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May 4, 2006

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VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAY - 4 2006

Part of
Public Record

**RE: Finance Docket No. 34873, South Kansas & Oklahoma
Railroad, Inc. – Trackage Rights Exemption – BNSF Railway
Company**

Dear Secretary Williams:

On April 24, 2006, South Kansas & Oklahoma Railroad, Inc., filed a Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), to acquire restricted overhead trackage rights over a rail line owned by BNSF Railway Company. At the time the Notice was filed, the parties had not entered into a final agreement. Attached for inclusion in the public record in this proceeding are ten redacted copies of the final Trackage Rights Agreement entered into on April 25, 2006. The unredacted Agreement is being filed under seal.

Please time and date stamp the extra copy of this letter and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

Enclosures

Overhead Trackage Rights Agreement
Between W.N. Junction, KS AND Wichita, KS

AGREEMENT made this 18th day of April, 2006, ("Agreement Date") between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" and **SOUTH KANSAS & OKLAHOMA RAILROAD**, hereinafter called "SKOL".

WITNESSETH:

WHEREAS, BNSF, sometimes referred to as "Owner", owns a line of railroad between W.N. Junction, Kansas and Wichita, Kansas, identified as follows:

BNSF's line of railroad near W.N. Junction, KS, Arkansas City Subdivision Milepost 249.7 and Wichita, KS, Arkansas City Subdivision Milepost 206.0 as shown by bold line on the attached print dated January 07, 2005 (and identified as Exhibit "A") and further described in Section 1.4 of Exhibit "B", which collectively shall be referred to herein as the "Joint Trackage"; and

WHEREAS, SKOL, sometimes referred to as "User", (a Watco Company) desires to use Owner's trackage between W.N. Junction, Kansas and Wichita, Kansas for handling its cars, trains and traffic, and

WHEREAS, BNSF is willing to allow such use on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. General Conditions; Conflict Between Provisions

The General Conditions as set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. Each capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail. All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

2. SKOL Rights

Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for operation of [] overhead freight train per day in each direction [] over all or part of the Joint Trackage. User may serve [] pursuant to section 3.1 with [] in each direction. User shall operate its trains, locomotives, cabooses and cars with its own officers, agents, employees and contractors and equipment, in its account, over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage, it being understood and agreed that User shall not have the right to:

- a. Set out, pick up, or store cars, or switch industries upon, along, connected to or which may become connected to the Joint Trackage, or any part thereof, except as provided in Section 3 below or as necessary for handling locomotives, cabooses or cars bad ordered en-route; or
- b. Except as otherwise provided in this Section 2, permit or admit any third party to use all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or

- c. Connect with or interchange with itself or any other railroad either directly or indirectly through haulage or trackage rights or other means, [

]; or

- d. Access or use BNSF yard tracks at Wichita except to deliver or receive rail cars or freight car traffic to or from BNSF pursuant to a valid and binding interchange agreement with BNSF and for no other purpose; or
- e. Construct any improvements to or extensions or connecting lines or facilities upon, along or over the Joint Trackage; or
- f. Provide any passenger service upon, along or over the Joint Trackage, except SKOL may move cabooses or unoccupied business and/or passenger Cars (Note: for purposes of this Agreement, business and/or passenger Cars shall mean the private, not-for-hire business and/or passenger Cars owned or leased by User). SKOL shall obtain a BNSF mechanical inspection and written consent for any business and/or passenger Car prior to movement under this Agreement. Notwithstanding anything herein above; the BNSF mechanical inspection does not warrant condition of the Car or change and/or diminish any liability provisions in this Agreement.

3. **Limitation of Overhead Traffic**

Traffic handled by SKOL between W. N. Junction and Wichita is limited to 1) overhead freight traffic having an origin and destination [

]; and 2) only the traffic listed below unless written approval is granted by BNSF in its sole and absolute discretion:

[

[]

]. For purposes of Section 3, open to reciprocal switching shall mean open to reciprocal switching as published in the BNSF Switching Book as of the date of this Agreement.

