreement ("Amount Due Under Formula"), the actual rental payment BN makes to the State will be determined as follows:

- (1) If the Amount Due Under Formula is less than \$1 million, BN will pay the State \$100,000 as rental.
- (2) If the Amount Due Under Formula is greater than \$1 million, BN will pay the State the excess of the Amount Due Under Formula above \$1 million as rental, but in no event less than \$100,000.
- (3) If the Amount Due Under Formula is equal to \$1 million, BN will pay the State \$100,000 as rental.

No later than June 1 of each year during the term of the Operating Agreement, BN shall provide the State with notice pursuant to ARTICLE 12 of the Operating Agreement of the Amount Due Under Formula and the actual amount of the rental payment due under this Section 2 including an explanation of the basis for determining the revenue attributable to the Rail Facilities. BN will continue to make rental payments under the terms of this Section 2 until the "Reduced Rental Account", as determined hereinafter, aggregates \$8 million. The Reduced Rental Account will be established beginning with BN's August 1, 1991, rental payment to the State and is intended to accumulate no more than \$8 million. The Reduced Rental Account will be determined as follows:

Circumstance

If the Amount Due Under Formula is less than \$1 million, BN will pay the State \$100,000 as rental.

If Amount Due Under Formula is greater than \$1 million, BN will pay the state the excess of the Amount Due Under Formula above \$1 million as rental, but in no event less than \$100,000.

Amount Credited to
Reduced Rental Account

Reduced Rental Account gets credited the difference between the Amount Due Under Formula and \$100,000.

Reduced Rental Account gets credited \$1 million.

If the Amount Due Under Formula is equal to \$1 million, BN will pay the State \$100,000 as rental.

Reduced Rental Account gets credited \$1 million.

BN's June 1 notice to the State shall also include a statement of the amount credited to the Reduced Rental Account for the year in question and a statement of the total accumulated amount credited to the Reduced Rental Account. Rental shall continue to be determined pursuant to this Section 2 until the State receives a notice from BN that the total accumulated credit in the Reduced Rental Account has reached \$8 million. Upon receipt of such notice and for the remainder of the term of the Operating Agreement, BN shall make rental payments to the State under the rental formula contained in the Operating Agreement, ARTICLE 3E.1.

Section 3. Amendment of ARTICLE 4 (Additions to Rail Facilities) of the Operating Agreement

BN and the State agree to amend ARTICLE 4 of the Operating Agreement by adding the following new Section B:

B. Acquisition of Ortonville to Appleton Line and Additions to Certain of the Rail Facilities

BN agrees to use its best efforts to acquire from the Soo Line Railroad Company a line of railroad between Ortonville and Appleton, Minnesota, at an estimated cost of \$900,000. Upon BN's acquisition of the Ortonville to Appleton line, it will rehabilitate the line at an estimated cost of \$1,500,000. In consideration for the State's agreement to reduce rental for use of the Rail Facilities, and for other good and valuable consideration, BN agrees to rebuild the north yard in Mitchell, South Dakota (at an estimated cost of \$1,037,000), relay all rail less than 90 pounds per yard between Mitchell and Canton, South Dakota (at an estimated cost of \$4,556,500), and relay all rail less than 90 pounds per yard between Mitchell, South Dakota, and Sioux City, Iowa (at an estimated cost of \$4,707,000), in accordance with the estimates attached as Exhibit 1 hereto. BN agrees that it will complete all five (5) of the aforementioned rail acquisition and construction projects no later than December 31 of the calendar year in which the State receives notice under ARTICLE 3E.1 of the Operating Agreement and Section 2 of this Amendment Agreement, stating that the Reduced Rental Account has been credited with \$8 million. If any of the aforementioned construction or acquisition projects have not been completed by December 31 of the calendar year in which the State receives notice that the Reduced Rental Account has been credited with \$8 million, BN agrees to pay a portion of the Reduced Rental

Account to the State as provided hereinafter. The amount to be remitted to the State in the event BN has not completed all rail construction or acquisition projects within the required time will be calculated as follows: the estimated cost (as set forth in Exhibit 1 hereto) of the uncompleted project(s), divided by \$12.7 million (the total cost of the rail construction/acquisition projects) multiplied by \$8 million (the State's funding commitment). BN shall pay the State any amount due under this paragraph no later than March 31 of the year following the year in which the State receives the notice that the Reduced Rental Account has been credited with \$8 million.

