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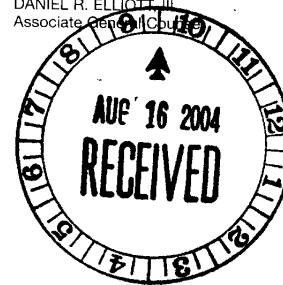
August 13, 2004

Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
Ph: (202) 565-1519
Fax: (202) 565-9018

ENTERED
Office of Proceedings

AUG 16 2004

Part of
Public Record



Re: Finance Docket No. 34509

Dear Mr. Williams:

Please find enclosed the original and 10 copies of United Transportation Union's Supplemental Petition to Revoke for filing in the above-captioned matter. In accordance with prior Board requirements, we have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

cc: C. J. Miller, III, General Counsel

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34509

**KAW RIVER RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**UNITED TRANSPORTATION UNION'S
SUPPLEMENTAL PETITION TO REVOKE**



Daniel R. Elliott, III
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United Transportation Union
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Attorney for United Transportation Union

United Transportation Union ("UTU") respectfully submits its supplemental petition to revoke. In UTU's original Petition to Revoke, it averred that the exemption filed by Kaw River Railroad, Inc. ("KRR") should be revoked because it contains false and misleading information. After receiving the discovery documents from KRR, UTU supports this statement with strong evidence that this transaction is nothing but a sham formulated by Kansas City Southern Railway Company ("KCS") to evade its collective-bargaining agreement obligations.

**SUPPLEMENTAL FACTS IN SUPPORT OF UTU'S POSITION
THAT THE NOTICE OF EXEMPTION WAS MISLEADING**

KCS provided certain switching and other services in the Kansas City, KS - Kansas City, MO area. These services were provided over KCS-owned tracks and, pursuant to the Track Lease and Switching and Maintenance Agreement, dated December 15, 1992, over certain tracks leased by KCT to KCS. In addition, KCS has operating authority over KCT-owned trackage pursuant to an Operating Agreement, dated June 12, 1909, as amended. Pursuant to the proposed transaction, KRR claims it is taking over these KCS operations by leasing the KCS-owned tracks, subleasing the KCT-owned tracks currently under lease to KCS, and obtaining by assignment certain of KCS' operating rights under the Operating Agreement.

Upon review of this Track Lease between KCS and KRR, it becomes quite apparent that the notice of exemption is misleading in that KCS has actually retained control over the KRR operation, thereby demonstrating that this filing is mere subterfuge. First of all, all inbound traffic from KCS to KRR will be received in the same blocking as was being received before the transaction. (Track Lease, attached hereto as Exhibit A, at Article II(B)(3)). KCS also is still apparently managing, supervising, providing and performing all maintenance and repair work and services for all signal, grade crossing protection, and communication systems and the related labor and materials on the

trackage. (*Id.* at (4)). In addition, all rail cars handled by KRR will at all times remain in the KCS account and be the responsibility of the KCS. (*Id.* at Article IV(a)).

Also, any member of a crew of KRR can be removed from the performance of duties on behalf of KRR upon written request of KCS. (*Id.* at Article V). The KRR employee would then have a right to be heard in a tribunal, apparently with KCS, after removal. (*Id.*).

Furthermore, KRR is required to furnish KCS with records maintained in the KCS Management Control System ("MCS") by KRR for arriving at number of cars switched. (*Id.* at Article VI(C)). KCS does not charge KRR for the use of this system. (*Id.* at Article XV).

Also, KCS has final approval over any service plan by KRR, and KRR is required to make improvements to service to insure quality service is provided to KCS customers and service is in compliance with the KCS service plan. (*Id.* at Article VI(E)). Also, KRR cannot make any decrease in service or change its operating plan unless KCS agrees. (*Id.*).

KRR will at all times remain in the KCS account while on the trackage. (Track Sub-Lease, attached hereto as Exhibit B, at Article II(E)). In fact, KRR inputs all rail movement events into the KCS MCS. KCS will provide free training to KRR employees to learn the MCS system. (*Id.*).

KCS has also agreed to haul between Pittsburg, KS and the leased track, at no cost to KRR, all locomotives, cars, materials and equipment being delivered to the leased trackage for use by KRR. (Exhibit A at Article VI (H)).

The entire agreement is conditioned upon whether or not it will be necessary to obtain a labor contract agreement from the affected labor crafts, (*id.* at Article IX), which only demonstrates that the true purpose of this sham transaction is to avoid KCS's collective-bargaining agreement obligations.

Also, KRR must provide KCS daily inspection repair reports from which KCS will bill car owners for the repairs. (Exhibit B at Article II(C)(4)). KCS can then order KRR to deliver the car

if proper service is deemed to be needed. (*Id.* at (5)).

All books and records regarding the service of KRR are subject to inspection by KCS. (*Id.* at Article VIII). Moreover, KCS must give consent to any settlement by KRR of certain claims regarding the service. (*Id.* at Article X(C)).

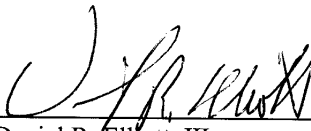
KCS also provides the locomotive power for the KRR service pursuant to a Short Term Locomotive Lease which allows for an engine swap by the parties in lieu of rental payments. (Exhibit C, attached hereto, at Section III(b)). The switching schedules and frequency have not changed since KRR has taken over the service. In other words, nothing has changed regarding this operation except for the name of the company and the employees operating the KCS locomotive.

As is evident from these leases, it is clear that KRR's operation is a sham put in place by KCS to avoid its duties under its collective-bargaining agreement. The Board should not permit such an obvious ruse to be perpetrated on the innocent employees on KCS.

CONCLUSION

Based on the foregoing facts, UTU respectfully asks the Surface Transportation Board to revoke the transaction on the basis that the notice of exemption is misleading.

Respectfully submitted,



Daniel R. Elliott, III
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Supplemental Petition to Revoke has been served this 14 day of August, 2004, via first-class, postage pre-paid mail upon the following:

Karl Morell
Ball Janik, LLP
1455 F Street, N.W., Ste. 225
Washington, DC 20005

Harold A. Ross
Ross & Kraushaar Co., LPA
1548 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

Gordon P. MacDougall
1025 Connecticut Ave., N.W.
Washington, DC 20036

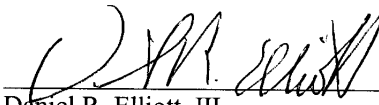

Daniel R. Elliott, III

EXHIBIT A

TRACK LEASE

THIS AGREEMENT, entered into this 27th day of May, 2004, by and between The Kansas City Southern Railway Company, a Missouri Corporation, hereinafter referred to as "KCS" and Kaw River Railroad, Inc., a Kansas Corporation, hereinafter referred to as "KRR".

RECITALS:

WHEREAS, KCS provides certain rail switching services to industries and others now or hereinafter located on or served from trackage owned and operated by KCS in Kansas City, Wyandotte County, Kansas (the "KCS Trackage"); and

WHEREAS, KCS and KRR have entered into a Track Sub-Lease and Switching and Maintenance Agreement, dated May 27, 2004 (the "KRR Sublease Agreement") governing certain switching services and maintenance work to be performed by KRR for KCS on trackage leased to KCS by Kansas City Terminal Railway Company ("KCT") in Kansas City, Kansas and Kansas City, Missouri (the "KCT Trackage") pursuant to the Track Lease and Switching and Maintenance Agreement dated December 15, 1992 (the "KCT Agreement"); and

WHEREAS, concurrent with the term of the KRR Sublease Agreement, KCS desires to further contract with KRR for KRR to perform a portion of the switching services and maintenance work on the KCS Trackage as hereinafter described, and KRR is willing to perform such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants and agreements hereinafter contained to be kept and performed by the parties hereto, it is agreed as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS.

A. The term "Leased Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCS as shown with red lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference, and used in connection with the performance of the services hereunder, including but not limited to all rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankments, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and any and all equipment and installation required by lawful authority in connection with

construction, renewal, maintenance and operation of said track structures and all appurtenances thereof of the KCS Trackage .

