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VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 32760 (Sub-No. 51), BNSF Railway Company—
Emergency Petition for Enforcement—Interchange with Salt Lake
Garfield & Western Railway**

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is BNSF Railway Company's Emergency Petition for Enforcement and Request for Expedited Relief. Pursuant to 49 C.F.R. § 1002.2(f)(88), a filing fee of \$350 was paid using pay.gov.

Please contact me or Timothy J. Strafford at (202) 429-8170 with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 51)

BNSF RAILWAY COMPANY
—EMERGENCY PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SALT LAKE GARFIELD & WESTERN RAILWAY

**BNSF RAILWAY COMPANY'S
EMERGENCY PETITION FOR ENFORCEMENT
AND REQUEST FOR EXPEDITED RELIEF**

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Dated: July 7, 2025

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AND REQUEST FOR EXPEDITED RELIEF**

1. INTRODUCTION AND SUMMARY

BNSF Railway Company (“BNSF”) hereby requests that the Surface Transportation Board (“Board” or “STB”) take immediate emergency action to prevent Union Pacific Railroad Company (“UP”) from blocking BNSF from using BNSF’s trackage rights over UP’s lines in California, Nevada, and Utah, for BNSF to move double-stack intermodal trains for interchange with the Salt Lake Garfield & Western Railway (“SLGW”) in Salt Lake City, Utah. BNSF obtained these trackage rights as a condition imposed by the Board on its approval of the merger of UP and Southern Pacific Rail Corporation (“SP”) in 1996. The Board has the authority pursuant to 49 U.S.C. § 11327 to enforce these conditions and enter the order requested by BNSF here on an emergency basis.

Should the Board find it necessary, the Board could also enter the order requested by BNSF here on a temporary basis pursuant to its emergency service authority under 49 U.S.C. § 11123 and 49 C.F.R. § 1146.2, and then later grant BNSF’s requested relief on a more permanent basis pursuant to its UP/SP merger enforcement authority.

UP and BNSF compete vigorously for intermodal rail movements to/from the West Coast. In 2024-2025, two intermodal customers moved a significant portfolio of business from UP to BNSF. To serve this business, BNSF must use its trackage rights over UP's lines obtained under the UP/SP merger conditions – trackage rights that UP has consistently honored since the merger occurred nearly 30 years ago. BNSF intends to operate using these trackage rights this week – as early as today, July 7, 2025.

In a blatantly retaliatory move, UP has indicated that it will not allow BNSF to make these trackage rights movements. And if UP eventually allows these BNSF trains to operate, UP intends to force BNSF to use an alternative routing that will result in a windfall for UP. BNSF needs the Board's immediate assistance to overcome this behavior by UP intended to punish both BNSF and UP's former customers for entering into market-based agreements that dared to shift business away from UP.

Without an expedited order from the Board, BNSF's intermodal trains cannot run, SLGW's new intermodal facility in Salt Lake City cannot operate, BNSF's intermodal partners and customers cannot move their containers by rail to/from Salt Lake City, and UP's retaliatory and anticompetitive behavior will be rewarded.

As explained below, the scope of BNSF's trackage rights ordered by the Board in connection with the UP/SP merger includes two routes between the same end points in Northern California (Roseville) and Nevada (Weso): UP's Valley, Sacramento, Canyon and Winnemucca subdivisions (the "Northern Route") and UP's Roseville and Nevada subdivisions (the "Southern Route"), as shown on the map below.



BNSF has the right to operate trains on either the Northern Route or the Southern Route. Additionally, at BNSF's request, UP must provide crews for these BNSF trains.

BNSF told UP in May that BNSF will operate this new intermodal service using UP's crews, beginning in July 2025. Although there was no discussion of routing at that time, BNSF has trackage rights over both the Northern Route and the Southern Route and planned for this service to use the Northern Route in both directions. If BNSF wanted to use the Southern Route for this service, BNSF would have to pay UP for half the cost of the project (estimated at tens of millions of dollars) that UP undertook in 2009 to clear the Donner Pass tunnel for its own double-stack intermodal service. BNSF has no such desire, given that the Northern Route is entirely capable of handling BNSF's double-stack intermodal trains.

However, UP has made it clear in recent days that: (1) UP will not allow these BNSF trains to operate without UP's approval of an operating plan, which they claim would take another month; and (2) BNSF must use the Southern Route to move the intermodal trains eastbound to Salt Lake City, due to a purported

westbound directional running pattern on the Northern Route that UP admittedly does not regularly adhere to. These actions are flagrant violations of UP's obligations under the UP/SP merger conditions.

If necessary, BNSF may later ask for a Board order declaring that, if UP forces BNSF to use the Southern Route, BNSF will not incur any obligation to pay UP for the improvements made by UP on the Southern Route to accommodate double-stack intermodal trains. But given the emergency caused by UP's brazenly anticompetitive and retaliatory behavior, BNSF's narrow request at this time is limited to a Board order enforcing the UP/SP merger conditions by directing UP to: (1) allow BNSF to run double-stack intermodal trains eastbound and westbound over the Northern Route for interchange with SLGW in Salt Lake City, Utah; and (2) provide the crews for these BNSF trains pursuant to UP's obligations under the UP/SP merger conditions.

BNSF requests that the Board address this petition on an expedited, emergency basis. The SLGW intermodal facility will open for business today, Monday, July 7. The first empty train arrived in Salt Lake City last night and the first container arrived today. Once loaded, the first westbound train is expected to leave Salt Lake City this week. BNSF anticipates that the first eastbound movement of BNSF double-stack intermodal trains over the Northern Route will begin as early as later this week. BNSF only learned on the evening of Thursday, July 3, that UP would not allow these trains to move.

Absent the requested relief, UP will succeed in disrupting the business of BNSF, SLGW, and its intermodal partners and customers. We understand that if BNSF cannot move these trains, even in the short-term, exports destined for overseas markets could miss their scheduled vessels, imports coming into West Coast ports will be forced to sit and incur dwell time, and customers will be

scrambling to find alternate routing via other modes, which is likely to be at a higher rate.

The facts set forth in this Petition have been verified by Farah Lawler, BNSF's VP Service Design Network Strategy Design & Innovation.

2. BACKGROUND

2.1. BNSF has the right to use the Northern Route to run eastbound and westbound trains.

In August 1996, the Board approved the common control and merger of the rail carriers controlled by UP and the rail carriers controlled by SP, subject to various conditions designed to preserve direct and indirect competition that would be lost as a result of the consolidation of the two carriers. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp (Decision No. 44)*, 1 S.T.B. 233, 233, 367-75, 418-21 (1996). The essential bargain struck by UP/SP in order to obtain Board approval for their merger consisted of granting BNSF rights – including trackage rights allowing BNSF to operate over thousands of miles of UP lines – to access interchange partners and shippers that would have otherwise suffered from a reduction of competitive options as a result of the 1996 merger. The Board imposed as a condition of the merger the terms of a settlement agreement between UP and BNSF. *Id.* at 242-43, 246-47, 419.

As contemplated by *Decision No. 44*, BNSF and UP restated and amended the original settlement agreement in accordance with that decision and subsequent Board decisions interpreting the agreement. The Board approved the terms of the March 1, 2002 Restated and Amended Settlement Agreement (“RASA”), attached hereto as Exhibit A, in the context of its oversight review of the UP/SP merger. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1174, 1178 (2001).

In connection with the UP/SP merger, UP granted BNSF trackage rights over both the Northern Route and the Southern Route of the Central Corridor. The relevant Trackage Rights Agreement (“TRA”) is attached as Exhibit B. The TRA does not give UP the ability to block BNSF from operating over any of the line segments covered by the TRA. Rather, BNSF has the ability to select which lines it will operate over. At the time of the UP/SP merger, there was no restriction on BNSF running double-stack intermodal trains bi-directionally on the Northern Route, and there is no such restriction today in the RASA.

2.2. BNSF and UP are subject to certain rights and obligations under the RASA.

Under the RASA, BNSF and UP are subject to certain rights and obligations. For instance, the STB made it clear that UP must, when it implements operational changes such as the institution of directional operations on trackage rights lines, “make all necessary accommodations to preserve the competitive presence that we expected BNSF to provide when we adopted the [UP/SP merger] conditions.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Houston/Gulf Coast Oversight) (Decision No. 10)*, 3 S.T.B. 1030, 1039 (1998). The STB also stated that “UP cannot unilaterally take action that impairs BNSF’s ability to provide service on a trackage rights line.” *Decision No. 21*, 5 S.T.B. at 1184.

As a result of the Board’s direction in *Decision No. 10* and *Decision No. 21*, BNSF and UP negotiated Section 9(n) of the RASA, which gives BNSF the right to operate against the flow of directional running if reasonably necessary to provide competitive service to shippers accessible to BNSF. (See Ex. A, RASA 41.) Section 9(n) also obligates UP to provide BNSF with “reasonable notice” of the planned institution of directional operations on any trackage rights line. (*Id.*) UP failed to do that here.

Additional key provisions of the RASA include the following:

Section 1(h) of the RASA obligates UP to provide, at BNSF's request, train and engine crews to handle BNSF trains moving between Salt Lake City and Oakland. (*See id.* at 10).

Section 1(b) of the RASA expressly provides BNSF the right to interchange with SLGW at Salt Lake City. (*Id.* at 6.)

Section 1(j) of the RASA provides that, “[i]f BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances.” (*Id.* at 10.) This provision further states that, “[i]f UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost . . . at such time as BNSF begins to use the line for domestic high cube double stacks.” (*Id.* at 11.)

2.3. UP's actions are retaliation for losing certain intermodal business to BNSF.

In 2024 and 2025, BNSF won certain intermodal business, resulting in a shift of intermodal traffic from UP to BNSF. At the time, BNSF understood that it had the clear right to run double-stack intermodal trains bi-directionally over the Northern Route and priced this new business accordingly. Indeed, BNSF operates bi-directionally today on a portion of the Northern Route between Roseville, Calif. and Keddie, Calif., so BNSF assumed that it could move its new intermodal service bi-directionally on the remaining segment of the Northern Route between Keddie, Calif. and Weso, Nev. BNSF began making capital investments to support this intermodal business, including working with SLGW to construct an SLGW intermodal yard in Salt Lake City on SLGW's line. BNSF also developed operating plans to move the new double-stack intermodal trains to/from the west destined for interchange with SLGW in Salt Lake City.

By refusing to allow BNSF to run its double-stack intermodal trains eastbound over the Northern Route, UP is blatantly attempting to disrupt the business of BNSF and its intermodal partners and to recoup UP's lost contribution from that intermodal business by forcing BNSF to pay for one-half of the costs UP unilaterally incurred when it took steps to increase the clearances of the Donner Pass tunnel on the Southern Route for its own business purposes in 2009.

2.4. UP has had notice of the new BNSF double-stack intermodal trains for two months.

Recent correspondence and discussions between BNSF and UP, summarized below, show that UP has had notice of the new double-stack intermodal trains since early May 2025, if not earlier when UP lost the business. The correspondence also shows that UP has failed to meet its obligations under the UP/SP merger conditions.