Between July 1, 1991, and November 15, 1998, BN agrees that it will complete at least one of the five (5) construction/acquisition projects in any two (2) year period in which the Reduced Rental Account has been credited with a total of \$2 million. BN and the State agree that: (1) BN will own the Ortonville to Appleton line and all additions, betterments and improvements on the line resulting from the rehabilitation project; and (2) the State will own the additions, betterments and improvements resulting from the rail construction projects at north yard in Mitchell, on the Mitchell to Canton line, and on the Mitchell to Sioux City line.

Section 4. Amendment of ARTICLE 8 of the Operating Agreement (Contract Term, Renewal and Renegotiation)

BN and the State agree to amend ARTICLE 8A. of the Operating Agreement by extending the termination date of the Agreement from July 1, 2001, to July 1, 2020, and by deleting the reference to ARTICLE 8B in ARTICLE 8A. BN and the State agree to amend ARTICLE 8B. of the Operating Agreement by deleting that section from the Operating Agreement in its entirety.

Section 5. Amendment of ARTICLE 12 of the Operating Agreement (Notices)

BN and the State agree to amend ARTICLE 12 of the Operating Agreement by changing the notice provision for the Operator as follows:

Vice President and General Counsel
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102

Vice President, Business Development
Burlington Northern Railroad Company
176 East 5th Street
St. Paul, MN 55101

IN WITNESS WHEREOF, the parties hereto have caused this
Amendment Agreement to be executed and attested by their
duly authorized officers on the date herein first-above
written.

ATTEST:

Kathryn J. Thakur

BURLINGTON NORTHERN RAILROAD COMPANY

By John T. Hall

Approved as to legal form by:

[Signature]

STATE OF SOUTH DAKOTA

By [Signature]
Chairman
South Dakota State Railroad Board

By [Signature]
Governor

Ident:
447AW19

BURLINGTON NORTHERN RAILROAD ESTIMATE	NONCASH CAPITAL CAPITAL	OPER EXP	OTHERS	TOTAL
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LOCATION: ELK POINT TO ETHAN, SD.

LINE SEG.: 2001

RFA:

ACCT DIV:

BEGIN MP: 535.10

AFE:

STREET(S):

ENDING MP: 636.70

CLASS: 2

DOT #(S):

RELAY 25.5 MILES 85# CB INCLUDING 7 - #11 TURNOUTS WITH SH 115# CWR
AND 7 - #11 TURNOUTS. INCLUDING 7 SETS OF SWITCH TIES AND 8400 NT BALLAST.

BN WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -
ACCRUED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE

35.700 MBM N SSND & TRTD HDW SW TIES	19117
*UNLOAD TIES - COMPANY FORCES	1049
*REPLACE 35.700 MBM WD SW TIES (71%)	9873
*WORK TRAIN SERVICE	640
2800 LF NEW 115# BLANKS - STD CARB	23580
267600 LF SH 115# CWR	1949020
300 FLD WLDS 115# ORGOTHRM W/HRDWR	18900
3 N RH #11 MAN SW COMP 115# CWR	29141
4 N LH #11 MAN SW COMP 115# CWR	38854
7 NEW #11 RBM FROG 115# CWR	38603
14 EA NEW 15' GUARD RAIL 115#	15435
7 SW STAND(S), HTDL (RACOR 112G)	3321
7 CONN ROD(S) F/ RACOR 112G	652
7 TARGET(S) F/ RACOR 112G, RED	37
24 PR COMP JTS (NEW)	5040
600 EA TEMP JT BARS 115#	
1944 EA TRACK BOLTS 1 1/8" x 6"	3099
1944 EA SPRING WASHERS 1 1/8"	566
1576 TIE PLATES, NEW 5 1/2" BASE	6344
157884 TIE PLTS, SH 5 1/2" BS	381323
896 EA CLIPS TYPE "E"	1646
1666 EA LOCK SPIKES 5/8"x7"	1050
482594 EA TRK SPKS 5/8"x6"	110922
113800 RAIL ANCHORS NEW 5 1/2" BASE	103849
157892 ADZ PADS	31433
473676 LQD TPLGS	39789
*UNLOAD RAIR AND OTM	56196
*WORK TRAIN SERVICE	8320
*RELAY 133800 T.F. (75%)	474154
*RELAY 7 TURNOUTS (75%)	12403
*PLACE FIELD WELDS	32100
*PLACE 25.50 MI ADZ PADS	6560
8400 N.T. CR. ROCK BALLAST	43659
*UNLOAD BALLAST	7810
*SURFC, LINE & TAMP 133800 T.F.	16275
*WORK TRAIN SERVICE	23680
SUBTOTAL	3514440
OVERHEADS:	
ACCOUNTING	19472
EQUIPMENT RENTAL	162265

Ident:
447AW19

BURLINGTON NORTHERN RAILROAD ESTIMATE		NONCASH	OPER	OTHERS	TOTAL
		CAPITAL	CAPITAL	EXP	
BUSINESS EXPENSE					57000
LABOR ADDITIVES:					
	TOTAL \$		OTHERS		
ACCOUNTING	19472		53.09%		10338
CAPITAL:					
W/S	616420		54.44%		335579
TYE	32640		48.65%		15879
TRANSPORTATION:					
OTHERS =	100.00% X:				
	N. T. x	AVE. MILES	x	CONSTANT	
TIES	100.0	396		0.0150	594
RAIL	5182.7	851		0.0150	66157
BALLAST	8400	200		0.0150	25200
MATERIAL ADD'S:					
MATL FURN BY BN	2821721		8.16%		230252
LIABILITY INSURANCE					128513
CONTINGENCIES					118317
TOTAL OVERHEADS					1169566
SUBTOTAL - INSTALLATION COSTS					4,684,006
TRACK REMOVAL COST:					
*REMOVE TIES IN A NORMAL REPLACEMENT (29%)					4,033
*LOAD TIES					628
DISPOSE OF TIES					1,962
*REMOVE RAIL & OTM IN A RELAY					168,751
*LOAD RAIL					43,072
*LOAD OTM					14,665
*TRAIN SERVICE					28,475
SUBTOTAL					261,586
TRACK REMOVAL COST OVERHEADS:					
BUSINESS EXPENSE					18,491
LABOR ADDITIVES:					
	TOTAL \$		LBR SURCHG		
M/W	(231,149)	111.00%	52.51%		121,375
TYE	(28,475)	53.00%	48.65%		13,852
CONTINGENCIES					8,396
TOTAL OVERHEADS					162,114
GROSS COST OF TRACK REMOVAL					423,700
CREDIT VALUE OF MATERIAL SALVAGED:					
269200 L.F. RAIL					(543,974)
1833095 LBS OTM					
NET TRACK REMOVAL COST					(120,274)
TOTAL ACCOUNT 709					4,563,732

Ident:
447AH19

BURLINGTON NORTHERN RAILROAD ESTIMATE	CAPITAL	NONCASH CAPITAL	OPER EXP	OTHERS	TOTAL

CHARGE ACCOUNT 761 - USE TAX - STATES AND PROVINCES					
STATE TAX 4.00%				114,615	
LOCAL TAX 1.00%				28,653	

TOTAL ACCOUNT 761				143,268	

TOTAL COST TO STATE				4,707,000	

LEDGER VALUE RETIREMENT
RATABLE

CREDIT ACCOUNT 8 - TIES			
5332	785 EA	6.792 EA	SYS AV
CREDIT ACCOUNT 9 - RAIL AND OTM			
662770	269200 LF RAIL	2.462 PER LF	SYS AV
300628	1833095 LBS OTM	0.164 PER LB	SYS AV