B. The term "Industries" shall mean those industries, businesses and other operations now or hereinafter located on or adjacent to the Leased Trackage which now or hereinafter receive or desire to receive Switching Services.

C. The term "Joint Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT as approximately shown in blue lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

D. The term "MCS" shall mean KCS's computer system known as the Management Control System.

ARTICLE II. DESCRIPTION OF DUTIES

A. In the performance of this Agreement, KRR agrees to provide the following services.

B. KRR shall, at its sole cost and expense (except as otherwise provided herein):

(1) Obtain such authority as may be required at KRR's expense for the operations by KRR as contemplated by this Agreement including, to the extent necessary, an application or exemption filing under 49 U.S.C. 10901; and

(2) Perform all work and services necessary to facilitate, or incidental to, the switching of cars to and from those Industries including but not limited to intra-plant switching, pursuant to and in accordance with the terms and conditions of this Agreement; and

(3) Block traffic to be transferred to KCS in up to seven (7) blocks in accordance with KCS's initial blocking plan (the "Blocking Plan") as set forth on Attachment B, attached hereto and made a part hereof. Deviations from the Blocking Plan will require reasonable notice from KCS prior to future accommodations being made. All inbound traffic from the KCS to KRR will be received in the same blocking as is currently being received, until it is deemed mutually beneficial by both the KCS and KRR to make adjustments to current inbound blocking to better serve the customers.

(4) With the exception of KCS's signal, grade crossing protection and communications systems, and their related labor and materials, KRR will manage, supervise, provide and perform all maintenance and repair work and services and provide all materials and supplies therefore (including all work and materials for changes, additions, betterments and retirements) of the Leased Trackage which:
(a) are necessary to maintain the Leased Trackage in good order, condition and

repair at levels consistent with efficient train movements, (b) meet the requirements of the Federal Railroad Administration ("FRA"); are no lower than the levels that existed on the date this Agreement became effective; and meet standards which may from time to time be reasonably established by KCS. All portions of the leased trackage including any portion of the Leased Trackage which has been excepted by the FRA shall be maintained at its condition and current maintenance levels when this Agreement becomes effective.

In performing the foregoing services, KRR shall furnish and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies, and other incidentals in the management, supervision and performance of the foregoing services, all of which shall be collectively referred to herein as the "Switching Services". KRR shall consider for employment those of KCS's employees who want to work for KRR on the terms and conditions of employment that are offered by KRR, at KRR's sole discretion. KRR shall give priority-hiring consideration to employees of KCS who work on the Leased Trackage. Any such individuals who KRR in its sole discretion determines to be qualified for a job that KRR has available, shall be offered such job by KRR on the terms and conditions that KRR establishes, in KRR's sole discretion. KRR promptly shall notify KCS of the name of each of KCS's current employees who KRR offers to hire, and also the name of each of these employees who KRR actually hires.

All such work, services, materials and supplies are herein collectively referred to as the "Switching Maintenance Work". The Switching Maintenance Work shall include, and KRR shall perform, such other maintenance and repair work and services on the Leased Trackage and provide such other materials and supplies necessary to perform such other maintenance and repair work as may from time to time be requested by KCS, which KRR shall comply with the standards of the FRA and the standards issued by KCS. KCS shall be responsible for the cost and expense of all work and materials for changes, additions, betterments and retirements of the Leased Trackage, including the cost and expense for improvements to and maintenance of the Leased Trackage at higher levels than its condition or current maintenance on the date this Agreement became effective.

C. KRR shall supply all materials and equipment and pay all wages, taxes and fringe benefits of its employees engaged in the performance of the Switching Services and of the Switching Maintenance Work. KRR shall have the exclusive direction and control of the Switching Services performed on the Leased Trackage and KRR shall be solely responsible for scheduling and overseeing the Switching Services and the Switching Maintenance Work, for the degree of care with which the Switching Services and the Switching Maintenance Work is performed, and for the quality of the results of the Switching Services and the Switching Maintenance Work.

D. KRR shall perform the Switching Services and the Switching Maintenance Work in a fair and impartial manner. Moreover, in performing the Switching Services and for Switching Maintenance work, KRR shall comply with all applicable federal and state

statutes, rules and regulations, including but not limited to, supplying at KRR's own expense, certified locomotive engineers.

ARTICLE III. USE OF LEASED FACILITIES

A. In order to provide the Switching Services and perform the Switching Maintenance Work under this Agreement, and for the sum of _____ and other good and valuable consideration paid to it by KRR, KCS hereby sub-leases to KRR the Leased Trackage, for the purposes set forth in this Agreement, subject to the rights of KCS and other authorized users of KCS Trackage.

B. KCS retains the right to conduct operations over the Leased Trackage.

ARTICLE IV. EQUIPMENT

A. ~~Except as provided in Article ILC of the KRR Sublease Agreement, for the purposes of car hire accounting, all rail cars handled by KRR pursuant to this Agreement will at all times remain in the KCS account and be the responsibility of the KCS.~~ KRR shall provide and furnish such vehicles, equipment, crews and supplies necessary to perform the services provided for under this Agreement to be performed by KRR, including switch engine or engines, switch crews and other employees, as well as all fuel, water, supplies, roundhouse handling and other incidentals.

B. KRR shall provide vehicles and equipment as necessary to perform the Switching Maintenance Work under this Agreement.

C. If a car is bad ordered while in the possession of KRR under this Agreement, such bad ordered car shall be subject to the provisions of the KRR Sublease Agreement.

ARTICLE V. REMOVAL OF CREWS

~~Upon good cause being shown, any member of a crew of KRR engaged in performance of duties on behalf of KRR pursuant to this Agreement shall be removed there from upon written request of KCS. In the event a board or tribunal subsequently sustains the employee's position, such employee shall not thereafter be barred from service on the Leased Trackage by reason of such occurrence. Anything herein to the contrary notwithstanding, KRR shall not be required to remove any person from service if prevented from doing so by law or regulation of a public authority having jurisdiction, or by a contract with respect to removal from service.~~

ARTICLE VI. SWITCHING OF CARS

A. KRR shall be responsible for all cars, defects in such cars, violations of operating rules and all other violations of federal, state and local statutes, rules and regulations, which occur during KRR's performance of its obligations under this Agreement.

B. KRR shall use, for the interchange of cars, those portions of the Leased Trackage currently identified and designated for interchange, and such other portions of the Leased Trackage as KRR and other carriers agree to use for interchange. In using Leased Trackage or such other trackage designated by KCS for interchange, KRR shall place or leave all cars to be interchanged at safe distances from any grade crossings or any track or tracks which may now or hereafter connect therewith or intersect the same, and so as not to interfere with, obstruct or endanger in any manner the operation or use of any other tracks or grade crossings.

C. ~~KRR shall furnish KCS with accurate records maintained in the MCS (Management Control System) by KRR which may be used as a basis for arriving at the number of cars switched by KRR. Such records shall show the car numbers, initials and contents, date of movement, and for whose account moved, and shall be subject to review and check at any and all times.~~

D. KRR shall be deemed to have commenced and terminated Switching Services for each individual car designated for switching in accordance with the then current Interchange Rules of the Association of American Railroads.

E. KRR agrees to provide service to customers equal to or better than provided for in the KCS service plan set forth in "Attachment B" attached hereto and incorporated herein by reference. ~~KCS will have final reasonable approval of any service plan and KRR will make reasonable improvements in service to insure quality service is provided to customers and service is in compliance with the KCS service plan. KRR will not make any decrease in the level of service, unless changes in KRR's operating plan are requested by KRR and agreed to in writing by KCS, approval of any requests and changes to the operating plan will not be unreasonably withheld by KCS.~~

F. KRR, takes the Leased Trackage subject to existing track leases or future track leases agreed to by KCS. Provided that future track leases will not unreasonably constrain or impair the current ability of KRR to serve existing or future customers KRR has no right to any revenues from leased tracks.

G. KRR agrees to preserve interchange practices in effect as of the date of this Agreement. Such practices are outlined on Attachment B. Interchange practices will be subject to discussion and review between KRR and other carriers pursuant to an assurance of efficient operating practices and quality service to customers.