In a letter dated May 2, 2025, and emailed on May 5, 2025, from Cara Weidling, BNSF's General Director of Transportation to John Hughes, UP's General Manager – Roseville Service Unit, BNSF informed UP that BNSF anticipated moving an additional two to five intermodal trains per week to/from the west destined for interchange with SLGW, effective on or around June 1, 2025. (*See Ex. C, BNSF Letter 1, May 2, 2025.*) BNSF requested that UP crews operating BNSF trains physically interchange these intermodal trains directly to SLGW at Salt Lake City, and BNSF invited UP to contact BNSF if it had any concerns or wished to discuss BNSF's request further. (*Id.*)

On May 16, 2025, Rich Dennison, BNSF's General Manager, spoke with his UP-counterpart John Hughes. Mr. Dennison reviewed with Mr. Hughes BNSF's planned start date, planned route, and handoff locations. Mr. Hughes indicated to Mr. Dennison that he shared this information with John Hall, UP's General

Manager and Assistant Vice President of Network Integration and Scheduling and with David W. Hughes, UP's AVP Joint Facilities & Interline Operations.

On June 20, 2025, Matthew S. Graham, BNSF's Director of Trackage Rights – Omaha, NE sent an email to his UP-counterpart Mike Hoffman, informing UP that the new BNSF intermodal trains will use the Northern Route and that BNSF cannot run the trains through the Southern Route. (*See* Ex. D, BNSF Email 1, June 20, 2025.)

BNSF and UP had a conference call on June 24, 2025, during which UP notified BNSF that it will force BNSF to run the new double-stack intermodal trains via the Southern Route. UP informed BNSF that UP operates the Northern Route in a westbound directional running pattern, notwithstanding the facts that: (1) current operations include BNSF trains and UP unit and local trains moving against that flow eastbound over portions of the Northern Route; and (2) UP's train-length maps make no reference to westbound directional running over the Northern Route and indicate that trains up to 5,700 feet can operate eastbound. (*See* Ex. E, UP Train Length Exemptions Map.) Additionally, UP told BNSF that UP had crew availability issues with running the BNSF trains eastbound over the Northern Route. UP also demanded that BNSF pay for one-half of the costs UP incurred to increase clearances of the Donner Pass tunnel. BNSF rejected UP's proposal.

In a letter dated June 27, 2025, from Ms. Lawler to Mr. David Hughes, BNSF memorialized its rejection of UP's proposal to use the Southern Route and the Donner Pass tunnel for the BNSF double-stack intermodal trains moving to/from Salt Lake City. (Ex. F, BNSF Letter, June 27, 2025.) BNSF demanded that UP allow the BNSF trains to move over the Northern Route, and BNSF asserted that, if UP forces BNSF to run trains on the Southern Route for UP's own operating convenience, BNSF will not incur any obligation to pay UP for the Donner Pass double-stack clearance improvements. (*Id.* at 1-3.)

In a letter dated July 3, 2025, from Mr. David Hughes to Ms. Lawler, UP asserted that it is not attempting to prohibit BNSF from exercising its trackage rights, and it is “merely exercising its exclusive right to control operations and dispatching on the ‘Joint Trackage’ as defined in . . . the TRA.” (Ex. G, UP Letter 1, July 3, 2025.) UP stated that it is “willing to review BNSF’s request to initiate service and requires that BNSF immediately provide its proposed operating plan.” (*Id.* at 2.) UP further stated that it would respond to BNSF within 30 days of its approval or disapproval of BNSF’s plan. (*Id.*)

In a letter dated July 4, 2025, from Ms. Lawler to Mr. David Hughes, BNSF asserted, among other things, that it “is not required by the TRA or the RASA to provide UP with a proposed operating plan or to obtain UP’s approval of such an operating plan.” (Ex. H, BNSF Letter 2, July 4, 2025.) BNSF explained that its “new intermodal movements in the Central Corridor are not to access a new shipper facility, but rather to interchange with SLGW at Salt Lake City,” and “[t]hose SLGW interchange rights are explicitly set forth in the RASA, Section 1(b), and are not subject to any of the ‘election’ procedures for BNSF’s access to a shipper facility.” (*Id.*) Nevertheless, BNSF provided UP with a detailed description of BNSF’s anticipated operations of the new intermodal trains over the Central Corridor via the Northern Route. (*Id.* at 4.)

2.5. BNSF is not obligated to pay for the Donner Pass tunnel improvements if UP forces BNSF to use the Southern Route.

UP has demanded that BNSF pay for one-half of the costs UP incurred to increase clearances of the Donner Pass tunnel on the Southern Route if BNSF moves double-stack intermodal trains over the Southern Route. The cost for BNSF would be tens of millions of dollars.

However, if UP forces BNSF to use the Southern Route, BNSF is not obligated to pay for one-half of the costs of the improvements. UP unilaterally

decided to increase the clearances of the Donner Pass tunnel on the Southern Route to allow double-stack intermodal trains to run through that tunnel for its own business purposes. BNSF has been clear that it does not desire to operate the double-stack intermodal trains over the Donner Pass using the Southern Route and that BNSF wants to use the Northern Route pursuant to its trackage rights over those lines. BNSF is not subject to any obligation under Section 1(j) of the RASA to pay for one-half of the costs of the improvements in this instance, because it has no desire to run the double-stack intermodal trains on the Southern Route.

3. ARGUMENT

BNSF respectfully requests that the Board promptly issue a decision ordering UP to allow BNSF to run double-stack intermodal trains eastbound and westbound over the Northern Route pursuant to BNSF's trackage rights over these lines and ordering UP to provide the crews for these BNSF trains, pursuant to its obligations under Section 1(h) of the RASA.

3.1. The Board has continuing jurisdiction to resolve issues related to the UP/SP merger conditions.

The Board clearly has jurisdiction and authority to provide BNSF with the limited relief requested here. In *Decision No. 21*, 5 S.T.B. at 1177, the Board stated that, while it was concluding its formal oversight process for the UP/SP merger, it retained under 49 U.S.C. § 11327 “continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323” and that “the conclusion of the formal oversight process does not preclude any party from invoking [the Board’s] jurisdiction to address any merger-related concerns arising out of [the Board’s] conditions.”¹

¹ See also *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760 (STB served Jan. 31, 2018) (granting a BNSF petition for enforcement of UP/SP merger conditions); *Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 35*), FD 36500, slip op. at 77 (STB served Mar. 15, 2023) (“The Board has authority to enter

3.2. The Board should order UP to allow BNSF to run its double-stack intermodal trains eastbound and westbound over the Northern Route and to provide the crews for these BNSF trains.

As discussed above, the Board has said that UP must, when it implements operational changes such as the institution of directional operations on trackage rights lines, “make all necessary accommodations to preserve the competitive presence that we expected BNSF to provide when we adopted the [UP/SP merger] conditions.” *Decision No. 10*, 3 S.T.B. at 1039.

Under this standard, the Board should order UP to allow BNSF to use the Northern Route to move its double-stack intermodal trains eastbound to Salt Lake City, Utah and westbound to Roseville, California and to provide the crews for these BNSF trains. BNSF is entitled to run its intermodal trains over the Northern Route pursuant to BNSF’s trackage rights over these lines, and UP has provided no authority that would allow it to block BNSF from operating eastbound over the lines. Indeed, BNSF and UP each currently run eastbound trains over portions of the Northern Route, notwithstanding UP’s purported westbound directional running program.

UP has breached its obligations under the UP/SP merger conditions with respect to accommodating BNSF service on lines where UP has implemented directional running programs. In fact, UP has taken no steps whatsoever to accommodate eastbound BNSF trains on the Northern Route.

supplemental orders enforcing merger conditions and to modify prior decisions entered in the merger proceeding both during and after the merger oversight period.”) (citing 49 U.S.C. § 11327; *Canadian Nat’l Ry.—Control—Ill. Cent.*, FD 33556 (Sub-No. 4), slip op. at 3 (STB served Dec. 27, 2001); *Decision No. 35*, FD 36500, slip op. at 55 (“[T]he Board is authorized to issue supplemental orders under 49 U.S.C. § 11327, both during the oversight period and afterwards, which may include taking remedial action following the transfer of control if warranted.”)).

Additionally, UP has known that BNSF anticipated moving additional intermodal trains to/from the west destined for interchange with SLGW since at least early May 2025. Yet, it was not until June 24, 2025, a year after BNSF had won some of the intermodal business that resulted in a significant shift of intermodal traffic from UP to BNSF, that UP told BNSF for the first time that UP operates the entire Northern Route in a westbound directional running pattern.

UP's actions are in violation of the Board's carefully-crafted UP/SP merger conditions designed to preserve competition. To compete effectively in highly competitive intermodal markets such as the business at issue here, BNSF must have notice when UP intends to implement directional running on lines subject to the TRA. BNSF competes head-to-head with UP for this traffic and cannot coordinate operational changes with UP during the negotiation process with potential customers or after customers switch carriers due to confidentiality concerns. If UP were allowed to only inform BNSF of directional running restrictions after-the-fact and not allow BNSF to operate against the flow of those unilaterally imposed restrictions, BNSF's ability to serve such traffic would be greatly undermined. UP is now seeking to impose significant costs on BNSF service to customers, disrupting the economics of how this traffic has been priced. UP's conduct, if not prevented by the Board, could cause a substantial amount of traffic to divert to truck.

BNSF is entitled to use the Northern Route and has no desire to use the Southern Route. The Board should promptly issue an order enforcing the conditions it imposed on its approval of the UP/SP merger by requiring UP to allow BNSF to run double-stack intermodal trains eastbound and westbound over the Northern Route pursuant to BNSF's trackage rights over these lines and requiring UP to provide the crews for these BNSF trains. The Board should require UP to comply with the UP/SP merger conditions.

3.3. The Board could invoke Section 11123 to grant BNSF's requested relief on a temporary basis.

BNSF believes that the Board has the authority pursuant to 49 U.S.C. § 11327 and its continuing jurisdiction over the UP/SP merger to enter the order requested by BNSF here. However, should the Board find it necessary, the Board could also provide the relief requested by BNSF here on a temporary basis pursuant to its emergency service authority under 49 U.S.C. § 11123 and 49 C.F.R. §1146.2, and then later grant BNSF's requested relief on a more permanent basis under its UP/SP merger enforcement authority.

BNSF has established here that UP's actions have created "an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that [BNSF] cannot transport the traffic offered to it in a manner that properly serves the public." 49 U.S.C. § 11123(a). Under the statute, an emergency situation can be created by "unauthorized cessation of operations . . . or other failure of traffic movement." *Id.* The Board has stated that "[s]uch emergencies exist when there is . . . a high probability of business closures or immediate plant shutdowns." 49 C.F.R. § 1146.2(a). Here, the SLGW intermodal yard will not be able to operate as a result of UP's actions.

The Board can thus "direct the handling, routing, and movement of the traffic of [BNSF] and its distribution over its own or other railroad lines; (2) require joint or common use of [UP's] railroad facilities; [or] (3) prescribe temporary through routes." 49 U.S.C. § 11123(a). The relief requested here by BNSF is consistent with these authorities.

The Board has promulgated rules to implement Section 11123 at 49 C.F.R. Part 1146. Through this petition, BNSF has demonstrated circumstances that meet the standard set forth in 49 C.F.R. § 1146.2(a) for ordering accelerated temporary

interim relief, should the Board decide to invoke its Section 11123 authority rather than or in addition to its broad UP/SP merger enforcement authority to provide BNSF with its requested relief.