4. **Traffic SKOL is not Permitted to Move**

Notwithstanding any provision to the contrary herein, SKOL specifically acknowledges that the rights granted herein are solely for the accommodation of traffic specifically identified in Section 3 of this Agreement, and in no event shall SKOL use the Joint Trackage for the movement of [

]:

[

].

Use of the trackage rights by SKOL to move any of the traffic in breach of the terms of this Sections 2, 3 and/or 4 shall constitute an event of material default by SKOL.

5. **Compensation**

- a. Except to the extent provided in subsection "c" of this Section 5 below, compensation for these trackage rights will be [] moved in each direction. SKOL will provide a detailed listing monthly to BNSF for all cars moved by car initial, car number, commodity, origin, destination and waybill date. For the purpose of this Section 5. a. each locomotive shall count as two (2) cars.

- b. In addition to compensation referenced in 5(a) SKOL will pay BNSF the prevailing BNSF reciprocal switch rates for loaded cars to or from industries located in Wichita (as defined in Section 3 above) open to reciprocal switching.

c. [

].

- d. The rates in subsections "a" and "c" of this Section 5 shall be adjusted annually (on July 1 of each year) beginning on the first July 1 following the effective date of this Agreement based on [] of the increase or decrease between the first quarter of the current year compared to the first quarter of the immediately preceding year, [

]

6. **Additional Terms and Conditions**

The following additional terms and conditions shall apply to the limited trackage rights to be granted by BNSF to SKOL:

- a. The limited overhead trackage rights granted by BNSF to SKOL will not be assignable or transferable or subject to subletting in whole or in part, whether by operation of law or otherwise, by SKOL; and

b. [

]; and

- c. BNSF will have the right to audit the records of SKOL, Watco or their successors or assigns concerning compliance with the terms hereof, but no more than once annually, upon reasonable notice and at BNSF expense; and
- d. In the event of material default of the terms of this Agreement and failure to cure such default within 15 days' receipt of written notice thereof, BNSF may, at its election, and without prejudice to any other rights or remedies available at law or in equity, terminate this Agreement on five (5) days' written notice to SKOL.
- e. User may not assign or sublet this agreement in whole or in part without the express written consent of Owner. Subject to the foregoing, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns. [

]; and

f. [

- g. Cars destined to or received from WTA shall remain in the car hire account of SKOL while the cars are on WTA or BNSF track; and

h. [

- i. SKOL shall submit its written program for certifying the qualifications of locomotive engineers per CFR 49 part 240.101. Such written program shall be approved by BNSF prior to SKOL commencing operations as contemplated herein.
- j. This Agreement is considered confidential, subject to applicable federal and state laws, necessary disclosures to third parties to effect the intent and purposes of this Agreement, and any necessary or appropriate disclosures to federal regulatory authorities for securities and corporate governance reporting or for

obtaining any necessary permits or approvals required by this Agreement. Subject to advance coordination between the parties, nothing herein shall preclude either party from issuing a press release which references the general provisions of this Agreement, provided that they shall not reveal specific limitations, rates, or charges or other commercial terms of this Agreement, except to the extent mutually agreed otherwise.

7. **Term**

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit B and subsection "f" of Section 6 of this Agreement, this Agreement shall become effective upon the date User first commences operations over the Joint Trackage pursuant to this Agreement, subsequent to having secured all necessary consent, approval or authority from the appropriate governmental agency, or agencies, upon terms and conditions satisfactory to User, and shall remain in effect for an initial term of [] from the date first written hereinabove and thereafter until terminated as herein provided, except User shall have the right at any time to terminate this Agreement upon not less than six (6) months written notice to Owner. Upon giving six (6) months written notice, Owner shall have the right to cancel this Agreement effective upon the date of expiration of the aforesaid initial term or at any time thereafter by giving not less than six (6) months written notice to User, except that Owner can terminate this Agreement immediately as where expressly provided in this Agreement. Upon expiration or termination of the terms of this Agreement for any reason, User shall promptly secure all necessary consent, approval, or authority from the appropriate governmental agency or agencies to discontinue operating under the terms of this Agreement. The parties agree that money damages alone are not suitable to remedy a breach of the terms of the foregoing sentence, and BNSF shall have a right of specific performance to enforce the terms thereof. BNSF may also proceed, at its option, to seek such authority on behalf of User, and User shall support and not oppose such actions of BNSF and User shall bear all costs therefor, including without limitation, attorneys fees, filing fees, and related costs. Additionally, without prejudice to any other