H. ~~KCS, as reasonably practicable in its regular train traffic, agrees to haul on KCS's rail system between Pittsburg, Kansas and the Leased Trackage at no cost to KRR all locomotives, cars, materials and equipment (the "Equipment") being delivered to the Leased Trackage for use by KRR in performing any of the duties called for hereunder. KRR shall indemnify, defend and save harmless KCS for all damage or destruction to the Equipment, including contents and lading, while in the possession of KCS, except to the extent caused by KCS's gross negligence or willful acts.~~

ARTICLE VII. COMPENSATION

A. As KRR's sole compensation for performing the Switching Services and the Switching Maintenance Work called for hereunder shall be:

1. per loaded car, which shall include, industry switching, transfer work, blocking and any other services provided for in this agreement, and
2. per car for each car that is delivered to KRR empty and subsequently interchanged to another railroad without having been loaded.
3. per train for each initial terminal air test performed by KRR on outbound trains.
4. For performing Car Inspection and Repair Work, KRR shall receive of all ARR labor rates in effect for each billable man hour for all non-KCS owned cars and an agreed upon shop rate for all such work on KCS owned cars. Further, KRR shall receive of ARR allowance for materials applied using the current AAR Office and Field Manual allowance.
5. Beginning January 1, 2005, the charges in this subsection 1 and 2 of this Article VII A shall be adjusted annually, on the anniversary of the Effective Date, by of the change in the RCAF-U in the four immediately preceding calendar quarters.

The above charges include without limitation, switching and miscellaneous services including but not limited to intraplant switching at Industries, switches to or from leased track(s) and intermediate switching. Revenues from such services, including demurrage, shall be retained by KCS.

Contemporaneously with the execution of this Agreement the parties are also entering into the KRR Sublease Agreement. It is the intent of the parties that only one charge will be assessed by KRR for each car handled under these agreements, therefore the charges in this Agreement will not apply in any instance where a charge is made under the KRR Sublease Agreement.

Any payments due KRR shall be paid within twenty (20) days of receipt of an invoice from KRR.

ARTICLE VIII. INSPECTION OF RECORDS

KRR shall keep complete and accurate records relating to the performance of the Switching Services and the Switching Maintenance Work. So much of the books,

accounts and records of KRR as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by proper officers and agents of KCS. KCS and its agents, employees or representatives, shall have the right to audit the records of KRR for purposes of satisfying KCS and KCS's Board of Directors of KRR's proper and timely performance of the Switching Services and the Switching Maintenance Work, the number of cars switched by KRR, and the appropriateness of KRR's charges hereunder.

ARTICLE IX. EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the later of: execution of this agreement; approval by the Surface Transportation Board, if required; the effective date of an exemption; or as of such other date mutually agreed. ~~If it is determined that it is necessary to obtain labor contract agreement from the affected labor crafts, this Agreement is contingent on obtaining such approval. KRR will be responsible for obtaining any approvals necessary from the Surface Transportation Board and any other prerequisite legal authority at its cost.~~ Unless sooner terminated pursuant to Articles XII or XV hereof, this Agreement shall have an initial term of one year and thereafter shall automatically renew for additional terms of one year unless either party hereto gives the other party written notice of its intent to terminate this Agreement at least ninety days prior to the end of the initial term or any renewal term, as applicable. KCS may, at its option, terminate this Agreement upon the expiration or termination of the KCT Agreement.

In the event either the KCT Agreement, the KRR Sublease Agreement or both are terminated or expire, this Agreement will terminate at the same time.

ARTICLE X. LIABILITY

A. Prior to KRR commencing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, KCS and KRR will conduct a joint inspection of the Leased Trackage to establish and agree upon the condition of the Leased Trackage at the time of KRR beginning service under this Agreement and that the Leased Trackage is suitable for safely conducting the operations contemplated by this Agreement. KRR shall not, by reason of KCS's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Leased Trackage have or make against KCS any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom. KRR AGREES TO HOLD HARMLESS AND INDEMNIFY KCS FOR ANY CLAIMS INCLUDING BUT NOT LIMITED TO THOSE ALLEGED TO RESULT FROM KCS'S NEGLIGENCE PRIOR TO THE JOINT INSPECTION, ARISING DURING THE TERM OF THIS AGREEMENT RESULTING FROM OR ALLEGED TO RESULT FROM THE CONDITION OF THE LEASED TRACKAGE, EXCEPTING (i) THOSE CLAIMS ARISING FROM OR RELATED TO KCS'S SIGNAL, GRADE CROSSING PROTECTION AND COMMUNICATIONS SYSTEMS, AND THEIR RELATED LABOR AND MATERIALS, AND (ii) THOSE CLAIMS FOR WHICH THE LOSS,

DAMAGE, DESTRUCTION, INJURY, OR DEATH OCCURRED PRIOR TO KRR COMMENCING OPERATIONS UNDER THIS AGREEMENT.

B. KRR shall be responsible for all losses or damages in any way arising from, growing out of or connected with the Switching Services and Switching Maintenance Work performed by KRR or the condition of the Switching Trackage KRR is responsible for maintaining, except to the extent caused by the negligence, intentional acts or breach of this Agreement by KCS, its officers, agents, directors, employees or subcontractors (excluding KRR and its subcontractors). For purposes of applying this Section all officers, agents and employees of KRR while engaged in performance of the Switching Services and Switching Maintenance Work shall be considered exclusive employees of KRR and motive power, work trains, other equipment and other property of KRR while likewise engaged in the Switching Services and Switching Maintenance Work were exclusive equipment or other property of KRR.

C. KRR may make settlement of any claim for loss or damage for which it or KCS may be liable hereunder, but no payment in excess of
shall be voluntarily made by KRR in settlement of any such claim without first obtaining in writing consent of KCS, which consent shall not be arbitrarily nor capriciously withheld.

D. If a claim is made against either party hereto which under this Agreement is not chargeable in whole or in part with liability involved herein, such party shall promptly notify in writing the other party hereto without penalty on its part for failure to do so.

E. All releases taken pursuant to settlement of any and all claims involving joint liability hereunder shall include KRR and KCS and copies thereof shall be furnished each such party.

F. Neither party shall, however, be bound by any judgment or decree at law or in equity against the other party hereto unless it has had reasonable notice from such other party allowing it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other, the party receiving the same shall be bound by the judgment or decree in such action or suit.

G. Each party hereto shall fully indemnify and save harmless the other party hereto from and against all loss or damage properly chargeable to the indemnifying party under provisions of this Agreement.

H. KRR shall use reasonable and customary care, skill and diligence in the performance of the Switching Services and the Switching Maintenance Work. Should KRR fail to repair any defect in the Leased Trackage or perform by other Switching Maintenance Work within a reasonable time after KCS shall have given written notice

thereof to KRR, specifying the defect and requesting that it be repaired, then KCS shall have the right to make necessary repairs which shall be paid for by KRR.

ARTICLE XI. INSURANCE.

A. KRR shall provide, in addition to any other form of insurance or bond required by statute, insurance of at least the following kinds and amounts:

1. Railroad General Liability insurance containing broad form contractual liability with a single limit of at least _____ per occurrence or claim and an aggregate limit of at least _____. Coverage must be purchased to include but not be limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations

2. Business Automobile Coverage insurance containing a combined single limit of at least _____ per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

3. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, if applicable.
- Employers' Liability (Part B) with limits of at least _____

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

B. The insurance certificate covering such insurance shall be furnished to the Company before notice to begin work and shall be satisfactory to the Company with

respect to coverage (including the contractual liability herein assumed by the Contractor), amount, and character of insurance companies. The insurance certificate shall contain a clause reading: "In the event any of the above policies are materially altered, changed or canceled, Company will be furnished 30 days advance notice in writing."