Under Section 11123, emergency service may be ordered summarily. *Id.* § 11123(b)(1). Board orders under 49 U.S.C. § 11123 are subject to an initial time limit of 30 days, but they may be extended up to an additional 240 days if the Board finds that emergency conditions continue to exist. *Id.* §§ 11123(a), (c). Should the Board decide to invoke its authority under Section 11123 to enter the order requested by BNSF for an initial 30-day period, the Board could then later decide to either extend that relief on a temporary basis pursuant to Section 11123, or more permanently pursuant to its UP/SP merger enforcement authority.

4. REQUEST FOR EXPEDITED RELIEF

BNSF requests that this petition be addressed on an expedited basis. As noted above, the SLGW intermodal facility will open for business today. The first empty train arrived in Salt Lake City last night and the first container arrived today. Once loaded, the first westbound train is expected to leave Salt Lake City this week. BNSF anticipates that the first eastbound movement of BNSF double-stack intermodal trains over the Northern Route will begin as early as later this week.

5. CONCLUSION

For the reasons stated above, BNSF respectfully requests that the Board promptly issue an emergency order directing UP: (1) to allow BNSF to run double-stack intermodal trains eastbound and westbound over the Northern Route pursuant to BNSF's trackage rights over these lines granted by the Board as a condition to the UP/SP merger; and (2) to provide the crews for these BNSF trains, pursuant to its obligations under Section 1(h) of the RASA.

Respectfully submitted,

/s/ Peter W. Denton

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Dated: July 7, 2025

EXHIBIT A

Restated and Amended Settlement Agreement (RASA)

03/01/02

RESTATED AND AMENDED AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1. **Western Trackage Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **I-5 Corridor**

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

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

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

3. **Southern California Access**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. St. Louis Area Coordinations

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

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

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

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

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

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

8. **Additional Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Trackage Rights - General Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **Term**

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

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

12. **Adjustment of Charges**

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

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

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

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

13. **Assignability**

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

14. **Government Approvals**

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

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

15. **Arbitration**

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

16. **Further Assurances**

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

17. **No Third Party Beneficiaries**

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibit A
LIST OF “2-TO-1” POINTS

Points Referred to in Section 1(b)

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

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

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

Points Referred to in Section 5(b)

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

Points Referred to in Section 6(d)

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

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

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

2. South Texas Trackage Rights

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

3. Eastern Texas – Louisiana Trackage Rights

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

4. Additional Rights

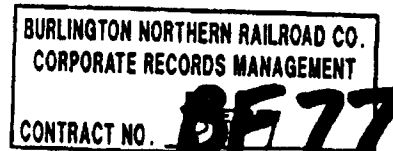
- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

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

EXHIBIT B

Denver, Colorado to Stockton and San Jose, California
Trackage Rights Agreement



**DENVER, COLORADO TO STOCKTON AND SAN JOSE, CALIFORNIA
TRACKAGE RIGHTS AGREEMENT**

THIS AGREEMENT made as of this 1st day of June, 1996, between UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRR"), SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT"), and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation ("DRGW") (UPRR, SPT, and DRGW are hereinafter referred to collectively as "Owner"), on the one hand, and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, Owner owns lines of railroad consisting of track structures extending:

between Denver, Colorado, in the vicinity of DRGW's Milepost 3.2, and Salt Lake City, Utah, in the vicinity of DRGW's Milepost 745.59, via the Moffat Tunnel which shall include one track of 19.82 miles of double main track operated over by DRGW and Utah Railway Company ("URC") ("Denver-Salt Lake City Route") which shall include:

a line of railroad of DRGW between Midvale, Utah, in the vicinity of DRGW's Denver-Salt Lake City Route Milepost 735.0 (DRGW's Bingham Branch Milepost 0.0), and Welby, Utah, in the vicinity of DRGW's Bingham Branch Milepost 5.1 (DRGW's Garfield Branch 5.1), and Bacchus Spur, in the vicinity of DRGW's Garfield Branch Milepost 11.2 ("Bingham-Garfield Line");

between Salt Lake City, in the vicinity of UPRR's Milepost 782.7, and Ogden, Utah, in the vicinity of UPRR's Milepost 817.94 ("Salt Lake City-Ogden Route");

between Ogden, in the vicinity of UP's Milepost 1.7, SPT's Milepost 781.2, and Little Mountain, Utah, in the vicinity of SPT's Milepost 769.7 ("Ogden-Little Mountain Route");

between Salt Lake City in the vicinity of UPRR's Milepost 782.7, and Alazon, Nevada, in the vicinity of UPRR's Milepost 713.65 ("Salt Lake City-Alazon Route");

between Alazon, in the vicinity of UPRR's Milepost 713.65 for eastward movement of Equipment and SPT's Milepost 603.75 for westward movement of Equipment, and Weso, Nevada, in the vicinity of UPRR's Milepost 535.7 for eastward movement of Equipment and SPT's Milepost 420.9 for westward movement of Equipment ("Paired Track");

between Weso, in the vicinity of UPRR's Milepost 535.7 and Stockton, California, in the vicinity of UPRR's Milepost 91.5 ("Weso-Stockton Route"); and

between Weso, in the vicinity of SPT's Milepost 420.9, and San Jose, California (including the "Cal-P"), in the vicinity of SPT's Milepost 46.4, via SPT's Milpitas Line ("Weso-San Jose Route"), which shall include:

a line of railroad of SPT between Elvas, California, in the vicinity of SPT's Weso-San Jose Route Milepost 91.8 (SPT's Fresno Line Milepost 136.2), and Stockton, in the vicinity of SPT's Fresno Line Milepost 88.9 ("Elvas-Stockton Line") and

a line of railroad of SPT between Niles Tower, California, in the vicinity of Weso-San Jose Route Milepost 42.4 and Shinn, California, in the vicinity of SPT's Tracy Line Milepost 41.7,

as shown by bold and dashed lines on the attached print dated June 1, 1996 (and identified as Exhibit "A") (Figures 1-1, 1-2 and 1-3) and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), UPRR, Missouri Pacific Railroad Company ("MPRR") (UPC, UPRR and MPRR are collectively referred to hereinafter as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, DRGW, St. Louis Southwestern Railway Company ("SSW") and SPCSL Corp. ("SPCSL") (SPC, SPT, DRGW, SSW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, Owner granted certain rights to User, including overhead bridge trackage rights between Denver, Colorado and Stockton and San Jose, California, (excluding the overhead bridge trackage rights being granted to User by SPT over the Elvas-Stockton Line pursuant to this Agreement, which User subsequently requested and Owner has agreed to) and the right to access all industries which are presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad except as may be otherwise herein provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application currently pending before the STB in Finance Docket No. 32760.

WHEREAS, SPT and Santa Fe are parties to an agreement dated March 19, 1976, under which SPT granted to Santa Fe the right to operate between Oakland, California and Stege, California ("Oakland-Stege Agreement") which is located on the Weso-San Jose Route.

WHEREAS, pursuant to the Settlement Agreement, Owner and User wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

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

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

2. Rights of User:

(a) Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in User's 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 (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement, it being understood and agreed that User shall not have the right to:

- (i) Switch industries upon the Joint Trackage, except as hereinafter provided;
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Section 2 and in Sections 2.12, 2.13 and 2.14 of Exhibit B;
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in this Section 2;

- (iv) Permit or admit any third party to the use of 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 Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment 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
- (v) Connect with or interchange with any other railroad except as hereinafter delineated in Exhibit "E" attached hereto and by this reference made a part hereof.

(b) The rights granted in Section 2 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal, except as follows.

- (i) On the SPT's portion of the Joint Trackage between Weso and Oakland via the "Cal-P," User shall be entitled to move only (i) Intermodal Trains (as defined below) moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one Manifest Train (as defined below) daily in each direction.

Intermodal Trains are to be comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and/or containers in single or double stack configuration.

Manifest Trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable trains of Owner. Helpers shall not be used unless comparable manifest trains of Owner use helpers in which case User manifest trains may be operated in the same fashion provided User furnishes the required helper service. The requirement for the use of helpers does not apply to movement over the "Cal-P"; and

- (ii) User may also utilize the "Cal-P" route for one Manifest Train per day moving to or from Oakland via Keddie and Bieber.

Provided, however, User may only operate one Manifest Train per day in each direction via the "Cal-P" regardless of where the train originates and terminates; and

- (iii) Notwithstanding the provisions of subsections (I) and (ii) of this Section 2(b), User's frequency of operations between Stege (Richmond) and Oakland, and providing service to and from certain industries south of Oakland shall not be restricted; and
 - (iv) User's operations over SPT between Elvas and Stockton shall be restricted to such trains operated by User on the portion of the Weso-San Jose Route between Weso and Elvas.
- (c) Furnishing of train and engine crews, support personnel and services:
- (I) Owner shall provide, upon written request of User, between Denver and Salt Lake City and for a period not to exceed one (1) year from the effective date of this Agreement, train and engine crews, required support personnel and services necessary to operate trains of User in accordance with Owner's operating practices; and
 - (ii) Owner shall provide, upon written request of User, between Salt Lake City and Oakland, train and engine crews, required support personnel and services to operate trains of User in accordance with Owner's operating practices; and
 - (iii) User shall reimburse Owner for providing the employees and services set forth heretofore in subsections (I) and (ii) of this Section 2 (c) on a cost plus reasonable additive basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense.

All employees of Owner engaged in or connected with the operation of the trains of User shall, solely for purposes of Sections 4 and 5 of the General Conditions, be deemed to be "sole employees" of User and the trains of User shall be deemed to be the "sole property" of User. Notwithstanding the provisions of Section 7.4 of the General Conditions, User shall be responsible for any labor protection, guarantees or reserve board payment for such incremental employees resulting from any change in User's operations or traffic levels.

User must also give UP/SP reasonable advance written notice of its need for employees in order to allow UP/SP time to have adequate trained crews available.

- (d) User shall have the right to pick up and set out rail cars and to stage and/or switch rail cars as necessary relative to the industrial rights granted in this Agreement, at:

- (i) Provo, Utah, DRGW's yard in the vicinity of DRGW's Milepost 701.1; and
- (ii) Salt Lake City, Utah, DRGW's Roper Yard, intermodal facility in the vicinity of DRGW's Milepost 740.1; and
- (iii) SPT's yard at Ogden, Utah, in the vicinity of SPT's Milepost 782.3; and
- (iv) Elko, Nevada, UPRR's yard in the vicinity of UPRR's Milepost 620.7 (SPT's Milepost 557.0); and
- (v) Battle Mountain, Nevada, SPT's yard in the vicinity of SPT's Milepost 475.8; and
- (vi) Winnemucca, Nevada, UPRR's and SPT's yards in the vicinity of UPRR's Milepost 532.1; and
- (vii) Sparks, Nevada, SPT's yard and intermodal facility in the vicinity of SPT's Milepost 246.2; and
- (viii) Portola, California, UPRR's yard in the vicinity of UPRR's Milepost 321.4; and
- (ix) Sacramento, California, UPRR's South Train Yard in the vicinity of UPRR's Milepost 136.9; and
- (x) Warm Springs in the vicinity of SPT's Milepost 36.3 or Milpitas, California in the vicinity of SPT's Milepost 40.7, as the authorized representatives of the parties may agree from time to time (for rail cars destined to or originating at those industries located between immediately south of Warm Springs and San Jose).