968730	TOTAL - CHARGE ACCOUNT 735 - ACCUMULATED DEPRECIATION; ROAD		

RAIL AND OTM RECOVERED BY RELAY:				AVERAGE TIES / 100':		
				59		
RAIL	TF MATL	RAIL	JT.B.	T.P.	SPIKE	ANCHOR
85# CB	134600	100.00%	100.00%	100.00%	100.00%	100.00%
134600		TOTALS				

INCLUDING TURNOUTS:

	# 20	# 11	# 9	# 7	LF RAIL	LBS REG OTM	LBS T/O OTM	VALUE
90# CB			7				42000	2415
85# CB					269200	1791095		541559
TOTALS:								
			7		269200	1791095	42000	543974

Ident:
447AW18

Exhibit 1

BURLINGTON NORTHERN RAILROAD ESTIMATE	NONCASH CAPITAL	OPER EXP	OTHERS
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LOCATION: CANTON TO MARION, SD.

LINE SEG.: 2002

RFA:

ACCT DIV:

BEGIN MP: 295.00

AFE:

STREET(S):

ENDING MP: 326.65

CLASS:

2

DOT # (S):

RELAY 24.6 MILES OF 75 AND 85# CB INCLUDING 6 - #10 TURNOUTS WITH SH 115# CWR
AND 6 - #11 TURNOUTS. INCLUDING 6 SETS OF SWITCH TIES AND 8100 NT BALLAST.

BN WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -
ACCRUED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE

30.600 MBM N SSND & TRTD HDW SW TIES	16386
*UNLOAD TIES - COMPANY FORCES	899
*REPLACE 30.600 MBM WD SW TIES (71%)	8462
2400 LF NEW 115# CB - STD CARBON	20212
259360 LF SH 115# CWR	1889005
276 FLD WLDS 115# ORGOTHRM W/HRDWR	17388
3 N RH #11 MAN SW COMP 115# CWR	29141
3 N LH #11 MAN SW COMP 115# CWR	29141
6 NEW #11 RBM FROG 115# CWR	33089
12 EA NEW 15' GUARD RAIL 115#	13230
6 SW STAND(S), HTDL (RACOR 112G)	2847
6 CONN ROD(S) F/ RACOR 112G	559
6 TARGET(S) F/ RACOR 112G, RED	32
30 PR COMP JTS (NEW)	6300
552 EA TEMP JT BARS 115#	
1656 EA TRACK BOLTS 1 1/8" x 6"	2639
1656 EA SPRING WASHERS 1 1/8"	482
1114 TIE PLATES, NEW 5 1/2" BASE	4484
153578 TIE PLTS, SH 5 1/2" BS	370923
768 EA CLIPS TYPE "E"	1411
1428 EA LOCK SPIKES 5/8"x7"	900
468399 EA TRK SPKS 5/8"x6"	107659
109740 RAIL ANCHORS NEW 5 1/2" BASE	100144
153586 ADZ PADS	30576
460758 LQD TPLGS	38704
*UNLOAD RAIL AND OTM	54664
*WORK TRAIN SERVICE	7680
*RELAY 130152 T.F. (75%)	461226
*RELAY 6 TURNOUTS (75%)	10631
*PLACE FIELD WELDS	29532
*PLACE 24.60 MI ADZ PADS	6328
8100 N.T. CR. ROCK BALLAST	43971
*UNLOAD BALLAST	7480
*SURFC, LINE & TAMP 130152 T.F.	15500
*WORK TRAIN SERVICE	22400
SUBTOTAL	3384025
OVERHEADS:	
ACCOUNTING	18744
EQUIPMENT RENTAL	156201
BUSINESS EXPENSE	54765