ARTICLE XII. DEFAULT

A. If KCS shall fail to pay any sum payable by it hereunder on the date when same shall be due or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this Agreement and such default shall continue for a period of thirty (30) days after written demand for such payment, performance or compliance shall have been made upon KCS by KRR, then KRR shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KCS, this Agreement then and there by such notice shall be terminated and all rights of KCS hereunder shall cease and determine. Any such termination, however, shall not relieve KCS from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its rights to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KRR of the breach by KCS of any covenant or condition of the Agreement shall not impair the right of KRR to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Switching Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Switching Trackage.

B. If KRR fails: to pay any sum payable by it hereunder on the date the same shall be due; or shall fail to promptly and properly perform the services provided under this Agreement in compliance with this Agreement; or should KRR fail to perform or comply with any other covenants or conditions of this Agreement, and such failure should continue for a period of thirty (30) days after written demand for such payment, performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KRR, this Agreement then and there by such notice shall be terminated and all rights of KRR hereunder shall cease and determine. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KCS of its right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement shall not impair the right of KCS to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Leased Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Leased Trackage.

C. In addition to all other default provisions set forth in this Article XI, if KRR fails to properly perform any of the services which are its responsibility to perform under this

Agreement or fails to perform them in accordance with the terms and conditions of this Agreement, KCS, at its sole discretion, shall have the right to perform any portion of or all of such services itself until such time as the failure is cured in KCS's sole opinion. Any cost incurred by KCS to perform such services shall be reimbursed by KRR. Should such failure continue for a period of thirty (30) days after written demand for performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated. If KCS makes an election to terminate pursuant to this Article, it shall give written notice of such election to KRR. This Agreement shall be terminated and all rights of KRR shall cease twenty-four (24) hours after notice of intent to terminate is sent electronically or by express mail to KRR. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its right to enforce any such liability, or of the benefits of any covenants or obligations contained in this Agreement.

ARTICLE XIII. INDEMNIFICATION

KRR AGREES TO DEFEND, INDEMNIFY AND HOLD KCS ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS AND RECOVERIES FOR LOSS OR DAMAGE TO ANY PROPERTY AND INJURY TO OR DEATH OF ANY PERSONS, HOWSOEVER THE SAME MAY BE CAUSED (WHETHER ARISING OUT OF OR BASED UPON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) DIRECTLY OR INDIRECTLY RESULTING FROM KRR'S AND/OR KRR'S EMPLOYEES ACTIVITIES IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL ACTS OR BREACH OF THIS AGREEMENT BY KCS, ITS OFFICERS, AGENTS, DIRECTORS, EMPLOYEES OR SUBCONTRACTORS (EXCLUDING KRR AND ITS SUBCONTRACTORS).

IN THE PERFORMANCE OF THIS AGREEMENT KRR SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL GOVERNMENTAL STATUTES, ORDINANCES, ORDERS AND REGULATIONS. NO PENALTIES, COSTS OR ADDITIONAL EXPENSE RESULTING FROM FAILURE TO COMPLY WITH ANY SUCH REQUIREMENT SHALL BE ADDED TO OR FORM THE BASIS FOR ANY PART OF THE CONTRACT PRICES HEREIN PROVIDED. KRR SHALL INDEMNIFY, SAVE HARMLESS KCS AND ASSUME THE COST OF DEFENSE FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS TO THE EXTENT CAUSED OR PERMITTED BY KRR.

ARTICLE XIV. ARBITRATION

A. In the event any disagreement shall arise between the Parties hereto as to the interpretation or the application of the provisions of the Agreement, then, upon the written request of either Party, in which request the issue in dispute is set forth, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association (“AAA”) under the AAA Commercial Arbitration Rules (the “Rules”) then in force, to the extent such Rules are not inconsistent with the provisions of this Agreement.

B. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within (30) days after the Party requesting arbitration shall notify in writing the other Party of such dispute, the dispute shall be submitted to such single arbitrator.

C. If a single arbitrator cannot be agreed upon before the expiration of such period of thirty (30) days, the dispute shall be submitted to three arbitrators experienced in matters of the character in dispute to be appointed as follows: The party requesting arbitration shall select an arbitrator and give written notice thereof to the other Party. Such other Party shall select an arbitrator within thirty (30) days after receipt of such notice and give written notice thereof to the Party requesting arbitration. If within the time specified a Party fails to nominate its party-appointed arbitrator or the two party-appointed arbitrators fail to nominate the third arbitrator, either party may request the AAA to make the appointment according to the Rules. If any nominated arbitrator is not appointed, declines, resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party or arbitrators entitled to appoint that arbitrator shall promptly nominate a successor. If the arbitrators are unable to agree on a replacement third arbitrator, then the AAA shall make the appointment according to the Rules.

D. The arbitrator or arbitrators, having taken and subscribed an oath before a person authorized by law to administer oaths to the effect that he or they will try to impartially and justly decide the matter or controversy according to the best of his or their ability, which oath shall be filed to his or their decision, shall, as soon as practicable after his or their decision, shall, as soon as practicable after his or their selection, hear the dispute or disputes submitted and shall give to each of the Parties reasonable notice of the time and place of such hearing. The hearing shall be conducted at the time and place designated as aforesaid, and, after hearing both Parties and taking such testimony or making such investigation as he or they may deem necessary. The arbitration award shall be in writing, shall give reasons for the decisions reached and shall be signed and dated by the arbitrator(s), and a copy of the award shall be delivered to each of the Parties. The Party against which an award assesses a monetary obligation or enters an injunctive or mandatory order shall pay that obligation or comply with that order on or before the 30th calendar day following the receipt of the award or by such other date as the award may provide. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the Parties.

E. Upon the presentation of such decision, each Party shall immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision is required of it.

F. Each Party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsels. The compensation, cost and expense of the single arbitrator or the third arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

G. Until a decision is made upon any dispute submitted to arbitration, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such dispute.

ARTICLE XV. USE OF MCS SYSTEM

~~KRR agrees not to use any function of the KCS Management Control System ("MCS") for any purpose other than: train set, switching, EEL, and way billing inquiry for the purpose of inputting rail movement events related to cars handled under this Agreement. KCS will not charge KRR for the use of the system. Prior to commencement of the services under this Agreement, KCS will provide MCS training as reasonably necessary under the terms of the KRR Sublease Agreement.~~

If KRR, or anyone gaining access to KCS's MCS system through KRR, or as a result of KRR's actions:

- (a) Intentionally accesses additional functions of the KCS MCS system other than the following functions: train set, switching, EEL, and weigh billing inquiry, for the purpose of utilizing the additional functions; or
- (b) Intentionally attempts to access or use any part of the KCS MCS system for any purpose other than in connection with its responsibilities under this Agreement,

then this Agreement may be terminated immediately by KCS without any obligation or liability to KRR other than that existing prior to such termination and KCS shall be entitled to a permanent injunction prohibiting the disclosure of any information obtained from the use of KCS's MCS system. In the event of any such unauthorized use KRR shall be responsible for all attorney's fees and costs KCS incurs to enforce this provision.

ARTICLE XVI. SERVICE OF NOTICES

Any notice herein provided for shall be in writing and deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to the party as follows, unless notice of change of address has been previously given in writing.

IF TO KCS: Senior Vice President Operations
The Kansas City Southern Railway Company
PO Box 219335
Kansas City, MO 64121-9335

IF TO KRR: Executive Vice-President – Strategic Development
Kaw River Railroad, Inc.
315 w 3rd street
Pittsburg, KS. 66762

ARTICLE XVII. AGREEMENT TO BE CONSTRUED LIBERALLY NOT FOR BENEFIT OF THIRD PARTIES

This Agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other third party.

ARTICLE XVIII. SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the respective successors, lessees and assigns of the parties hereto, provided however, KRR may not assign this Agreement to a third party without the written consent of KCS. Such consent shall not be unreasonably withheld if KRR assigns this agreement to a responsible third party in connection with the merger of KRR into, or the sale of all or substantially all of KRR's assets to, the assignee, but no assignment by KRR of this Agreement shall release KRR from its obligations hereunder.

ARTICLE XIX. SECTION HEADINGS

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

ARTICLE XX. INDEPENDENT CONTRACTOR

KRR is an independent contractor, providing its own tools, equipment, supervision, and employees, and KRR's employees shall not be considered to be the employees of KCS for any purpose whatsoever.