(e) User shall have the right to establish crew points at Grand Junction, Colorado (Denver-Salt Lake Route), Salt Lake City, Elko, Sparks, and Portola (Weso-Stockton Route), or such other points as from time to time may be mutually agreed to in writing by Owner and User.

However, User agrees that if sufficient trackage is not available at such locations(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Improvements") in the vicinity of such location as may be required in the reasonable judgement of Owner, the cost and expense of which shall be borne by User. In the event such Improvements are constructed at the cost and expense of User, and

Owner shall choose to use such Improvements, Owner shall pay User fifty-percent (50%) of the cost of constructing such Improvements. Should Owner decline to participate, Owner shall be denied access to such Improvements. However, should Owner elect at a later date to use such Improvements, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User by separate written agreement existing facilities for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

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

User shall participate in fifty percent (50%) of Owner's cost and expense of any Improvements constituting connecting and access tracks and switches for such new shipper facilities upon User's election to directly serve such new shipper facility which then shall become part of the Joint Trackage. Should User decline to participate in the cost and expense of Improvements required to serve any new shipper facility, User shall be denied access to such new shipper facility and the Improvements then shall not be part of the Joint Trackage; provided, however, should User elect at a later date to serve such new shipper facility, such right shall be granted to User by Owner upon payment of fifty percent (50%) of Owner's initial cost and expense of the Improvements plus interest as calculated pursuant to Section 2 (e) above.

If User wishes to provide rail service to any new shipper facility at the locations set forth in this Section 2 (f), User shall provide Owner with written notice of its plans including a proposed rail service plan to the new shipper facility and Owner shall, within thirty (30) days of its receipt of such notice and plan, notify User of its approval or disapproval of User's plans for construction, which approval Owner shall not unreasonably withhold. In the event a request is approved by Owner, Owner shall construct and maintain the Improvements at User's sole cost and expense, provided, that Owner, subject to the provisions of the second paragraph of this Section 2 (f) regarding payment of fifty percent (50%) of the cost thereof plus interest, if applicable, may elect to participate in the cost of Improvements at that time or in the future.

Forty-five (45) days before initiating service to a customer, User must elect, in writing, whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior written agreement, using a third party contractor to perform switching for User alone or both User and UP/SP. User shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; provided, however, that User shall (x) not change its election more often than once every five (5) years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

(g) User shall have the right to utilize in common with UP/SP, for normal and customary charges, DRGW's soda ash transload facilities in Ogden and Salt Lake City. User shall also have the right to access any shipper-owner soda ash transload facilities in Ogden and to establish its own soda ash transload facilities along the Joint Trackage.

(h) User shall have the right to use DRGW's intermodal facility at Salt Lake City and SPT's intermodal facility at Sparks and Owner shall, pursuant to a separate written agreement(s), provide intermodal services at Salt Lake City and Sparks at UP's normal and customary charges.

(i) It is the intent of the parties that User shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle local traffic. Facilities or portions thereof presently utilized by UP/SP shall, pursuant to a separate agreement entered into between the parties, be provided by UP/SP to User by lease or purchase at normal and customary charges. Upon request of User and subject to availability and capacity, UP/SP shall, pursuant to a separate agreement entered into between the parties, provide User with terminal support services, including fueling, running repairs and switching. UP/SP shall be reimbursed by User for such services at UP's normal and customary charges. Where terminal support services are not required, User shall not be assessed additional charges for train movement through a terminal. Owner, pursuant to a separate written agreement, shall provide User locomotive servicing, fueling and 1,000 mile inspection at Owner's Roper Yard, Salt Lake City.

(j) User shall have access (i) at Oakland to SPT's connection with The Oakland Terminal Railway, pursuant to a separate written agreement, and (ii) to the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built.

(k) User may, subject to Owner's written consent, use agents for limited feeder service on the Joint Trackage.

(l) User shall have the right to inspect the Joint Trackage and require Owner to make such reasonable improvements as User deems necessary to facilitate its operations at User's sole cost and expense. Any such inspection must be completed and improvements identified to Owner within one (1) year of the effectiveness of this Agreement.

(m) User shall have the right to connect, for movements in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines it will purchase or be granted trackage rights over pursuant to the Settlement Agreement. Such right shall include User's access to the Weso-San Jose Route at Stege, SPT's Milepost 13.1 including trackage required for User to connect with its trackage at Seaver Avenue and User's yard at SPT Milepost 6.0 at Oakland.

(n) User agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location as may be required in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2 (e) above.

3. GTM Rates:

(a) In addition to other payments to be made under this Agreement, User shall remit to Owner for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of the following sums monthly, which sums per GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes:

- (i) 3.1 mills per GTM for all Equipment, except as provided in Subsections (a)(ii) and (a)(iii) of this Section 3.

- (ii) 3.0 mills per GTM for unit trains (trains consisting entirely of sixty-seven (67) or more rail cars of bulk freight of a single commodity (except for intermodal shipments, unless of a single commodity), loaded or empty ("Unit Trains").
- (iii) 3.48 mills per GTM for all Equipment originating or terminating north of Keddie and moving between Keddie in the vicinity of UPRR's Milepost 280.49 ("Weso-Stockton Route") and Stockton in the vicinity of UPRR's Milepost 91.5 ("Weso-Stockton Route") and/or Richmond (Steger) in the vicinity of SPT's Milepost 13.1 ("Weso-Stockton Route").

(b) For the purpose of computing the GTM Rates under this Section 3, it is mutually agreed that the distance between the designated points of the Joint Trackage shall be determined by reference to UPRR's EPMS Engineering Mileage Master and SPT's Station Pair Master File which shall be subject to verification by User.

(c) The GTM Rates set forth in Section 3 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

The GTM Rates shall be adjusted upward or downward effective July 1 of each year during the term of this Agreement by the difference in the two (2) preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the GTM Rates. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

4. Reciprocal Switching Charges:

In addition to the other payments to be made under this Agreement, User shall remit to Owner the following amounts for reciprocal switching User elects to be performed by Owner under this Agreement.

(a) Except as provided in Subsection 4(b) below, Owner shall receive One Hundred Thirty Dollars (\$130) per rail car for rail cars of certain commodities switched to and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out).

(b) Owner shall receive Sixty Dollars (\$60) per rail car for rail cars constituting part of a Unit Train switched to and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out) that contain commodities within the following Standard Transportation Commodity Codes ("STCC"): 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144.

Charges set forth in this Section 4 shall be adjusted July 1 of each year during the term of this Agreement to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the STB or successor agency or other organization. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 6 of the General Conditions. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the reciprocal switching charge shall be increased or decreased in direct proportion to 50% of such ratio, but under no circumstances shall the adjusted rate be less than the initial reciprocal switching charges provided in this Agreement.

5. Upgrading Joint Trackage and Reverse Signaling Between Stege and Emeryville:

User shall reimburse Owner one-half (½) (but not exceeding Two Million Dollars (\$2,000,000.00)) of the costs incurred by Owner to upgrade to mainline standard and reverse signaling Owner's Number 1 Track between Stege (in the vicinity of Owner's Milepost 13.1) and Emeryville, California (in the vicinity of Owner's Milepost 8) on the Weso-San Jose Route.

6. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary to implement the rights granted under Section 2 of this Agreement. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2 (e) above. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others.

(b) Except as provided in Section 6(a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings (other than Sidings), Centralized Traffic Control, grade separations, and future connections (other than Connections), shall be handled as follows:

- (i) Owner shall bear the cost of all Changes in and/or Additions to the Joint Trackage that are necessary to achieve the benefits of the consolidation of UP and SP as outlined in the application filed with the STB in Finance Docket No. 32760 for UP to control SP. The operating plan filed by UP and SP in support of that application shall be given presumptive weight in determining what Changes in and/or Additions to the Joint Trackage are necessary to achieve these benefits.
- (ii) Any Changes in and/or Additions to the Joint Trackage other than those covered by subparagraph (b)(i) of this Section 6 above shall be shared by Owner and User on the basis that the parties' respective GTMs operated over the Joint Trackage bear to total GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced; provided, that User shall not be required to share in the cost of any Changes in and/or Additions to the Joint Trackage under the provision of this subparagraph (ii) for eighteen (18) months following UP's acquisition of control of SP as outlined in the application filed with the STB in Finance Docket No. 32760. The use of Joint Trackage by any third party shall be attributed to Owner for purposes of computing respective GTMs for purposes of this Section 6 (b).
- (c) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF if UP/SP subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one-half of the original cost at such time as BNSF begins to use the line for domestic high cube double stacks.
- (d) User shall, at a later date, have the right to have a connection constructed at its sole cost and expense, at Richmond, in the vicinity of SP's Milepost 15.0.
- (e) User shall have the right to have a connection constructed at its sole cost and expense in the Northeast quadrant of the intersection in Stockton of the trackage of SPT and User, in the vicinity of SPT's Milepost 90.2 ("Stockton Connection"). The parties agree that the construction of the Stockton Connection will be coordinated with the construction of proposed trackage and rearrangement and removal of existing trackage of Owner. If Owner's rearrangement and construction is not completed within twelve (12) months of the date that UP acquires control of SP pursuant to the application filed in STB Finance Docket No. 32760, User shall be permitted to construct its connection without further delay.

7. Notices.

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, 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 UP/SP:

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

With a copy to:

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

If intended for User:

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

With a copy to:

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

Notice of address change may be given any time pursuant to the provisions of this Section 7.

8. Settlement Agreement.

The provisions, rights and obligations set forth in the Settlement Agreement, as amended and supplemented from time to time, shall survive, and nothing herein shall be deemed to repeal or supersede the Settlement Agreement, as amended and supplemented. If any conflict between the Settlement Agreement and this Agreement shall arise, the provisions of the Settlement Agreement, as amended and supplemented, shall govern.