rights or remedies, pending the ability to obtain governmental authority to discontinue such trackage rights if any authority may be required for termination or expiration of the terms of this Agreement, from and after the date of expiration or termination as the case may be, all movements of traffic hereunder shall be deemed unauthorized traffic subject to compensation set forth in subsection "c" of Section 5. of this Agreement. User shall surrender possession and operation of the Joint Trackage as promptly as User is able to do so under applicable laws and regulations. Notwithstanding any provision to the contrary herein, Owner shall have the right at any time, and User shall not contest the right of Owner at any time to abandon, transfer, or discontinue all or any part of the Joint Trackage. Any liability created under this Agreement shall survive any termination of this Agreement.

8. Notice

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

If intended for SKOL:

Executive Vice President and
Chief Commercial Officer
315 West 3rd St.
Pittsburg, Kansas 66762

With a copy to:

Chief Operating Officer –
Central Region
315 West 3rd St.
Pittsburg, Kansas 66762

If intended for BNSF:

Executive Vice President
and Chief Operations Officer
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

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

Notice of address change may be given any time pursuant to the provisions of this Section 8.

9. Governing State Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

BNSF RAILWAY COMPANY

By_____

Printed_____

Title_____

Date_____

SOUTH KANSAS & OKLAHOMA RAILROAD

By_____

Printed_____

Title_____

Date_____

EXHIBIT "B"
GENERAL CONDITIONS TO
OVERHEAD TRACKAGE RIGHTS AGREEMENT
WICHITA, KANSAS (SKOL/BNSF)

Section 1. DEFINITIONS

1.1 "Original Agreement" shall mean that certain Overhead Trackage Rights agreement dated April 18, 2006, to which this Exhibit "B" is appended. Except where expressly provided otherwise, the term "Original Agreement" shall include this Exhibit.

1.2 "Owner" shall mean the BNSF Railway Company and its successors and assigns. The designated nomenclature of "Owner" is a term of convenience used by the parties hereto and shall not signify or imply actual ownership status of any particular piece of property or trackage.

1.3 "User" shall mean the party reserving the right to use the Joint Trackage.

1.4 "Joint Trackage" shall mean trackage described in this agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, end of train devices vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Annual" shall mean a calendar year.

1.7 "Car" shall mean one (1) rail car; however, in the case of an articulated rail car the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.) Notwithstanding the foregoing, articulated cement hopper cars with SKOL equipment reporting marks up to a maximum number of such cars in SKOL's fleet and so marked as of the Agreement Date shall be counted as one (1) car. Each locomotive shall be counted as two (2) cars.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board

(hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions and/or Capital Improvements" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of this agreement.

1.10 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 Reserved.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall have sole charge of the maintenance, repair and dispatching of the Joint Trackage with its own supervisors, labor, materials and equipment. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in this agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner

any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom or from any condition or defect of the Joint Trackage. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

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

2.7 Owner may from time to time substitute any track or tracks for those delineated in this agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, this agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.9 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

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

2.11 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Sections 2, 4 and 5 of the General Conditions.

2.12 User shall insure that all its employees engaged in or connected with the operations of User on or along the Joint Trackage shall, at all times, be in compliance with the Code of Federal Regulations 49, Part 240 Qualifications and Certification of Locomotive Engineers as may be amended from time to time and shall pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.13 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.14 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter

called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.15 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit.