ARTICLE XXI. CONFIDENTIALITY

KRR agrees to maintain the confidentiality of all shipper information received in the performance of this contract, including but not limited to rates, origins, destinations, customer contact information and to use such information only for the purpose of performing its obligations under this agreement. Upon termination or expiration of this Agreement, KRR agrees to return all such information and any compilations, memos, summaries or other documents containing such information. The parties agree that all of the terms of this Agreement are confidential and shall not be disclosed by any party without the written consent of the other parties, to individuals not employed by or acting as counsel for or consultants to KCS or KRR respectively, except as required by law, provided that the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking STB approval or exemption of the Agreement under applicable STB confidentiality procedures.

The obligation of confidentiality contained in this section shall not include information which (i) becomes lawfully available to the public other than as a result of a disclosure by the parties, its representatives, or its agents, or, (ii) was lawfully available to KRR on a non-confidential basis prior to its disclosure to KRR or its agents or representatives under this Agreement or as a result of performance of this Agreement.

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

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: Michael R. Haruty

Title: Chairman, President and CEO

KAW RIVER RAILROAD, INC.

By: Gary J. J.

Title: General Counsel & Asst. Secretary

ATTACHMENT B

TO TRACK LEASE KCS TRACKAGE

<u>Customer Name</u>	<u>Trackage Served From</u>	<u>Frequency</u>	<u>Current Job</u>
Procter and Gamble	KCT	7 days/wk	YKS105 (0630)
Meridian Rail	KCT	5 days/wk	YKS112 (0800)
Total Distribution	KCT	As needed	YKS112 (0800)
Ace Pallet	KCT	As needed	YKS112 (0800)
Thomas	KCT	As needed	YKS112 (0800)
Inland Container	KCS	5 days/wk	YKS112 (0800)
KC Hardwood	KCS	As needed	YKS112 (0800)
KC Railcar	KCS	As needed	YKS112 (0800)
Colgate Palmolive	KCS	Evry other day	YKS112 (0800)
Lite-Weight Products	KCS	As needed	YKS112 (0800)
Philadelphia Quartz	KCS	5 days/wk	YKS112 (0800)
Kaw River Shredding	KCT	6 days/wk	YKS217 (1500)
National Compressed Stl.	KCT	6 days/wk	YKS217 (1500)
Kansas City Star (Watco)	KCT	5 days/wk	YKS217 (1500)
Constar	KCT	As needed	YKS217 (1500)
Darling	KCT	As needed	YKS217 (1500)
KCS/Knoche Transfer ¹	KCT	6 days/wk	YKS310 (2359)
UP/Neff Yard	KCT	2-3 days/wk	YKS310 (2359)
BNSF/Argentine Yard ²	KCT	1-2 days/wk	YKS310 (2359)

Blocking on outbound train departing Mill Street Yard

Blue Springs

Odessa

Higginsville

Marshall

Slater

Mexico

East St.Louis

¹ All IC&E and NS traffic originating in Mill Street Yard is hauled to Knoche Yard with other KCS traffic on the KCS Knoche Transfer.

² On occasion, BNSF traffic is hauled to Knoche Yard on the KCS Knoche Transfer for furtherance by KCS to BNSF.

EXHIBIT B

**TRACK SUB-LEASE AND
SWITCHING AND MAINTENANCE AGREEMENT
KCT TRackage**

THIS AGREEMENT, entered into this 22nd day of May, 2004, by and between The Kansas City Southern Railway Company, a Missouri Corporation, hereinafter referred to as "KCS" and Kaw River Railroad, Inc., a Kansas Corporation, hereinafter referred to as "KRR".

RECITALS:

WHEREAS, KCS, pursuant to the Track Lease and Switching and Maintenance Agreement dated December 15, 1992 (hereinafter "KCT Agreement"), as amended, with Kansas City Terminal Railway Company ("KCT"), is obligated to provide certain switching services to industries and others now or hereinafter located on trackage owned by KCT, and KCS is further obligated to perform certain maintenance work on trackage used for said switching services, all in accordance with the terms and conditions set forth in the KCT Agreement; and

WHEREAS, KCS desires to contract with KRR for KRR to perform a portion of the switching services and maintenance set forth in the KCT Agreement, The KCS will provide KRR with a copy of the KCT Agreement, Operating Agreement and Yard Office Lease Agreement (as those terms are defined herein) to aid KRR in fulfillment of KCS's obligations under the KCT Agreement as well as other services provided herein, and KRR is willing to perform such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants and agreements hereinafter contained to be kept and performed by the parties hereto, it is agreed as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS.

A. The term "Leased Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT, and used in connection with the performance of the services hereunder, including but not limited to KCT's Mill Street Yard and all rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankments, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, and any and all equipment and installation required by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof, west of signal 82L as shown with green lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

B. The term "Industries" shall mean those industries, businesses and other operations now or hereinafter located on or adjacent to the Leased Trackage which now or hereinafter receive or desire to receive Switching Services.

C. The term "Joint Trackage" shall mean the track structure, right of way, all appurtenances thereof and all additions, improvements and betterments thereto owned by KCT as approximately shown in blue lines on Attachment "A" dated June 25, 2003, attached hereto and incorporated herein by reference.

D. The term "Operating Agreement" shall mean that certain agreement, dated June 12, 1909, by and among KCT, KCS and other railroads using KCT's tracks and facilities, as amended to date by nine Supplemental Operating Agreements, and as the same may be hereafter amended, modified or revised as provided in the Operating Agreement.

E. The term "Yard Office Lease Agreement" shall mean that certain agreement, dated July 1, 1993, between KCS and KCT covering KCS's lease of certain property located at 1101 South Mill Street, Kansas City, Wyandotte County, Kansas.

F. The term "MCS" shall mean KCS's computer system known as the Management Control System.

G. The term "KCT Agreement" shall have the meaning given in the preamble.

ARTICLE II. DESCRIPTION OF DUTIES

A. In the performance of this Agreement KRR agrees to provide the services KCS is obligated to perform under the KCT Agreement in compliance with the terms of that Agreement, and those terms of the Operating Agreement incorporated therein as set forth in the KCT Agreement.

B. KRR shall, at its sole cost and expense (except as otherwise provided herein):

(1) Obtain such authority as may be required at KRR's expense for the operations by KRR as contemplated by this Agreement including, to the extent necessary, an application or exemption filing under 49 U.S.C. 10901; and

(2) Perform transfer services between Mill Street Yard and KCS, Burlington Northern Santa Fe Railroad Company, Union Pacific Railroad Company and other railroads as required from time to time, and supply at its cost and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies; and

(3) Perform all work and services necessary to facilitate, or incidental to, the switching of cars to and from those Industries including but not limited to intra-

plant switching, pursuant to and in accordance with the terms and conditions of this Agreement; and

(4) Block traffic to be transferred to KCS in up to seven (7) blocks in accordance with KCS's initial blocking plan (the "Blocking Plan") as set forth on Attachment B, attached hereto and made a part hereof. Deviations from the Blocking Plan will require reasonable notice from KCS prior to future accommodations being made. All inbound traffic from the KCS to KRR will be received in the same blocking as is currently being received, until it is deemed mutually beneficial by both the KCS and KRR to make adjustments to current inbound blocking to better serve the customers.