9. Other Agreements.

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

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

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____

THE DENVER AND RIO GRANDE WESTERN
RAILWAY COMPANY

By: _____
Its: _____

UNION PACIFIC RAILROAD COMPANY

By: James V. Dulan
Its: General Counsel - Law

BURLINGTON NORTHERN RAILROAD COM-
PANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____
Its: _____

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TEL:303 812 5921

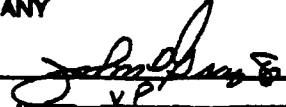
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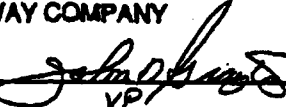
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: 
Its: VP

THE DENVER AND RIO GRANDE WESTERN
RAILWAY COMPANY

By: 
Its: VP

UNION PACIFIC RAILROAD COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COM-
PANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____
Its: _____

SLAWADNAGHSPDWERACT

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

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____

THE DENVER AND RIO GRANDE WESTERN
RAILWAY COMPANY

By: _____
Its: _____

UNION PACIFIC RAILROAD COMPANY

By: _____
Its: _____

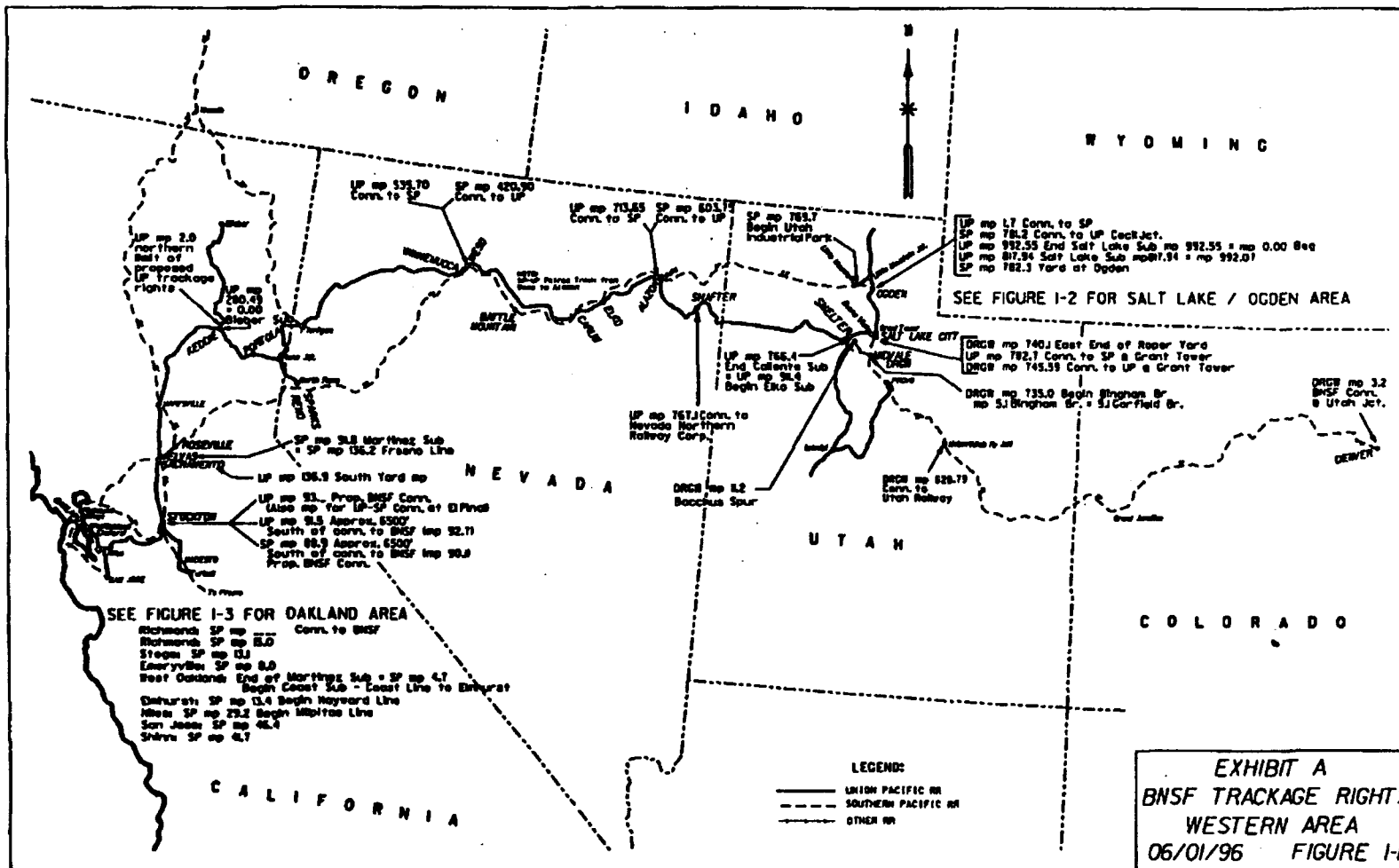
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PANY

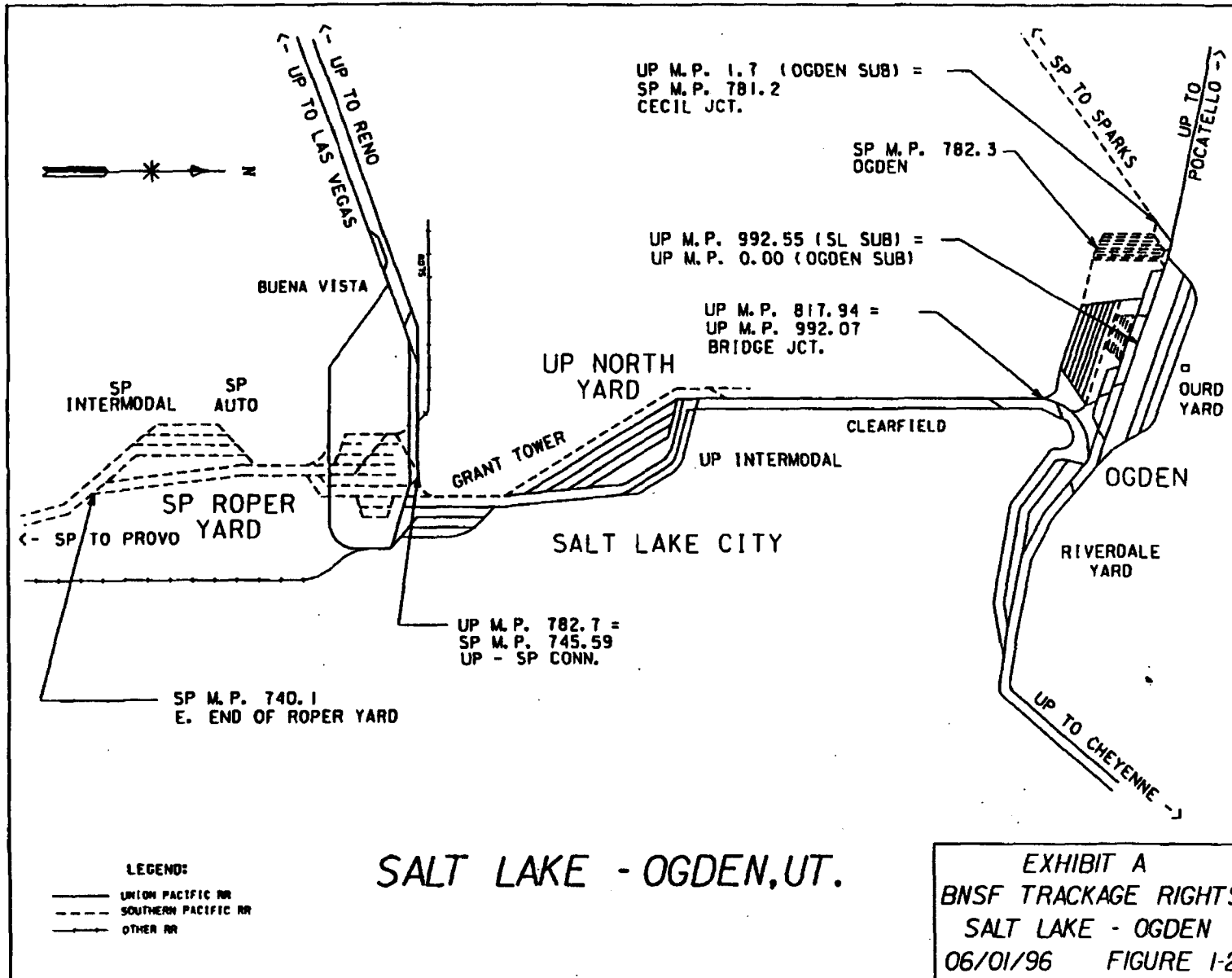
By: [Signature]
Its: VP GENL

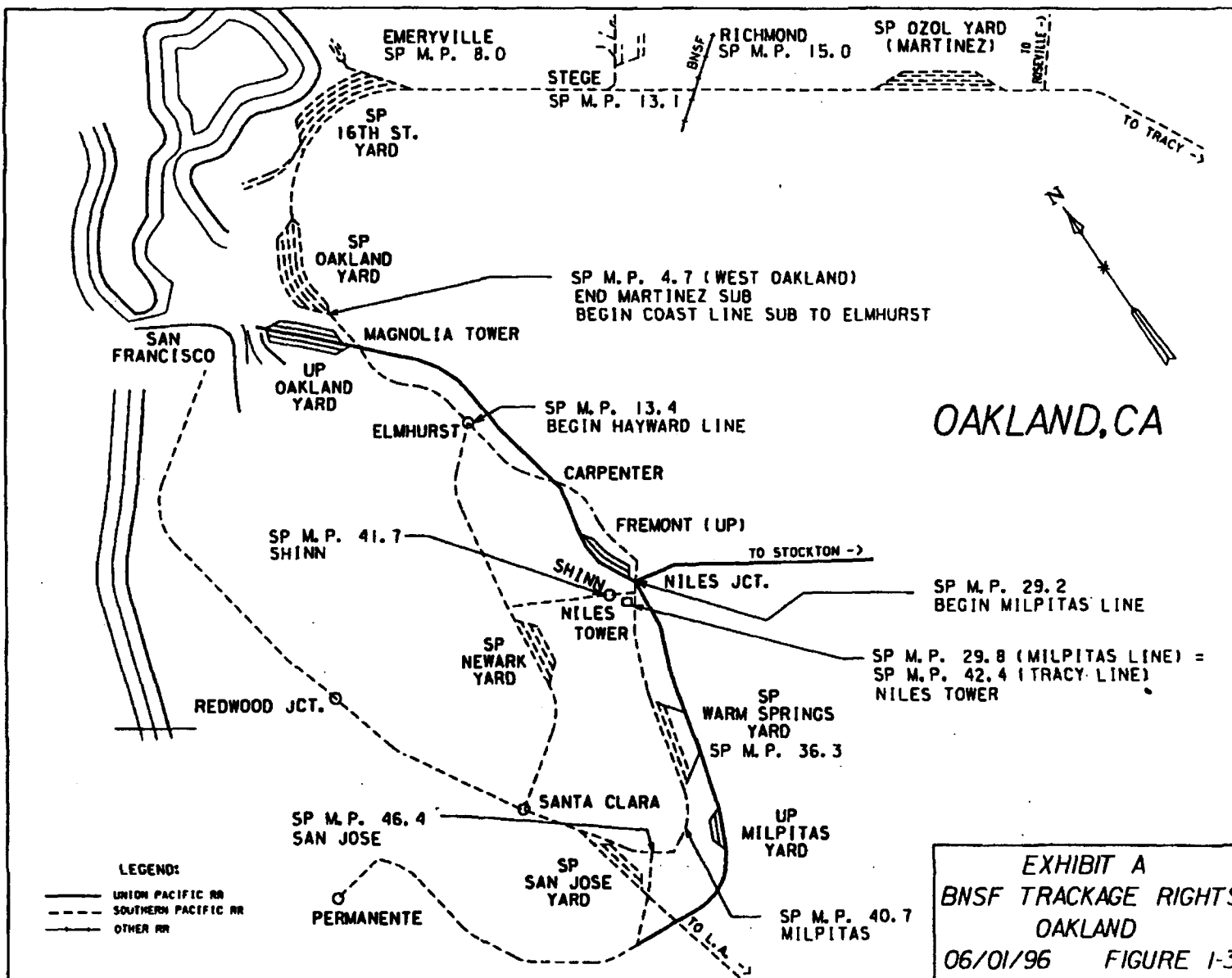
THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: [Signature]
Its: VP GENL