Ident:
447AW18

BURLINGTON NORTHERN RAILROAD ESTIMATE				NONCASH CAPITAL	OPER CAPITAL EXP	OTHERS
LABOR ADDITIVES:						
	TOTAL \$		OTHERS			
ACCOUNTING	18744		53.09%			9951
CAPITAL:						
W/S	594722		54.44%			323767
TYE	30080		48.65%			14634
TRANSPORTATION:						
OTHERS =	100.00% X:					
	N. T. x	AVE. MILES x	CONSTANT			
TIES	85.7	396	0.0150			509
RAIL	5017.1	851	0.0150			64043
BALLAST	8100	160	0.0150			19440
MATEL ADD'S:						
MATEL FURN BY BN	2715252		8.16%			221565
LIABILITY INSURANCE						123710
CONTINGENCIES						113957
TOTAL OVERHEADS						1121286
SUBTOTAL - INSTALLATION COSTS						4,505,311
TRACK REMOVAL COST:						
*REMOVE TIES IN A NORMAL REPLACEMENT (29%)						3,456
*LOAD TIES						538
DISPOSE OF TIES						1,682
*REMOVE RAIL & OTM IN A RELAY						163,586
*LOAD RAIL						41,649
*LOAD OTM						13,163
*TRAIN SERVICE						25,925
SUBTOTAL						249,999
TRACK REMOVAL COST OVERHEADS:						
- BUSINESS EXPENSE						17,790
LABOR ADDITIVES:						
	TOTAL \$		LBR SURCHG			
M/W	(222,392)	111.00%	52.51%			116,777
TYE	(25,925)	53.00%	48.65%			12,612
CONTINGENCIES						8,022
TOTAL OVERHEADS						155,201
GROSS COST OF TRACK REMOVAL						405,200
CREDIT VALUE OF MATERIAL SALVAGED:						
260304 L.F. RAIL			6 T/O'S			(491,971)
1645387 LBS OTM						
NET TRACK REMOVAL COST						(86,771)
TOTAL ACCOUNT 709						4,418,540

Ident:
447AW18

BURLINGTON NORTHERN RAILROAD ESTIMATE	NONCASH CAPITAL CAPITAL	OPER EXP	OTHERS
---------------------------------------	----------------------------	-------------	--------

CHARGE ACCOUNT 761 - USE TAX - STATES AND PROVINCES

STATE TAX	4.00%	110,368
LOCAL TAX	1.00%	27,592

TOTAL ACCOUNT 761	137,960
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TOTAL COST TO STATE	4,556,500
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LEDGER VALUE RETIREMENT
RATABLE

CREDIT ACCOUNT 8 - TIES			
4571 673 EA	6.792 EA	SYS AV	
CREDIT ACCOUNT 9 - RAIL AND OTM			
640868 260304 LF RAIL	2.462 PER LF	SYS AV	
269843 1645387 LBS OTM	0.164 PER LB	SYS AV	

915282 TOTAL - CHARGE ACCOUNT 735 - ACCUMULATED DEPRECIATION; ROAD

RAIL AND OTM RECOVERED BY RELAY: AVERAGE TIES / 100':

RAIL:	TF MATL	RAIL	JT. B.	T.P.	SPIKE	ANCHOR
85# CB	60456	100.00%	100.00%	100.00%	100.00%	100.00%
75# CB	69696	100.00%	100.00%	100.00%	100.00%	100.00%
	130152	TOTALS				

INCLUDING TURNOUTS:

	# 20	# 11	# 9	# 7	LF RAIL	LBS REG OTM	LBS T/O OTM	VALUE
85# CB			2		120912	804475	10800	243864
75# CB			4		139392	810912	19200	248107
TOTALS:			6		260304	1615387	30000	491971

PROJECTS IDENTIFIED IN AUGUST 2, 1991 AGREEMENT

LINE SEGMENT	DESCRIPTION OF PROJECT	EST. COST	STATUS	ACTUAL COST
Ortonville to Appleton	purchase	\$900,000	complete	\$900,000
Ortonville to Appleton	rehabilitate	\$1,500,000	complete	\$1,539,622
Mitchell yard	construct track	\$1,037,000	complete	\$1,259,900
Sioux City to Mitchell	relay rail - 25.5 miles	\$4,707,000	complete	
Canton to Mitchell	relay rail - 24.6 miles	\$4,556,500	complete	\$12,220,359
		\$12,700,500		\$15,919,881
Source of funds:	Planned	Actual		
BNSF	\$4,700,500	\$15,919,881		
State of South Dakota	\$8,000,000	\$8,000,000		