(5) With the exception of KCT's signal, grade crossing protection and communications systems, and their related labor and materials, KRR will manage, supervise, provide and perform all maintenance and repair work and services and provide all materials and supplies therefore (including all work and materials for changes, additions, betterments and retirements) of the Leased Trackage necessary to maintain the Leased Trackage in good order, condition and repair at levels consistent with efficient train movements, the requirements of the Federal Railroad Administration ("FRA"), the KCT Agreement and standards which may from time to time be established by KCT or KCS, provided that any portion of the Leased Trackage which has been excepted by the FRA shall be maintained at its existing condition and current maintenance levels. All such work, services, materials and supplies are herein collectively referred to as the "Switching Maintenance Work"

In performing the foregoing services, KRR shall furnish and be responsible for all equipment, switch engine or engines, switch crews and other employees, fuel, water, supplies, and other incidentals in the management, supervision and performance of the foregoing services, all of which shall be collectively referred to herein as the "Switching Services". KRR shall consider for employment those of KCS's employees who want to work for KRR on the terms and conditions of employment that are offered by KRR, at KRR's sole discretion. KRR shall give priority-hiring consideration to employees of KCS who work on the Leased Trackage. Any such individuals who KRR in its sole discretion determines to be qualified for a job that KRR has available, shall be offered such job by KRR on the terms and conditions that KRR establishes, in KRR's sole discretion. KRR promptly shall notify KCS of the name of each of KCS's current employees who KRR offers to hire, and also the name of each of these employees who KRR actually hires.

The Switching Maintenance Work may include, and KRR shall perform, such other maintenance and repair work and services on the Leased Trackage and provide such other materials and supplies necessary to perform such other maintenance and repair work as may from time to time be reasonably requested by KCT or KCS, which KRR shall comply with the standards of the FRA and the standards issued by KCT or KCS. KCT shall be responsible for the cost and expense of all work and materials for changes,

additions, betterments and retirements of the Leased Trackage, including the cost and expense for improvements to and maintenance of the Leased Trackage at higher levels than its existing condition or current maintenance at the time of the execution of this Agreement.

C. KRR shall, at its sole cost and expense (except as otherwise provided herein):

- (1) Be responsible for the initial terminal air test on outbound trains. KRR shall perform the initial terminal air test in accordance with the applicable rules of the FRA and AAR governing initial terminal air tests at the rates set forth in Article VII of this Agreement.
- (2) Be liable for any loss or damage for KRR's failure to perform, or properly perform, initial terminal air tests.
- (3) Perform all required car inspections and bad order repairs on cars handled under the Switching Services, except as provided in subsection C (5) of this Article II. If a rail car is bad ordered as a result of said inspection by KRR, and it is necessary that it be set out for repair, KRR shall promptly switch such bad ordered rail car to the repair tracks and perform the required repairs. Such bad ordered rail car shall, after being repaired by KRR, be promptly placed back in service for handling by KRR under the Switching Services. All such work, services, materials and supplies are herein collectively referred to as the "Car Inspection and Repair Work" and shall be billed at the rates set forth in Article VII of this Agreement. No additional charges shall apply to KRR's physical handling of rail cars to or from the repair tracks.
- (4) ~~Furnish electronically or as otherwise agreed to by the parties to KCS daily inspection and repair reports from which KCS will bill car owners for such repairs in accordance with the Field and Office Manuals of the Interchange Rules adopted by the AAR, hereinafter called "Interchange Rules," in effect on the date of performance of the repairs. KCS shall then prepare and submit billing directly to and collect from the rail car owners for rail car owner responsibility items as determined under said Interchange Rules, provided, however, that the cost of any repair or replacement of railcars that are damaged or destroyed while in the possession of KRR under the Switching Services shall be the sole responsibility of KRR. KCS will retain all revenues collected from the rail car owners.~~
- (5) Promptly notify KCS's designated Mechanical Officer and request disposition of said rail car, should KRR, during the course of performing the Car Inspection and Repair Work, discover any defect or damage condition or conditions on a rail car which, in KRR's opinion, (i) exceeds KRR's capabilities to make the required repair(s) or (ii) cannot be repaired by KRR and returned to service within seventy-two (72) hours from the time of such discovery. Upon receipt of KCS's disposition instructions, KRR shall promptly comply with such instructions. If KCS instructs KRR to deliver a rail car to KCS pursuant to this

Article II.C (5), KRR must make such delivery within forty-eight (48) hours of receiving such instructions or said rail car shall transfer to KRR's car hire account upon expiration of the forty-eight (48) hour period and remain in KRR's car hire account until delivery is made.

(6) KCS will utilize its best efforts to assist KRR in obtaining pricing for all parts, equipment, supplies and materials required for KRR's car repair responsibilities or other services to be provided by KRR under this Agreement, which are comparable to the prices KCS pays for similar parts, equipment, supplies and materials, but under no circumstances will KCS's best efforts require KCS to incur any additional charge or expense.

D. KRR shall supply all materials and equipment and pay all wages, taxes and fringe benefits of its employees engaged in the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. KRR shall have the exclusive direction and control of the Switching Services performed on the Leased Trackage and KRR shall be solely responsible for scheduling and overseeing the Switching Services, the Switching Maintenance Work the Car Inspection and Repair Work, for the degree of care with which the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work are performed, and for the quality of the results of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work.

E. KRR shall perform the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work in a fair and impartial manner. Moreover, in performing the Switching Services, the Switching Maintenance Work and Car Inspection and Repair Work, KRR shall comply with all applicable rules and regulations, including, supplying at KRR's own expense certified locomotive engineers.

F. Except as provided in Article II.C of this Agreement, for the purposes of car hire accounting, all rail cars handled by KRR will at all times remain in the KCS account while on the Leased Trackage. KRR will input rail movement events into the KCS Management Control System ("MCS") at no additional cost to KCS. KRR agrees not to use any function of the KCS MCS system for any purpose other than: train set, switching, EEI, and way billing inquiry for the purpose of inputting rail movement events related to cars handled under this Agreement. KCS will not charge KRR for the use of the system. Prior to commencement of the services under this Agreement, KCS will provide MCS training as reasonably necessary to train up to three (3) KRR personnel selected by KRR on the MCS system (in no event less than one training session) without charge to KRR to input data into the KCS MCS system. If any training is required after the initial training sessions KCS will provide such training provided KRR shall reimburse KCS for the cost of such training. If KCS changes the MCS system to the extent that additional training is required for the KRR personnel to use the MCS system, KCS will provide such additional training session as may be reasonably necessary to train KRR personnel on the changes to the MCS system (in no event less than one training session) without charge to

KRR. If any additional training is required after the initial re-training sessions, KCS will provide such training provided KRR shall reimburse KCS for the cost of such re-training.

G. In the performance of the work and obligations provided herein, comply with all applicable federal, state and local governmental statutes, ordinances, orders and regulations. **KRR SHALL INDEMNIFY, SAVE HARMLESS AND ASSUME THE COST OF DEFENSE OF KCS AND KCT FROM AND AGAINST ALL CLAIMS, ACTIONS, FINES, PENALTIES OR LEGAL PROCEEDINGS TO THE EXTENT ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS BY KRR AND ALL OF ITS SUBCONTRACTORS DURING THE TERM OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, WILLFUL ACTS OR OMISSIONS, VIOLATION OF LAW OR THE BREACH OF THIS AGREEMENT BY KCT OR KCS.**

ARTICLE III. USE OF LEASED FACILITIES

A. KCS shall be responsible for the car mileage proportion of the maintenance and operating expenses under the KCT Agreement for cars handled by KRR pursuant to this Agreement. KRR shall not use the Joint Trackage, in combination or connection with the Leased Trackage, in such a way so as to interfere or otherwise hinder the use of the Joint Trackage by KCT or any other Party to either the KCT Agreement or the Operating Agreement.

B. In order to provide the Switching Services and perform the Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, and for the sum of _____ and other good and valuable consideration paid to it by KRR, KCS hereby sub-leases to KRR the Leased Trackage including KCT's Mill Street Yard, for the purposes set forth in this Agreement, subject to the rights of KCT and other users of KCT Trackage.

C. KRR's operations over the Joint Trackage shall be in compliance with and subject to the rights of any parties to the KCT Agreement, the Operating Agreement, KCT's operating rules and Special Instructions and shall be governed by KCT's traffic control system.

D. KCS retains the right to conduct operations over the Leased Trackage.

E. KCS agrees to furnish KRR with a copy of the current lease from the KCT of the building (s) currently being used by the KCS and referred to as the yard office at Mill Street and further agrees to sublease the building currently used by KCS at the Mill Street yard to KRR at the rate KCS pays to the KCT under the Yard Office Lease Agreement. KRR agrees to comply with all the terms of the Yard Office Lease Agreement.