CLARENCE FORBES







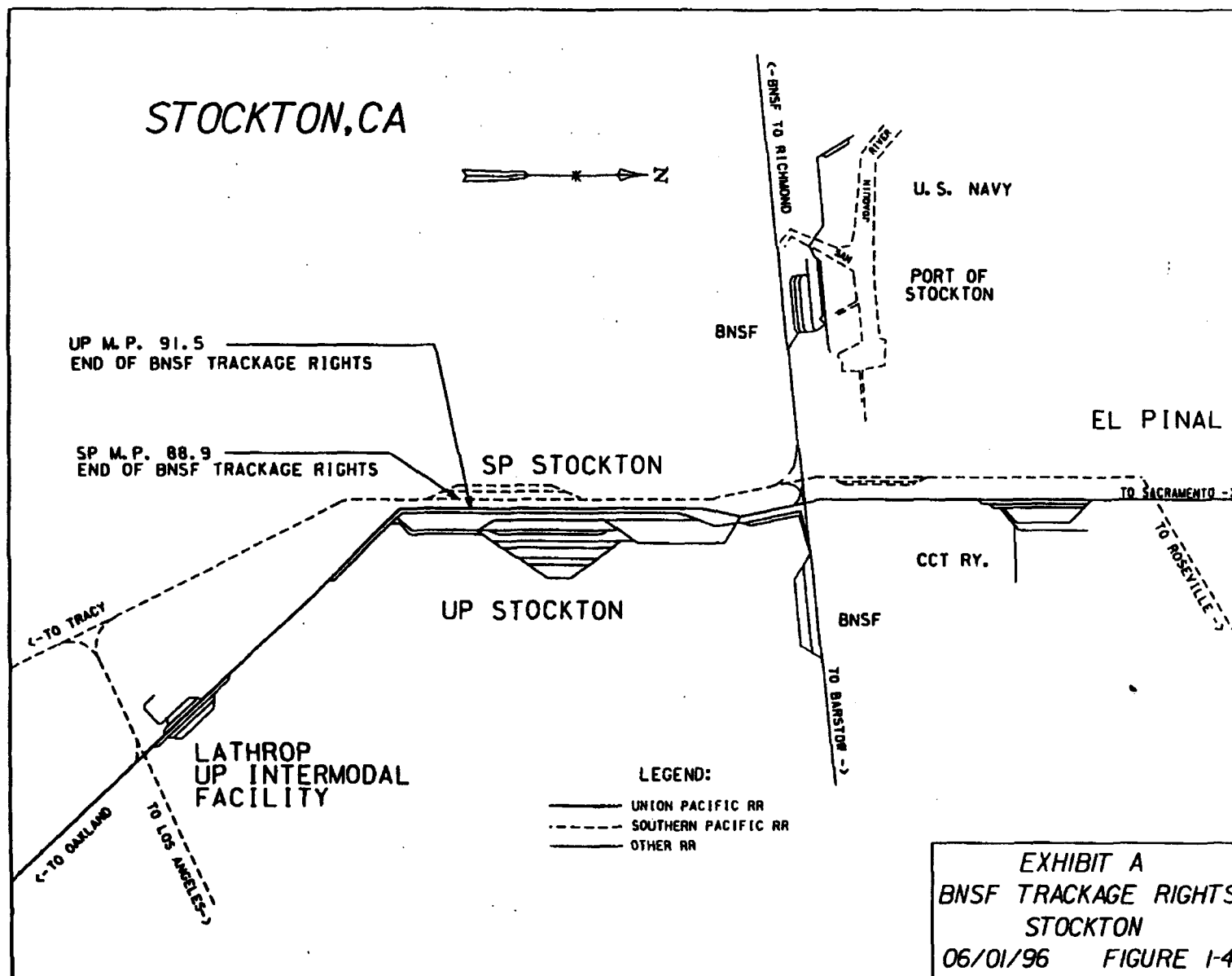


EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated June 1, 1996 to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

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

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.8 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Mill" shall mean one-tenth of a cent (\$0.001 US).

1.10 "Owner" shall have the meaning given to it in the Agreement.

1.11 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

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

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make

such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

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

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols attached hereto as Attachment 1. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. 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.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under this Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use

of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

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 or expense caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the 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 between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the 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 sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

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

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

any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. During the initial start-up period, User shall allow Owner's pilot, at User's sole cost and expense, to accompany User over the Joint Trackage as Owner may in its reasonable judgment deem necessary. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.11 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 the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees 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 by 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 arising from such withdrawal.

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

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of 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's employees after repairing such bad ordered 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 ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be railed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the 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 (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), 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, disabled 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 recrew 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 reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or

third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

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

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. 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 in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

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

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

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

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

Section 4. COMPLIANCE WITH LAWS

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

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment 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 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water

on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint

Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

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

demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages as specified in the next following sentence. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;

- (f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;
- (i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint

Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;
- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;
- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have

been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

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

5.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.
- (b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:
 - (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.
 - (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

- (c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 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; 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.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other

procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6. The parties acknowledge that other procedures have been agreed to for resolution of disputes concerning compliance with the BNSF-UP/SP Dispatching Protocols (attached hereto as Attachment 1) which procedures are set forth in Paragraph 13 thereof.

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

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

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the 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.

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

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

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

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. 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 by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage 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 Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net

Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 The Agreement shall be effective upon execution for a term of ninety-nine (99) years, provided, however, the trackage rights granted to User pursuant to the Agreement shall not become effective until the acquisition of control of SP by UP pursuant to STB Finance Docket No. 32760, and provided also that in the event the acquisition by UP of control of SP is finally disapproved by the STB and the time for any appeal has passed or, if the disapproval was appealed, the disapproval was affirmed on appeal, the trackage rights granted pursuant to the Agreement shall be of no force and effect and the Agreement shall terminate. User shall have the right to terminate the Agreement upon twelve (12) months' prior written notice to Owner. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the 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 the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by 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 termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the 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.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled,

controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

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

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

Section 12. OTHER CONSIDERATIONS

12.1 The 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.

12.2 If any covenant or provision of the 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 the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

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

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

Contract Transmittal

Page 1 of 2



BURLINGTON
NORTHERN
RAILROAD

Instructions: Complete all but the shaded areas and return to Contract Records Coordinator, 777 Main Street, Suite 3800, Fort Worth, Texas

SUBMITTED BY:		☒ MARK THIS BOX TO HAVE A COPY OF THE CONTRACT FORWARDED TO THE ADDRESS BELOW	
NAME	TITLE	DEPARTMENT	
Susan J Bywater	Manager Contracts and Jt. Facilities	Burlington Northern Santa Fe	
TELEPHONE NO	STREET ADDRESS	CITY, STATE ZIP	
817-352-4938	2600 Lou Menk Drive, P O Box 961034	Fort Worth, TX 76131	

☒ NEW CONTRACT	DATE OF CONTRACT (mm/dd/yy)	EFFECTIVE DATE (mm/dd/yy)	TERMINATION DATE (mm/dd/yy)
Complete the following:	June 1, 1996	Upon Execution	99 years
☐ AMENDMENT	DATE OF AMENDMENT (mm/dd/yy)	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yy)
Complete the following:			
☐ CANCELLATION	DATE OF CANCELLATION (mm/dd/yy)	ORIGINAL CONTRACT NO.	ORIGINAL CONTRACT DATE (mm/dd/yy)
Complete the following:			

P R O P. L E A S E T R A N S F E R / R E I S S U E	DATE OF CANCELLATION (mm/dd/yy)	NEW LEASE NO.	
	FOR EACH LEASE BEING CANCELLED, INDICATE WHETHER IT IS BEING TRANSFERRED OR REISSUED, AND SUPPLY THE ORIGINAL LEASE NUMBER AND DATE:		
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)
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	☐ TRANSFER ☐ REISSUE	ORIGINAL LEASE NO.	ORIGINAL LEASE DATE (mm/dd/yy)

CONTRACT PARTIES (OTHER THAN BN)
Union Pacific Railroad Company, Southern Pacific Transportation Company, Denver and Rio Grande Western Railroad Company, BN and Santa Fe

BN INVOLVEMENT
User

DESCRIPTION
Trackage rights agreemetrn Denver , Colorado to Stockton and San Jose California

LOCATION		LINE SEGMENT / MILEPOST INFORMATION					
STATE	CITY	LINE SEG. #	FROM MP #	TO MP #	LINE SEG. #	FROM MP #	TO MP #
SY	System						

RAILROAD PROTECTIVE INSURANCE (Y, N)	CERTIFICATE OF INSURANCE ATTACHED (Y, N/A)	CONFIDENTIAL (Y, N)	CONTRACT TYPE
y		Y	OP/JF

FORWARD COPIES OF THIS CONTRACT TO:

NAME / TITLE	STREET ADDRESS	CITY	STATE	ZIP

BILLABLE CONTRACT (Y, N)	Y
IF YES, COMPLETE THE APPROPRIATE SECTIONS ON PAGE 2 OF THIS FORM	

CONTRACT NO.
BF77

EXHIBIT C

May 2, 2025 Letter from Cara Weidling, BNSF General Director of Transportation
to John Hughes, UP General Manager – Roseville Service Unit



California Division
Cara Weidling
General Dir Transportation

BNSF Railway Company
740 E. Carnegie Dr
San Bernardino, CA 92408
909-386-4100
Cara.weidling@bnsf.com

May 2, 2025

John Hughes
General Manager – Roseville Service Unit
Union Pacific Railroad

Re: BNSF Service to the Salt Lake, Garfield and Western ("SLGW") at Salt Lake City, UT

Dear Mr. Hughes,

As you are aware, pursuant to the RASA, UP provides the crews for BNSF trains operating into and out of Salt Lake City, UT on lines over which BNSF has trackage rights. Effective on or around June 1, 2025, BNSF anticipates additional intermodal trains of two to five trains per week to/from the west destined to the SLGW.

BNSF requests that UP crews operating BNSF trains physically interchange these intermodal trains directly to SLGW at Salt Lake City, whereas all other BNSF traffic moving in trains separate and apart from the intermodal trains will continue to be handed off directly from the UP crews to the Utah Railway agent crews consistent with current service arrangements.

Should you have any concerns or wish to discuss further please contact me at your earlier convenience.

Regards,

Cara Weidling

A handwritten signature in blue ink, reading "Cara Weidling", written over a horizontal line.

CC: Eric Hamilton, Rich Dennison, Toni Hanson, Michael Pruneau, Matt Graham, Jason Teel

EXHIBIT D

June 20, 2025 Email from Matthew S. Graham, BNSF Director of Trackage Rights
– Omaha NE to Mike Hoffman

From: Graham, Matthew S <Matthew.Graham2@BNSF.com>
Sent: Friday, June 20, 2025 5:59 AM
To: Mike Hoffman <mjhoffma@up.com>; Kari Sachs <kjsachs@up.com>; Scheduling, Service <Service.Scheduling@bnsf.com>
Cc: HDCOps <hdcops@up.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hanson, Toni L <Toni.Hanson@BNSF.com>; Pruneau, Michael <Michael.Pruneau@BNSF.com>; Weidling, Cara A <Cara.Weidling@BNSF.com>; Dennison, Richard P <Richard.Dennison@BNSF.com>; jahughes@up.com
Subject: BNSF / UP Intermodal Handoff at Roseville --- DB-5

Good Morning, Mike.

We have Intermodal business projected to begin with the first train scheduled to depart on 7-7-2025. The Intermodal trains will be handled by BNSF from So-Cal port to Roseville and handoff to the UP. UP will then handle trains to Salt Lake City (SLC)-(SLGW) destination to deliver off to customer at Grants Tower and Vice Versa.