Ident:
409

BURLINGTON NORTHERN RAILROAD ESTIMATE		NONCASH	OPER	
		CAPITAL	CAPITAL	OTHERS

LOCATION: MITCHELL, SD				
LINE SEG.: 2011	RFA:			
BEGIN MP: (651.33)*	AFE:			* 0.00 BECAUSE TRACKAGE IS IN A YARD BUT
ENDING MP: (652.52)*	CLASS: 6			M.L. M.P. LOCATIONS ARE IN PARENTHESIS.
TRACK WORK IN MITCHELL YARD. RELAY 1608 T.F. WITH NEW 115# CWR INCLUDING 6				
TURNOUTS WITH C.B. TYPE SWITCHES AND FROGS. RELAY 9591 T.F. WITH S.H. 115# CWR.				
CONSTRUCT 117 T.F. NEW 115# CWR INCLUDING TURNOUT WITH C.B. TYPE SWITCH AND				
FROG. CONSTRUCT 700 T.F. S.H. 115# CWR. REPLACE 5428 CROSS TIES WITH NEW NO.4'S				
& SWITCH TIES ON 6 T/O'S. LINE 9275 T.F.				

BN WORK AT 100.00% STATE EXPENSE CHARGED TO ACCOUNT 709 -
ACCURED ACCOUNTS RECEIVABLE; CONSTRUCTION EXPENDITURES REIMBURSABLE

5825 NEW NO 4 HARDWOOD CROSS TIES	94618
32.080 MBM N SSND & TRTD HDW SW TIES	17179
*UNLOAD TIES - COMPANY FORCES	10117
*PLACE 397 WOOD CROSS TIES	3552
*REPLACE 5428 WD XTIES (71% TO PLC)	48559
*REPLACE 32.080 MBM WD SW TIES (71%)	8872
*WORK TRAIN SERVICE	3200
2400 LF NEW 115# BLANKS - STD CARB	20212
19200 LF SH 115# CWR	139840
519 PLANT WELDS	17983
111 FLD WLDS 115# ORGOTHRM W/HRDWR	6993
1 N RH #11 MAN SW COMP 115# CWR	9714
3 N LH #9 MAN SW COMP 115# CB	19754
1 N LH #11 MAN SW COMP 115# CWR	9714
2 N RH #9 MAN SW COMP 115# CB	13170
2 NEW #11 RBM FROG 115# CWR	11030
5 NEW #9 RBM FROG 115# CB	22783
14 EA NEW 15' GUARD RAIL 115#	15435
2 SW STAND(S), HTDL (RACOR 112G)	949
5 SW STAND(S), LT (RACOR 40)	1730
2 CONN ROD(S) F/ RACOR 1120	186
5 CONN ROD(S) F/ RACOR 40	394
5 SW STND STAFF(S) F/ RACOR 40	109
2 TARGET(S) F/ RACOR 112G, RED	11
10 TARGET(S) F/ 518, RCR 40, RED	31
10 TARGET(S) F/ 518, RCR 40, GRN	31
124 EA JT BARS 115#, NEW	2511
4 PR COMP JTS 115#/90RA, NEW	444
4 PR COMP JTS 115RE/85MLB, NEW	554
222 EA TEMP JT BARS 115#	
828 EA TRACK BOLTS 1 1/8" x 6"	1320
8 EA TRACK BOLTS 1 1/16" x 6"	10
16 EA TRACK BOLTS 1 1/16"x5 1/2"	20
828 EA SPRING WASHERS 1 1/8"	241
24 EA SPRING WASHERS 1 1/16"	8
1198 TIE PLATES, NEW 5 1/2" BASE	4823
11524 TIE PLTS, SH 5 1/2" BS	27833
768 EA CLIPS TYPE "E"	1411
1428 EA LOCK SPIKES 5/8"x7"	900