2.16 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.17 a) In the event any accident, derailment, or wreck, hereinafter called "derailment" involving Units on or in a train operated by User or for User by Owner carrying hazardous materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

b) Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

c) If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 The following terms and conditions apply with respect to billing on matters unrelated to claims for loss and/or damage.

3.2 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by this agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date, then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in the *Wall Street Journal* in the preceding June plus two and one-half percent (2 ½%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.3 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

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

3.5 Should any amount become payable by Owner to User under this agreement, the provisions of Sections 3.1 through 3.4 of this Exhibit shall apply with User as the billing party and Owner as the paying party.

3.6 Should User fail to make any payment when due which User is obligated to make under this agreement, or fail in any other respect to perform as required under this agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

- a) User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.
- b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the

occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties, Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action's interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under this agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs (other than those identified in Section 4.8 hereinbelow) of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 Notwithstanding any provision to the contrary herein, the total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of this Exhibit.

Section 5. LIABILITY, INDEMNITY, AND INSURANCE

5.1 For the purpose of this Section 5, the following definitions shall apply:

"Loss or Damage" shall mean without limitation all claims, liability, cost, and expense of every character including amounts paid or to be paid under any State or Federal compensation law (including without limitation, FELA) incident to loss or destruction of or damage to property and injury to and death of persons arising from the operation by the parties to this agreement on the Joint Trackage. Loss or Damage shall also include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailments and shall include any liabilities for any third party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment.

"Equipment" shall mean (i) trains, locomotives, railcars, and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on or along the Joint Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are located on or along the Joint Trackage for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating the Joint Property or in making Changes in and/or Additions thereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint employees" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto. "Joint Employees" shall not include train crew employees operating trains or other equipment deemed to be the "Sole Property" of either party. The acts and decisions of the party performing any management, maintenance, repair, renewal, removal, improvement, operation, dispatching or similar function of or for the Joint Property shall be deemed acts and decisions of a Joint Employee.

“Joint Property” shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing renewing, removing, inspecting, or operating the Joint Trackage or in making Changes in and/or Additions thereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed “Joint Property” while enroute from the performance of such work as hereinbefore described to perform service for the benefit of less than all of the parties hereto.

“Sole Employees” shall mean one or more officers, agents, employees, contractors, while engaged in, enroute to or from, or otherwise on duty incident to performing service solely for the benefit of a single party. Sole Employees shall include, but are not limited to, train crew employees operating trains or other Equipment deemed to be the “Sole Property” of either party. Pilots furnished by Owner to assist in operating trains or Equipment of User shall be considered the Sole Employees of User. All officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property of the party bearing the cost of repair or of the other Loss or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment. Employees operating equipment, railcars (and their lading) and locomotives, owned or controlled by and/or in the account of a third party operating on or over the Joint Trackage under rights or authority granted by another party hereto, by detour or otherwise, shall be deemed to be the Sole Employees of the party admitting such third party’s Equipment, railcars and locomotives.

“Sole Property” shall mean Equipment engaged in, enroute to or from, or otherwise on duty incident to performing service solely for the benefit of a single party. Railcars and their lading, and locomotives, owned or controlled by and/or in the account of or being handled by a party hereto shall be deemed to be the Sole Property of such party. Equipment, railcars (and their lading) and locomotives, owned or controlled by and/or in the account of a third party operating on or over the Joint Trackage under rights or authority granted by another party hereto, by detour or otherwise, shall be deemed to be the Sole Property of the party admitting such third party’s Equipment, railcars and locomotives.

5.2 As between the parties hereto only, User shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with User, User’s Sole Property, or property in User’s care, custody, or control, regardless of the cause of such Loss or Damage.

5.3 As between the parties hereto only, Owner shall bear all cost of Loss or Damage to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in transaction of business for or with Owner, Owner's Sole Property, or property in Owner's care, custody, or control, except to the extent any such Loss or Damage is caused or contributed to by acts or omissions or intentional misconduct of User, which Loss or Damage shall be borne by User.