We wanted to make sure correct schedules (DB-5) are built for routing on the UP side. The train has to be routed (Roseville -- Portola — Elko -- SLC). We can not run the trains through the Donner Pass route.

I have copied several team members on here to assist. I have also attached the BNSF Base Schedule below for Service Scheduling.

SCHNDBB1 BNSF FTWORT		***** Train System ***** - Browse Base Schedule Summary -								06/19/25 PRI 07:06:12CT 1						
Train ID	Station Abbr	Eff Dt	Arr Day	Arr Time	Arr Dir	Dpt Day	Dpt Time	Dpt Dir	M	T	W	T	F	S	S	
S-LBESLC1-A1	ROSEUP	051325	02	2354	E	03	0034	E								
S-LBTSLC1-A1	ROSEUP	042525	02	2354	E	03	0034	E								
S-LHGSLC1-A1	ROSEUP	051325	02	2354	E	03	0034	E								
S-0IGSLC1-A1	ROSEUP	061625	02	0939	E	02	1019	E								
S-SLCLBE1-A1	ROSEUP	051425	03	0715	W	03	0730	W								
S-SLCLBT1-A1	ROSEUP	051325	03	0715	W	03	0730	W								
S-SLCLHG1-A1	ROSEUP	051425	03	0715	W	03	0730	W								
***** End of Data *****																

Thank you,

Matthew S Graham | **BNSF Railway** | Director of Trackage Rights - Omaha, NE |
☎ Cell: 346-328-1013

you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

EXHIBIT E

UP Train Length Exemptions Map

Train Length Exemptions

As Approved by Corridor Asset Team

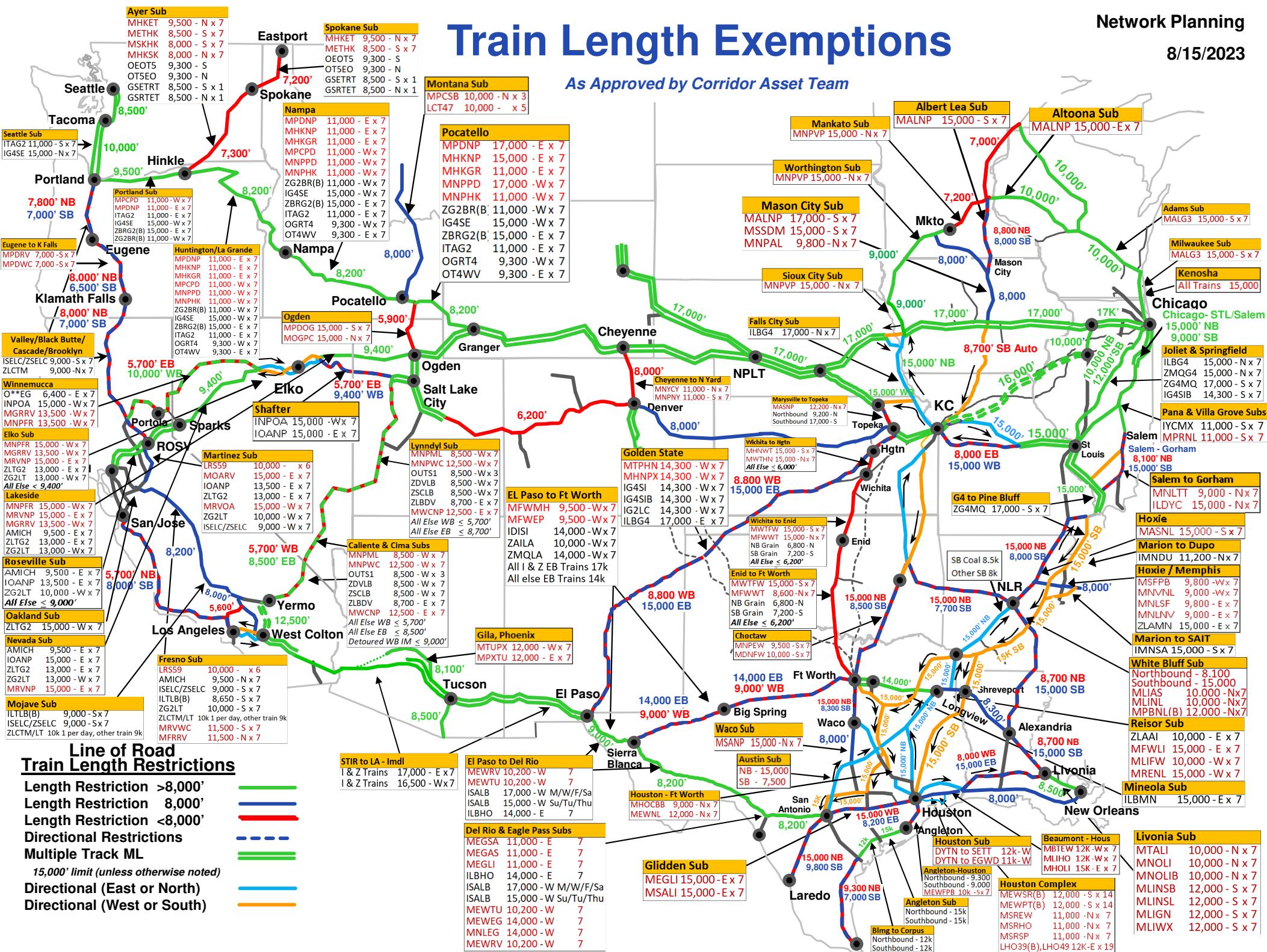


EXHIBIT F

June 27, 2025 Letter from Farah K. Lawler, BNSF VP Service Design Network
Strategy Design & Innovation to David W. Hughes, UP AVP Joint Facilities &
Interline Operations



FARAH K. LAWLER

*Vice President Service Design
Network Strategy Design & Innovation*

BNSF Railway Company

2500 Lou Menk Drive
Fort Worth, Texas 76161
Email: farah.lawler@bnsf.com

Phone: (817) 867-6553

June 27, 2025

Via Email

David W. Hughes
AVP Joint Facilities & Interline Operations
Union Pacific Railroad
1400 Douglas Street, Mailstop 1180
Omaha, Nebraska 68179
DWHughes@up.com

RE:Routing of BNSF intermodal traffic to Salt Lake City, UT

Dear David,

This letter addresses the routing of a new BNSF double-stack intermodal train service running to and from Salt Lake City, Utah. As discussed below, BNSF is entitled to run these trains eastbound and westbound over UP's Canyon and Winnemucca subdivisions (the "Northern Route") pursuant to BNSF's trackage rights over these lines and insists that UP allow BNSF the full use of those rights. If UP prohibits BNSF from using these trackage rights and instead forces BNSF to run the eastbound or westbound trains over UP's Roseville and Nevada subdivisions (the "Southern Route"), BNSF will not incur any obligation to pay UP for certain improvements made on that Southern Route to accommodate double-stack intermodal trains.

As UP is aware, in 2024, BNSF won certain intermodal business, resulting in a shift of intermodal traffic from UP to BNSF. BNSF began making capital investments to support this business, including constructing an intermodal yard in Salt Lake City. In early May, pursuant to our rights under the Restated and Amended Settlement Agreement ("RASA"), BNSF informed UP that it anticipated moving new double-stack intermodal trains (two-to-five per week) to/from the west destined for interchange with SLGW in Salt Lake City and requested that UP provide crews to operate these BNSF trains starting on or around June 1, 2025.

In a meeting on June 24, 2025, less than two weeks before BNSF's first train will launch, UP notified BNSF that it will force BNSF to run these trains via a route that will cost BNSF millions of dollars. UP told BNSF that UP operates the Northern Route in a westbound directional running pattern, even though UP operates certain eastbound local

and unit trains over the Northern Route against that flow.¹ UP also told BNSF at the June 24 meeting that UP had crew availability issues with running the BNSF train eastbound over the Northern Route. By forcing BNSF over the Southern Route, UP claims BNSF must pay UP for half of the cost of improvements to the Donner Pass tunnel that UP incurred to enable double-stack intermodal service on that Southern Route.

Through this letter, BNSF memorializes its rejection of UP's proposal to use the Southern Route and the Donner Pass tunnel for the BNSF double-stack intermodal trains moving to/from Salt Lake City. Instead, BNSF demands that UP allow these BNSF trains to move over the Northern Route. If UP forces BNSF to run trains on the Southern Route for UP's own operating convenience, BNSF will not incur any obligation to pay UP for the Donner Pass double-stack clearance improvements because of that decision.

BNSF has the right to use the Northern Route to run eastbound trains.

UP granted BNSF trackage rights over the Northern Route in connection with the UP/SP merger. The STB has made it clear that UP must, when it implements operational changes such as the institution of directional operations on such trackage rights lines, "make all necessary accommodations to preserve the competitive presence that we expected BNSF to provide when we adopted the [UP/SP merger] conditions." *UP/SP Merger (Houston/Gulf Coast Oversight, Decision No. 10)*, 3 S.T.B. 1030, 1039 (1998). The STB also stated that "UP cannot unilaterally take action that impairs BNSF's ability to provide service on a trackage rights line." *UP/SP Merger (Gen. Oversight, Decision No. 21)*, 5 S.T.B. 1173, 1184 (2001).

As a result of the Board's direction in Decision Nos. 10 and 21, BNSF and UP negotiated Section 9(n) of the RASA, which gives BNSF the right to operate against the flow of directional running if reasonably necessary to provide competitive service to shippers accessible to BNSF.

BNSF intends to start the intermodal service over the Northern Route the week of July 7, 2025. UP has neither provided "reasonable notice of the planned institution" of westbound directional running on the Northern Route nor has UP made any "accommodations" whatsoever to preserve BNSF's ability to provide competitive intermodal service in this corridor. Rather, UP seeks to take unilateral action to force BNSF to use the Southern Route while UP disingenuously runs its own eastbound trains against the flow on the Northern Route.

BNSF would have no obligation to pay for Donner Pass improvements if UP forced BNSF to use the Southern Route.

UP unilaterally decided to increase the clearances of the Donner Pass tunnel on the Southern Route to allow double-stack intermodal trains to run through that tunnel. BNSF agreed through Section 1(j) of the RASA that, if BNSF desired to operate double-stack intermodal trains over Donner Pass using the Southern Route, then BNSF must pay UP for one-half of the cost of UP's clearance program.

¹ Indeed, UP's train-length maps make no reference to directional running over the Northern Route. Those maps clearly indicate that trains up to 5,700 feet can operate eastbound.

To be clear, BNSF has no such desire to use the Southern Route for the double-stack intermodal service described in this letter and BNSF rejects UP's offer for BNSF to use the Southern Route. BNSF would have no obligation to pay for any portion of the cost of UP's double-stack clearance project at Donner Pass if UP forces BNSF to use the Southern Route for intermodal movements over BNSF's desire to use the Northern Route.

In any event, forcing BNSF to incur significant costs related to the Donner Pass tunnel double-stack clearance project would significantly "impair [] BNSF's ability to provide competitive service on a Trackage Rights Line." RASA § 9(n). BNSF has the right to "operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service. . . ." *Id.*

Should UP continue to threaten to impair BNSF's ability to provide competitive service to Salt Lake City, BNSF will seek intervention from the STB.