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BURLINGTON NORTHERN RAILROAD ESTIMATE	CAPITAL	CAPITAL	NONCASH	OPER	EXP	OTHERS
53661 EA TRK SPKS 5/8"x6"						12334
14526 RAIL ANCHORS NEW 5 1/2" BASE						13256
*UNLOAD RAIL AND OTM						4418
*WORK TRAIN SERVICE						640
*RELAY 9703 T.F. (75%)						34385
*RELAY 6 TURNOUTS (75%)						10631
*PLACE 817 T.F. RAIL AND OTM						4289
*PLACE 1 TURNOUTS						1772
*PLACE FIELD WELDS						11877
*LINE 9275 TF						24736
6375 N.T. CR. ROCK BALLAST						36548
*UNLOAD BALLAST						2420
*SURFC, LINE & TAMP 10800 T.F.						5425
*WORK TRAIN SERVICE						3840
SUBTOTAL						682812
OVERHEADS:						
ACCOUNTING						5362
EQUIPMENT RENTAL						44683
BUSINESS EXPENSE						32246
LABOR ADDITIVES:						
TOTAL \$						OTHERS
ACCOUNTING 5362						53.09%
CAPITAL:						2847
W/S 146317						54.44%
TYE 7680						48.65%
OPERATING:						
SCHEDULED 24736						54.44%
TRANSPORTATION:						13466
OTHERS = 100.00% X:						
N. T. x AVE.MILES x CONSTANT						
TIES 817.9 396 0.0150						4859
RAIL 414.0 851 0.0150						5285
BALLAST 6375 90 0.0150						8606
MATL ADD'S:						
MATL FURN BY BN 467531 8.16%						38151
LIABILITY INSURANCE						35389
CONTINGENCIES						35
TOTAL OVERHEADS						274320
SUBTOTAL - INSTALLATION COSTS						957,132
TRACK REMOVAL COST:						
*REMOVE TIES IN A NORMAL REPLACEMNT (29%)						23,458
*LOAD TIES						4,906
DISPOSE OF TIES						15,332
*REMOVE RAIL & OTM IN A RELAY						15,421
*LOAD RAIL						3,584
*LOAD OTM						1,407
*TRAIN SERVICE						3,400

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BURLINGTON NORTHERN RAILROAD ESTIMATE	NONCASH CAPITAL	OPER EXP	OTHERS
TRK REMOVL SUBTOTAL			67,508

TRACK REMOVAL COST OVERHEADS:

BUSINESS EXPENSE			3,789
LABOR ADDITIVES:			
TOTAL \$		LBR SURCHG	
M/W (47,369)	111.00%	52.51%	24,872
TYE (3,400)	53.00%	48.65%	1,653
CONTINGENCIES			78

TOTAL OVERHEADS	30,392
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GROSS COST OF TRACK REMOVAL	97,900
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CREDIT VALUE OF MATERIAL SALVAGED:

22398 L.F. RAIL	6 T/O'S	(43,235)
175898 LBS OTM		

NET TRACK REMOVAL COST	54,665
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TOTAL ACCOUNT 709	1,011,797
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CHARGE ACCOUNT 761 USE TAX - STATES AND PROVINCES

STATE TAX 4.00%	20,163
LOCAL TAX 1.00%	5,040

TOTAL ACCOUNT 761	25,203
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TOTAL COST TO STATE	1,037,000
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RAIL AND OTM RECOVERED BY RELAY:

AVERAGE TIES / 100':

RAIL:	TF MATL	RAIL	JT.B.	T.P.	SPIKE	ANCHOR
90# CB	1608	100.00%	100.00%	100.00%	100.00%	100.00%
75# CB	9591	100.00%	100.00%	100.00%	100.00%	100.00%
	11199	TOTALS				