5.4 As between the parties hereto only, User shall bear all Loss or Damage to third parties (excepting property or personnel of third parties deemed to be the Sole Property or Sole Employees of a party), Joint Employees, or Joint Property caused or contributed to by the acts or omissions, negligent, or otherwise of the Sole Employees and/or Sole Property of User with or without the concurring acts or omissions of Joint Employees and/or Joint Property and with or without the concurring acts or omissions of the Sole Employees or Sole Employees of Owner, except for Loss or Damage caused by the intentional misconduct of Owner in which case Owner shall bear all Loss and Damage allocated in this paragraph 5.4.

5.5 As between the parties hereto only, Owner shall bear all Loss or Damage to third parties (excepting property or personnel of third parties deemed to be the Sole Property or Sole Employees of a party), Joint Employees, or Joint Property caused or contributed to by the acts or omissions, negligent, or otherwise of the Sole Employees and/or Sole Property of Owner with or without concurring acts or omissions of Joint Employees and/or Joint Property, except when caused or contributed to by the acts or omissions, negligent or otherwise, of User's Sole Employees and/or User's Sole Property, in which case such Loss or Damage shall be borne in accordance with the terms of Section 5.4.

5.6 As between the parties hereto only, except as expressly provided otherwise in Sections 5.4 and 5.5 above, Loss or Damage to third parties (excepting property or personnel of third parties deemed to be the Sole Property or Sole Employees of a party), Joint Employees, or Joint Property, where such Loss or Damage is not caused or contributed to by the Sole Property or Sole Employees of a party (e.g., an incident involving only Joint Employees) or occurs in such a way that it cannot be determined how such Loss or Damage came about, or Loss or Damage not otherwise expressly covered by Sections 5.1 through 5.5 above, shall be shared by the parties equally regardless of the cause of such Loss or Damage. Notwithstanding any provision to the contrary in this Section 5, as between the parties hereto only, Loss or Damage to Joint Property that is 1) wholly attributable to the acts or omissions of a third party or event or condition of force majeure, and neither the Sole Property nor Sole Employees of either party hereto is involved in the incident giving rise to the Loss or Damage, or 2) occurs in such a way that it cannot be determined how such Loss or Damage came about, shall be shared by the parties based on the proportionate usage of the Joint Trackage as determined by car miles operated in the most recent 12 consecutive months of normal joint operations prior to the month in which such Loss or Damage occurred, or if the month of occurrence cannot be determined, the month in which the Loss or Damage was first discovered, regardless of the cause of such Loss or Damage.

5.7 (a) In the event that: (i) User pursues an indemnity claim against Owner for all or part of the cost of any Loss or Damage; (ii) Owner disputes liability for any such payment or contribution for such Loss or Damage; and (iii) User seeks to force Owner to pay or contribute to the cost of said Loss or Damage pursuant to litigation and/or arbitration, then, if it is finally determined in arbitration and/or litigation that Owner is not obligated to pay for or contribute to all or substantially all of the cost of the applicable Loss or Damage, User shall abide by the final determination and award and shall pay all costs of the arbitration and/or litigation, where applicable (including without limitation attorneys' fees and arbitration fees of Owner).

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

5.8 (a) In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefore, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of Fifty Thousand Dollars (U.S. \$50,000.00), the settling party shall notify the other parties prior to settlement and shall obtain written consent of such party to settle said matter. Consent to settlement shall not be unreasonably withheld in the event such settlement shall have no adverse impact on the non-settling party's rights (including rights of indemnity), liability, potential liability, or litigation position. Failure of the settling party to obtain consent to settle prior to settlement shall not relieve any party of its obligations under this Agreement. In the event a party settles without required written consent, at the option of the non-settling party, and without prejudice to any other rights or remedies available at law or in equity, all or part of any such unauthorized settlements terms may be voided.

(b) If a judgment shall be recovered against and satisfied by one party involving a liability which should under this Agreement be borne entirely or participated in by the other party(ies), then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of this Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other party(ies) to the extent to which the latter is indebted.