ARTICLE IV. EQUIPMENT

A. KRR shall provide and furnish such vehicles, equipment, crews and supplies necessary to perform the services provided for under this Agreement to be performed by KRR, including switch engine or engines, switch crews and other employees, as well as all fuel, water, supplies, tools and equipment, roundhouse handling and other incidentals.

B. KRR shall provide vehicles and equipment as necessary to perform the Switching Maintenance Work and Car Inspection and Repair Work under this Agreement.

C. KCS, as reasonably practicable in its regular train traffic, agrees to haul on KCS's rail system between Pittsburg, Kansas and the Leased Trackage at no cost to KRR all locomotives, cars, materials and equipment (the "Equipment") being delivered to the Leased Trackage for use by KRR in performing any of the duties called for hereunder. KRR shall indemnify, defend and save harmless KCS for all damage or destruction to the Equipment, including contents and lading, while in the possession of KCS, except to the extent caused by KCS's gross negligence or willful acts.

ARTICLE V. REMOVAL OF CREWS

~~Upon good cause being shown, any member of a crew of KRR engaged in performance of duties on behalf of KRR pursuant to this Agreement shall be removed therefrom upon written request of KCS or KCT. In the event a board or tribunal subsequently sustains the employee's position, such employee shall not thereafter be barred from service on the Leased Trackage by reason of such occurrence. Anything herein to the contrary notwithstanding, KRR shall not be required to remove any person from service if prevented from doing so by law or regulation of a public authority having jurisdiction, or by a contract with respect to removal from service.~~

ARTICLE VI. SWITCHING OF CARS

A. KRR shall be responsible for all cars, defects in such cars, violations of operating rules and all other violations which occur during KRR's performance of its obligations under this Agreement.

B. KRR shall use, for the interchange of cars, those portions of the Leased Trackage currently identified and designated for interchange, and such other portions of the Leased Trackage as KRR and other carriers agree to use for interchange. In using Leased Trackage or such other trackage designated by KCT or KCS for interchange, KRR shall place or leave all cars to be interchanged at safe distances from any grade crossings or any track or tracks which may now or hereafter connect therewith or intersect the same, and so as not to interfere with, obstruct or endanger in any manner the operation or use of any other tracks or grade crossings.

Final Agreement – For Execution

C. KRR shall furnish KCS with accurate records maintained by KRR in the MCS (Management Control System) which may be used as a basis for arriving at the number of cars switched by KRR. Such records shall show the car numbers, initials and contents, date of movement, and for whose account moved, and shall be subject to review and check at any and all times.

D. KRR shall be deemed to have commenced and terminated Switching Services for each individual car designated for switching in accordance with the then current Interchange Rules of the Association of American Railroads.

E. ~~KRR agrees to provide service to customers equal to or better than provided for in the KCS service plan in effect at the time of execution of this Agreement. KCS will have final reasonable approval of any service plan and KRR will make reasonable improvements in service to insure quality service is provided to customers and service is in compliance with the obligations contained in the KCT agreement. Unless changes in KRR's operating plan are requested by KRR and agreed to in writing by KCS, which consent shall not be unreasonably withheld, KRR's frequency of service to customers and other carriers, at minimum, shall be equivalent to the level of service performed by KCS, per "Attachment B", attached hereto and made a part hereof. KRR's combined operation at KCT's Mill Street Yard shall be staffed at least six days per week.~~

F. KRR, takes the Leased Trackage subject to existing track leases or future track leases agreed to by KCS or KCT provided that future track leases will not unreasonably constrain or impair the current ability of KRR to serve existing or future customers. KRR has no right to any revenues from leased tracks.

G. KRR agrees to preserve interchange practices in effect as of the date of this Agreement. Such practices are outlined on Attachment B. Interchange practices will be subject to discussion and review between KRR and other carriers pursuant to an assurance of efficient operating practices and quality service to customers.

ARTICLE VII. COMPENSATION

A. As KRR's sole compensation for performing the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work called for hereunder shall be:

1. per loaded car, which shall include, industry switching, transfer work, blocking and any other services provided for in this agreement, and
2. per car for each car that is delivered to KRR empty and/or subsequently interchanged to another railroad without having been loaded.
3. per train for each initial terminal air test performed by KRR on outbound trains.

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4. For performing Car Inspection and Repair Work, KRR shall receive of all ARR labor rates in effect for each billable man hour for all non-KCS owned or leased cars and an agreed upon shop rate for all such work on KCS owned or leased cars. Further, KRR shall receive of ARR allowance for materials applied using the current AAR Office and Field Manual allowance.
5. KRR commits to reducing the average monthly dwell time, based upon a calendar month, for cars handled at the Mill Street yard by . If KRR is able to reduce the average monthly dwell time for cars handled at the Mill Street yard by more than , compared to the six months prior to the first complete month of KRR operations, KCS will pay KRR one half of the savings to KCS from any further reductions in the dwell time.
6. Beginning January 1, 2005, the charges in this subsection 1 and 2 of this Article VII A shall be adjusted annually, on the anniversary of the Effective Date, by of the change in the RCAF-U in the four immediately preceding calendar quarters.

The above charges include without limitation, switching and miscellaneous services including but not limited to intraplant switching at Procter & Gamble ("P&G") and other shippers located on the Leased Track, weighing at Procter & Gamble, switches to or from leased track(s) and intermediate switching. Revenues from such services, including demurrage, shall be retained by KCS.

Any payments due KRR shall be paid within twenty (20) days of receipt of an invoice from KRR.

ARTICLE VIII. INSPECTION OF RECORDS

KRR shall keep complete and accurate records relating to the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. ~~So much of the books, accounts and records of KRR as are related to the subject matter of this Agreement ("Records") shall at all reasonable times be open to inspection and audit by proper officers and agents of KCS.~~ KCT and members of its Boards of Directors, or their agents or representatives, shall have the right to audit the Records of KRR for purposes of satisfying KCT and KCT's Board of Directors of KRR's proper and timely performance of the Switching Services, the Switching Maintenance Work and Car Inspection and Repair Work, the number of cars switched by KRR, and the appropriateness of KRR's charges hereunder.

ARTICLE IX. BEGINNING OF WORK AND EMPLOYEES

Upon this Agreement becoming effective pursuant to the provisions of Article XV hereof, KRR shall begin performing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work.

ARTICLE X. LIABILITY

A. Prior to KRR commencing the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work under this Agreement, KCS and KRR will conduct a joint inspection of the Leased Trackage to establish and agree upon the condition of the Leased Trackage at the time of KRR beginning service under this Agreement and that the Leased Trackage is suitable for safely conducting the operations contemplated by this Agreement. KRR shall not, by reason of KCS's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Leased Trackage have or make against KCS any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom. KRR AGREES TO HOLD HARMLESS AND INDEMNIFY KCS FOR ANY CLAIMS INCLUDING BUT NOT LIMITED TO THOSE ALLEGED TO RESULT FROM KCS'S NEGLIGENCE PRIOR TO THE JOINT INSPECTION ARISING DURING THE TERM OF THIS AGREEMENT RESULTING FROM OR ALLEGED TO RESULT FROM THE CONDITION OF THE LEASED TRACKAGE, EXCEPTING (i) THOSE CLAIMS ARISING FROM OR RELATED TO KCS'S SIGNAL, GRADE CROSSING PROTECTION AND COMMUNICATIONS SYSTEMS, AND THEIR RELATED LABOR AND MATERIALS, AND (ii) THOSE CLAIMS FOR WHICH THE LOSS, DAMAGE, DESTRUCTION, INJURY, OR DEATH OCCURRED PRIOR TO KRR COMMENCING OPERATIONS UNDER THIS AGREEMENT.