INCLUDING TURNOUTS:

	# 20	# 11	# 9	# 7	LF RAIL	LB REG OTM	LBS T/O OTM	VALUE
90# CB			2	4	3216	28307	36000	9245
75# CB					19182	111591		33990
TOTALS:			2	4	22398	139898	36000	43235

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

MYLES L. TOBIN
(312) 252-1502
mtobin@fletcher-sippel.com

November 29, 2005

VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 34794**
BNSF Railway Company -- Acquisition and
Operation Exemption -- State of South Dakota

Dear Secretary Williams:

BNSF Railway Company ("BNSF") is today filing in the above-captioned proceeding a verified notice of exemption pursuant to 49 C.F.R. § 1150.31, et seq. for BNSF's acquisition of certain rail lines owned by the State of South Dakota ("the State") and referred to collectively as the "Core Lines." The State supports BNSF's notice of exemption and concurs in the processing of BNSF's Core Lines acquisition under the referenced class exemption procedure.

As the Board is aware, BNSF's proposed acquisition of the Core Lines was the subject of previous contested proceedings in Finance Docket No. 34645 and Finance Docket No. 34667. On April 25, 2005, BNSF and the State entered into an agreement (the "Settlement Agreement") resolving various disputes and litigation between the parties, providing for BNSF's purchase of the Core Lines, and granting to the State or third parties trackage, haulage or other access rights over rail lines owned or to be acquired by BNSF. The trackage rights and other grants are preconditions to BNSF's purchase of the Core Lines. A copy of the Settlement Agreement is filed under seal herewith pursuant to a request for a protective order.

Certain new or modified trackage rights provided for in the Settlement Agreement are the subject of notices of exemption being filed concurrently herewith in Finance Docket No. 34786, Sioux Valley Regional Railroad Authority and D&I Railroad Company -- Trackage Rights Exemption -- BNSF Railway Company; Finance Docket No. 34787, D&I Railroad Company -- Trackage Rights Exemption -- BNSF Railway Company; Finance Docket No. 34685 (Sub-No. 1), D&I Railroad Company -- Trackage Rights Exemption -- BNSF Railway Company; Finance Docket No. 34788, Mitchell-Rapid City Regional Railroad Authority and Dakota Southern Railway Company -- Trackage Rights Exemption -- BNSF Railway Company; Finance

FLETCHER & SIPPEL LLC

Mr. Vernon A. Williams
November 29, 2005
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Docket No. 34125 (Sub-No. 1), South Dakota Railroad Authority -- Operation Modification Exemption -- BNSF Railway Company; Finance Docket No. 34789, Dakota, Minnesota & Eastern Railroad Corporation -- Trackage Rights Exemption -- BNSF Railway Company; and Finance Docket No. 34790, Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation -- Temporary Trackage Rights Exemption -- BNSF Railway Company.

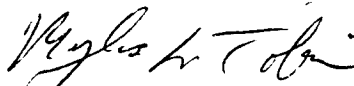
In addition, certain haulage rights granted by BNSF to: 1) the Mitchell-Rapid City Regional Railroad Authority and Dakota Southern Railway Company from Mitchell, South Dakota to Aberdeen, Napa and Wolsey, South Dakota and Sioux City, Iowa; and 2) the Napa-Platte Regional Railroad Authority and Dakota Short Line Corp. from Napa to Aberdeen, Wolsey, Mitchell and Sioux City are convertible to trackage rights upon the occurrence of certain future events. Those parties will seek appropriate regulatory authority for these contingent trackage rights when and if they are effectuated.

The timely processing of BNSF's notice of exemption to acquire the Core Lines is essential for the completion of the transactions contemplated by the Settlement Agreement, and is appropriate given what is now the non-controversial nature of the proposed Core Lines acquisition. The State supports fully BNSF's invocation of the class exemption procedure for that transaction.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Myles L. Tobin

Attorney for State of South Dakota

MLT: arw

Enclosures

cc: Adrian L. Steel, Jr., Esq.