Regards,



Farah K. Lawler
VP Service Design Network Strategy Design & Innovation

cc: Olivia Power
Courtney Estes
Jacob Godard

EXHIBIT G

July 3, 2025 Letter from David W. Hughes, UP AVP Joint Facilities & Interline Operations to Farah K. Lawler, BNSF VP Service Design Network Strategy Design & Innovation



BUILDING AMERICA

July 3, 2025

Via Email

Ms. Farah K. Lawler
VP Service Design Network Strategy & Innovation
2500 Lou Menk Drive
Fort Worth, TX 76131

Dear Farah:

Thank you for your letter dated June 27, 2025, expressing BNSF's concerns regarding the routing of BNSF intermodal trains over the Central Corridor. To be clear, UP is not attempting to prohibit BNSF from exercising their trackage rights. As BNSF is aware, the Northern and Southern Routes (as your letter describes them) are contained within the same Denver, CO to Stockton and San Jose, CA trackage rights agreement ("TRA"). UP is merely exercising its exclusive right to control operations and dispatching on the "Joint Trackage" as defined in Section 2.4 of Exhibit B to the TRA.

Regarding the recent timeline of interactions on this topic, I must clarify UP's understanding of your assertions. First, UP is aware of a letter from Cara Weidling to John Hughes dated May 2, 2025, where BNSF informed UP that it expected to run two to five additional trains per week. However, there is no request for UP to provide crews for these trains, simply a request to have the BNSF intermodal trains physically interchanged directly to the SLGW Short Line in Salt Lake City. Critically, there is also no information about where these trains will originate from or where BNSF expects UP crews to take over. Contractually and historically as a matter of practice, a notice to provide additional crews is not proper to the General Manager of a UP Service Unit.

BNSF's first written notice to UP regarding both the need for crews and the specific routing BNSF desired was delivered via email on Friday, June 20, 2025. As noted in your letter, UP and BNSF then had a conference call on Tuesday, June 24, 2025, to discuss UP's immediate concerns with BNSF's request. Specifically, BNSF requested a routing from Roseville to Portola, because "[w]e cannot run the trains through the Donner Pass route." During this meeting BNSF insisted that UP route the trains over the Northern Route, or what the TRA defines as the Weso-Stockton Route. UP expressed concerns that we did not have a proposed operating plan and could not accommodate such an unreasonable timeline.



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In an effort to resolve this dispute quickly, UP is willing to review BNSF's request to initiate service and requires that BNSF immediately provide its proposed operating plan. UP shall respond to BNSF within 30 days of its approval or disapproval of BNSF's plan.

Sincerely,

David W. Hughes
AVP Joint Facilities & Interline Operations

EXHIBIT H

July 4, 2025 Letter from Farah K. Lawler, BNSF VP Service Design Network
Strategy Design & Innovation, to David W. Hughes, UP AVP Joint Facilities &
Interline Operations



FARAH K. LAWLER

*Vice President Service Design
Network Strategy Design & Innovation*

BNSF Railway Company

2500 Lou Menk Drive
Fort Worth, Texas 76161
Email: farah.lawler@bnsf.com

Phone: (817) 867-6553

July 4, 2025

Via Email

David W. Hughes
AVP Joint Facilities & Interline Operations
Union Pacific Railroad
1400 Douglas Street, Mailstop 1180
Omaha, Nebraska 68179
DWHughes@up.com

RE: Routing of BNSF intermodal traffic to Salt Lake City, UT

Dear David,

This letter responds to your letter of July 3, 2025, regarding BNSF's movement of new intermodal trains over the Central Corridor for interchange with SLGW in Salt Lake City, UT.

The SLGW intermodal facility in Salt Lake City will open for business on Monday July 7, 2025. BNSF anticipates that the first BNSF bare-table train will arrive in Salt Lake City for interchange with SLGW that day via Utah Railway. Soon after arrival, SLGW will add intermodal containers to the train in its yard and interchange the train back to BNSF. BNSF will then, with UP crews, move the train westbound over the Central Corridor. BNSF anticipates that the first eastbound movement of BNSF double-stack intermodal trains over the "Northern Route" of the Central Corridor (on UP's Canyon and Winnemucca subdivisions) will begin as early as later that week.

In your letter, you stated that "UP is merely exercising its exclusive right to control operations and dispatching on the 'Joint Trackage' as defined in Section 2.4 of Exhibit B to the TRA." You stated that "UP is willing to review BNSF's request to initiate service and requires that BNSF immediately provide its proposed operating plan." You then stated that "UP shall respond to BNSF within 30 days of its approval or disapproval of BNSF's plan." You also asserted that BNSF should have provided UP with written notice, before June 20, 2025, of the need for UP crews to operate BNSF's new intermodal service and the specific routing that BNSF desired between Roseville, CA and Salt Lake City (over the Northern Route and not the "Southern Route" on UP's Roseville and Nevada subdivisions, through the Donner Pass).

First, your concerns about timing and crews ring hollow and can only be viewed as retaliation by UP for BNSF having won this intermodal business from UP in Salt Lake City. This is a blatant attempt by UP to disrupt the business of BNSF and its intermodal partners and to recoup UP's lost contribution from that intermodal business by forcing BNSF to pay for half of the costs UP unilaterally incurred when it took steps to increase the clearances of the Donner Pass tunnel on the Southern Route for its own business purposes. BNSF does not want to run this service over the Southern Route and will not pay for the Donner Pass clearance work if UP blocks BNSF from using the Northern Route. As I stated in my June 27 letter, if UP forces BNSF to run double-stacked intermodal trains on the Southern Route for UP's own operating convenience, BNSF will not incur any obligation to pay UP for its previously incurred Donner Pass double-stack clearance improvements because of that decision.

Second, BNSF is not required by the TRA or the RASA to provide UP with a proposed operating plan or to obtain UP's approval of such an operating plan. You are apparently referencing the process that BNSF must comply with when BNSF elects to access a shipper facility under the RASA. To be clear, BNSF's new intermodal movements in the Central Corridor are not to access a new shipper facility, but rather to interchange with SLGW at Salt Lake City. Those SLGW interchange rights are explicitly set forth in the RASA, Section 1(b), and are not subject to any of the "election" procedures for BNSF's access to a shipper facility. Notwithstanding the lack of a requirement to propose or obtain UP's approval of any BNSF operating plan, I have attached here a detailed description of BNSF's anticipated operations of these new intermodal trains over the Central Corridor. Please note that after this first train, the Utah Railway will not be involved in the movements contemplated by the attached description.

Third, BNSF has trackage rights under the TRA over both the Northern Route and the Southern Route of the Central Corridor and BNSF has the ability to select which of those lines it will operate over. The TRA does not give UP the ability to block BNSF from operating over any of the line segments covered by the TRA. Any UP rights to control operations and dispatching over the Central Corridor cannot mean that UP can block BNSF from using specific line segments that are clearly covered by the TRA. Your demand for a BNSF-proposed operating plan also contradicts your assertion that UP has the exclusive right to control operations and dispatching.

Fourth, UP's concerns about BNSF's eastbound movements over the Northern Route apparently relate to UP's purported westbound directional running program on the Northern Route. As you know, Section 9(n) of the RASA obligates UP to provide "reasonable notice" of its institution of directional operations on any Trackage Rights Line. UP failed to do that here. No notice was given to BNSF at the time UP instituted directional operations. Nor did UP advise BNSF of the fact of directional operations on the Northern Route when BNSF sent its letter dated May 2, 2025. Instead, UP remained silent and waited until BNSF sent its June 20 e-mail to inform BNSF for the first time that directional operations had been instituted. Having breached its RASA obligation to provide reasonable notice, UP cannot now refuse to accept BNSF's new trains two months after it first learned of those trains.

In any event, UP was aware of the planned new BNSF intermodal trains two months ago. If UP believed that it needed more information on crewing and specific routing,

it should have asked for it at that time. In fact, Rich Dennison, BNSF's General Manager, spoke with his UP-counterpart John Hughes, on May 16, 2025. Mr. Dennison reviewed with Mr. Hughes BNSF's planned start date, planned route, and handoff locations. Mr. Hughes indicated to Mr. Dennison that he shared this information with John Hall, UP General Manager and Assistant Vice President of Network Integration and Scheduling and with you.

As you have been told, the new trains are scheduled to start service next week, and BNSF expects UP to accept and crew the trains for westbound and eastbound movement over the Northern Route. The information that BNSF provided in its June 20 e-mail, at the June 24 meeting between the parties, in my June 27 letter, and in this letter, is sufficient to enable UP to do so. As noted in my June 27 letter, the STB requires that, when UP institutes directional operations, it must "make all necessary accommodations" to enable BNSF to provide competitive service to shippers. If UP does not immediately and unequivocally confirm that it will make such accommodations here by accepting and crewing the trains for westbound and eastbound movement over the Northern Route, BNSF will immediately seek relief from the Surface Transportation Board.

Regards,



Farah K. Lawler
VP Service Design Network Strategy Design & Innovation

cc: Olivia Power
Courtney Estes
Jacob Godard

BNSF/SLGW Operating Plan

Road Handling Component (BNSF)/(UP)

BNSF Crews will handle train from SCOD to Roseville to handoff / Crew Swap with UP Crew

- A key component is that UP will be handling the train from Roseville to SLC and will be 3 crew changes.
- The train will be required to run at max 5700' Westbound Routed SLC - Elko - Portola - Roseville and Eastbound will traverse Roseville - Portola - Elko - SLC.
- UP to handle train straight to Grants Tower for direct handoff with SLGW (Patriot Rail). This will eliminate the 3rd party handoff to Utah Railway and multiple delays if handoff were to occur at Roper Yard. This will give a greater margin as well as save time of breaking train up at Roper Yard with an additional 3rd party handling.
- Elko crew base will handle train for UP to Spot and Pull. UP could use Ogden crew base as well.
- Trains will NEED to be DP'd 2 * 2 and will arrive and depart loaded.

Patriot Rail (SLGW) Facility / Handling

SLGW has put together a process playbook.

- Upon handoff (NOTE: SLGW (Patriot Railway) will communicate the handoff at Grants Twr with UP) — No delays should occur, UP will shove train behind derail, logoff TO and PTC, and SLGW will step on and shove train back 7.6 miles to facility. Conductor will ride DP motor. (Note: Handoff will only have 1 crossing blocked with routes around)
- SLGW will switch train in (3) 1800' cuts (Unload and Reload) per cut.
- Third party vendor will handle the unloading process, estimating 24-36 hour turnaround per train.
 - 3rd party unloading/loading
 - Phase 1 only 5 DOW - 2 shifts
 - Phase 2 - 7 DOW - 2 shifts
 - Phase 3 - 24/7 Ops
- The facility has 12 tracks total and 2 Designated tracks that will fit 2 trains — Tracks 301 and 302.
- SLGW crews are DP qualified and qualified to perform Air Test.
- We need to provide ETD's if train is going to depart conventional.
- SLGW has already contacted Fuel Provider for 24-hour service.
- Track is good for 6 axle motors.

VERIFICATION

I, Farah Lawler, declare under penalty of perjury that I am VP Service Design Network Strategy Design & Innovation of BNSF Railway Company, that I am authorized to make this verification, and that I have read the foregoing Petition for Enforcement and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

/s/ Farah Lawler

Farah Lawler

Executed on July 7, 2025.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2025, I have caused the foregoing BNSF Railway Company's Emergency Petition for Enforcement and Request for Expedited Relief to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi

Attorney for BNSF Railway Company