5.9 For so long as User shall exercise rights under this Agreement, User shall, at its sole cost and expense, procure and maintain insurance coverage sufficient to cover the liability of User assumed under this Agreement and in compliance with the terms and conditions set forth hereinbelow in Sections 5.9.1 and 5.9.2.

5.9.1 Required Coverage. User shall, at its sole cost and expense, procure and maintain during the life of this Agreement and during operations or occupancy of all any part of the Joint Property by User (even if same shall extend beyond the term of this Agreement), the following insurance coverage:

(a) All risks property insurance covering all of Owner's property including property in the care, custody or control of User. Such insurance shall:

- (i) Be issued on a like kind and quality basis;
- (ii) Provide that in respect of the interest of Owner the insurance shall not be invalidated by any action or inaction of Industry or any other person and shall insure the respective interests of Owner as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Industry or any other person;
- (iii) Include a standard loss payable endorsement naming Owner as an additional loss payee as its interests may appear;
- (iv) Include a waiver of subrogation in favor of Owner; and
- (v) Include coverage for property in the care, custody or control of both User and Owner.

(b) Railroad liability policy of insurance acceptable to Owner in an amount of at least [] per occurrence. Such insurance shall include coverage for:

- (i) injury to or death of persons whomsoever, Personal Injury, Federal Employers Liability Act, property damage liability including but not

limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;

- (ii) seepage and pollution coverage, including without limitation, coverage applicable in the event of railroad accident, derailment or overturn;
- (iii) contractual liability; and
- (iv) evacuation expense coverage.

5.9.2 Other Requirements.

- (a) Required policies under this Agreement shall contain no other endorsements limiting coverage as respects obligations under this Agreement.
- (b) Annually User shall provide evidence of such coverage as required hereunder.
- (c) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
- (d) User agrees to waive its right of recovery against Owner for all claims and suits against Owner. In addition, its insurers, through policy endorsement, waive their right of subrogation against Owner for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. User further waives its right of recovery, and its insurers also waive their right of subrogation against Owner, for loss of its owned or leased property or property under its care, custody or control.
- (e) User's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Owner. The certificate of insurance must reflect that the above wording is included in evidenced policies.
- (f) All policy(ies) required above shall include a severability of interest endorsement and shall name Owner as an additional insured with respect to work performed under this Agreement. Severability of interest and naming Owner as additional insured shall be indicated on the certificate of insurance.
- (g) User is not allowed to self-insure without the prior written consent of Owner. If granted by Owner, any deductible, self-insured retention or other financial responsibility for claims, User shall itself directly cover, in lieu of insurance, any and all Owner liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by User's insurance as if User elected not to

include a deductible, self-insured retention or other financial responsibility for claims.

- (h) Prior to commencement of operations, User shall furnish to Owner an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Owner in writing at least thirty (30) days prior to any cancellation, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Owner, a certified duplicate original of any required policy shall be furnished.
- (i) If any coverage is purchased on a claims-made basis, User shall continue to provide evidence of insurance as required under this Agreement for a period of at least three (3) years, and such requirement and all necessary provisions of this Agreement to administer same shall, where applicable, survive termination of this Agreement until lapse of the third year of such coverage.
- (j) Any insurance policy shall be written by a reputable insurance company acceptable to Owner or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- (k) User represents that this Agreement has been thoroughly reviewed by User's insurance agent(s)/broker(s), who have been instructed by User to procure the insurance coverage required by this Agreement.
- (l) Not more frequently than once every five (5) years, Owner may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry. Further, each of the insurance limits set forth in this Section (excluding those subject to statutory liability requirements) shall be adjusted effective as of an insurance renewal date by a percentage change in the consumer price index for transportation service costs commencing on the date of this Agreement or from the immediately preceding adjustment date, as applicable, rounded to the nearest \$1,000,000, whenever the percentage change in such consumer price index would result in an increase of the then required insurance amount; provided, however, in no event shall the required insurance coverage limits fall below those limits set forth in this Section.
- (m) If any portion of the operation is to be subcontracted by User, provided such subcontracting is authorized by this Agreement, User shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein,

naming Owner as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Owner to the same extent and under the same terms and conditions as User is required to release, defend and indemnify Owner herein.

- (n) Failure to provide evidence as required by this Section shall be deemed to be a Material Breach and shall entitle, but not require, Owner to immediately suspend User's operations over the Joint Trackage until the Material Breach is cured, or terminate this Agreement immediately (or at any time after suspension of operating rights hereunder and failure to cure), without prejudice to Owner's ability to pursue any other remedies available at law or in equity. In the event Owner elects to suspend User's operating rights and/or terminate the terms of this Agreement for breach of the terms of this Section, User shall indemnify Owner for all costs associated with Owner's effectuation of such suspension and/or termination, including, without limitation, all legal fees expended by Owner to effectuate such suspension and/or termination. In addition to any other rights or remedies for breach of the terms of this Section, Owner shall have the right to seek and obtain coverage required by this Agreement by or on behalf of User, and User shall bear all costs associated for such coverage and any costs incurred by Owner in obtaining same.
- (o) The fact that insurance (including, without limitation, self-insurance if permitted) is obtained by User shall not be deemed to release or diminish the liability of User including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Owner shall not be limited by the amount of the required insurance coverage.
- (p) For purposes of this Section, Owner shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company", and the subsidiaries, successors, assigns and affiliates of each and their officers, directors, employees, agents, contractors and representatives.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between Owner and User in connection with this agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If Owner and User are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed

Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the American Arbitration Association from the CPR List of Distinguished Neutrals or other suitable pool of neutral arbitrators as may be mutually agreed in writing by the parties upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Except to the extent expressly provided otherwise in this Agreement, each party to the arbitration shall pay the compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.2 The non-privileged books and papers of all parties, as far as they reasonably relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s), subject to implementation of usual and customary confidentiality measures afforded business confidential documents or information in commercial arbitration proceedings.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of this agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and

file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

7.3 User may terminate this agreement with respect to all or part of the Joint Trackage at any time on thirty (30) days' written notice to Owner. Upon termination of this agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under this agreement, in all events; provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any partial termination of this agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.4 Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

7.5 Owner shall have the right in its sole discretion to abandon or discard all or part at anytime, and in such event this Agreement shall terminate with respect to the portion or all (where applied) of the Joint Trackage abandoned or discontinued.

Section 8. OTHER CONSIDERATIONS

8.1 User may not assign or sublet this agreement in whole or in part without the express written consent of Owner. Subject to the foregoing, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns. In the event of a change in control of SKOL or its parent company, Watco, BNSF may, in its absolute discretion, exercise at any time for any reason or no reason whatsoever, the right to terminate this Agreement on 90 days' written notice to SKOL, provided such termination may not be exercised after one full year following the later of the effective date of change in control or BNSF's receipt of SKOL's written notice of the change in control. For purposes of this section "Change in Control" shall mean any transaction, voluntary or otherwise, resulting in any change, directly or indirectly, in the ownership, control, or management of SKOL or its parent, including without limitation, a sale or transfer of all or a majority of the material assets and/or voting securities of SKOL or its parent, a merger or other business combination or consolidation, a material grant or transfer of voting rights by proxy or otherwise, or a material change in control of the management through the Board of Directors.

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

8.3 All notices, demands, requested, or submissions which are required or permitted to be given pursuant to this agreement shall be given by either party to the other in writing by serving the same pursuant to the terms of the Original Agreement.

8.4 If any covenant or provision of this agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of this agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of this agreement.

8.5 In the event there shall be any conflict between the provisions of this Exhibit and the main body of this agreement, the provisions of the main body of this agreement shall prevail.

8.6 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

END OF EXHIBIT "B" GENERAL CONDITIONS