B. KRR shall be responsible for all losses or damages in any way arising from, growing out of or connected with the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work performed by KRR or the condition of the Switching Trackage KRR is responsible for maintaining, to the extent KCS is responsible for such loss and damage under the liability provisions of the KCT Agreement or the Operating Agreement, except to the extent caused by the negligence, intentional acts or breach of this Agreement by KCS, its officers, agents, directors, employees or subcontractors (excluding KRR and its subcontractors). For purposes of applying this Section all officers, agents and employees of KRR while engaged in performance of the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work shall be considered exclusive employees of KRR and motive power, work trains, other equipment and other property of KRR while likewise engaged in the Switching Services, Switching Maintenance Work and Car Inspection and Repair Work were exclusive equipment or other property of KRR.

C. KRR may make settlement of any claim for loss or damage for which it or KCS may be liable hereunder, but no payment in excess of

shall be voluntarily made by KRR in settlement of any such claim ~~without first obtaining in writing consent of KCS, which consent shall not be arbitrarily nor capriciously withheld.~~

D. If a claim is made against either party hereto which under this Agreement is not chargeable in whole or in part with liability involved herein, such party shall promptly notify in writing the other party hereto without penalty on its part for failure to do so.

E. All releases taken pursuant to settlement of any and all claims involving joint liability hereunder shall include KRR and KCS and copies thereof shall be furnished each such party.

F. Neither party shall, however, be bound by any judgment or decree at law or in equity against the other party hereto unless it has had reasonable notice from such other party allowing it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other, the party receiving the same shall be bound by the judgment or decree in such action or suit.

G. Each party hereto shall fully indemnify and save harmless the other party hereto from and against all loss or damage properly chargeable to the indemnifying party under provisions of this Agreement.

H. If traffic over or upon said Joint Trackage or any part thereof or business thereon shall at any time be interrupted or delayed for any cause other than the willful act of either of the parties hereto then and in any such case neither of the parties hereto shall have any claim against the other for Loss or Damage of any kind or consequential, incidental or punitive damages of any kind caused by or resulting from such interruption or delay.

I. KRR shall use reasonable and customary care, skill and diligence in the performance of the Switching Services, the Switching Maintenance Work and the Car Inspection and Repair Work. Should KRR fail to repair any defect in the Switching Trackage or perform by other Switching Maintenance Work within a reasonable time after KCS shall have given written notice thereof to KRR, specifying the defect and requesting that it be repaired, then KCS shall have the right to make necessary repairs which shall be paid for by KRR.

ARTICLE XI. INSURANCE.

A. KRR shall provide, in addition to any other form of insurance or bond required by statute, insurance of at least the following kinds and amounts:

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1. Railroad General Liability insurance containing broad form contractual liability with a single limit of at least _____ per occurrence or claim and an aggregate limit of at least _____ Coverage must be purchased to include but not be limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations

2. Business Automobile Coverage insurance containing a combined single limit of at least _____ per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

3. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, if applicable.
- Employers' Liability (Part B) with limits of at least _____

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

4. In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

B. The insurance certificate covering such insurance shall be furnished to the Company before notice to begin work and shall be satisfactory to the Company with respect to coverage (including the contractual liability herein assumed by the Contractor), amount, and character of insurance companies. The insurance certificate shall contain a clause reading: "In the event any of the above policies are materially altered, changed or canceled, Company will be furnished 30 days advance notice in writing."

ARTICLE XII. DEFAULT

A. If KCS shall fail to pay any sum payable by it hereunder on the date when same shall be due or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this Agreement and such default shall continue for a period of thirty (30) days after written demand for such payment, performance or compliance shall have been made upon KCS by KRR, then KRR shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KCS, this Agreement then and there by such notice shall be terminated and all rights of KCS hereunder shall cease and determine. Any such termination, however, shall not relieve KCS from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its rights to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KRR of the breach by KCS of any covenant or condition of the Agreement shall not impair the right of KRR to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Switching Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Switching Trackage.

B. If KRR fails to pay any sum payable by it hereunder on the date the same shall be due; or shall fail to promptly and properly perform the services provided under this Agreement in compliance with the KCT Agreement or the Operating Agreement; or should KRR fail to perform or comply with any other covenants or conditions of this Agreement, and such failure should continue for a period of thirty (30) days after written demand for such payment, performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated and after giving notice in writing of such election to KRR, this Agreement then and there by such notice shall be terminated and all rights of KRR hereunder shall cease and determine. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KCS of its right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement contained to indemnify it or hold it harmless. A waiver by KCS of the breach by KRR of any covenant or condition of the Agreement shall not impair the right of KCS to avail itself of any subsequent breach thereof. Upon the termination of this Agreement, the lease of the Leased Trackage provided in Article III shall immediately terminate and KCS shall have the right to immediate possession of the Leased Trackage.

C. In addition to all other default provisions set forth in this Article XI, if KRR fails to properly perform any of the services which are its responsibility to perform under this Agreement or fails to perform them in accordance with the terms and conditions of this Agreement, KCS, at its sole discretion, shall have the right to perform any portion of or all of such services itself until such time as the failure is cured in KCS's sole opinion. Any cost incurred by KCS to perform such services shall be reimbursed by KRR. Should such failure continue for a period of thirty (30) days after written demand for

performance or compliance, then KCS shall have and is hereby given the right at its election to declare this Agreement terminated. If KCS makes an election to terminate pursuant to this Article, it shall give written notice of such election to KRR. This Agreement shall be terminated and all rights of KRR shall cease twenty-four (24) hours after notice of intent to terminate is sent electronically or by express mail to KRR. Any such termination, however, shall not relieve KRR from any liability which may have attached or accrued prior to or at the date of such termination or deprive KRR of its right to enforce any such liability, or of the benefits of any covenants or obligations contained in this Agreement.

ARTICLE XIII. INDEMNIFICATION

KRR AGREES TO DEFEND, INDEMNIFY AND HOLD KCS HARMLESS FROM ANY ACTIONS, CLAIMS, DAMAGE OR OTHER LIABILITY OR CHARGES RESULTING FROM OR ARISING IN CONNECTION WITH KRR'S AND/OR KRR'S EMPLOYEES ACTIVITIES IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL ACTS OR BREACH OF THIS AGREEMENT BY KCS, ITS OFFICERS, AGENTS, DIRECTORS, EMPLOYEES OR SUBCONTRACTORS (EXCLUDING KRR AND ITS SUBCONTRACTORS).

IN THE PERFORMANCE OF THIS AGREEMENT KRR SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL GOVERNMENTAL STATUTES, ORDINANCES, ORDERS AND REGULATIONS. NO PENALTIES, COSTS OR ADDITIONAL EXPENSE RESULTING FROM FAILURE TO COMPLY WITH ANY SUCH REQUIREMENT SHALL BE ADDED TO OR FORM THE BASIS FOR ANY PART OF THE CONTRACT PRICES HEREIN PROVIDED. KRR SHALL INDEMNIFY, SAVE HARMLESS KCS AND ASSUME THE COST OF DEFENSE FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS TO THE EXTENT CAUSED OR PERMITTED BY KRR.

ARTICLE XIV. ARBITRATION

A. In the event any disagreement shall arise between the Parties hereto as to the interpretation or the application of the provisions of the Agreement, then, upon the written request of either Party, in which request the issue in dispute is set forth, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association ("AAA") under the AAA Commercial Arbitration Rules (the "Rules") then in force, to the extent such Rules are not inconsistent with the provisions of this Agreement. KCS decisions pursuant to Article XII.C. To perform services as provided therein shall not be subject to Arbitration.

B. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within (30) days after the Party requesting arbitration shall notify in writing the other Party of such dispute, the dispute shall be submitted to such single arbitrator.

C. If a single arbitrator cannot be agreed upon before the expiration of such period of thirty (30) days, the dispute shall be submitted to three arbitrators experienced in matters of the character in dispute to be appointed as follows: The party requesting arbitration shall select an arbitrator and give written notice thereof to the other Party. Such other Party shall select an arbitrator within thirty (30) days after receipt of such notice and give written notice thereof to the Party requesting arbitration. If within the time specified a Party fails to nominate its party-appointed arbitrator or the two party-appointed arbitrators fail to nominate the third arbitrator, either party may request the AAA to make the appointment according to the Rules. If any nominated arbitrator is not appointed, declines, resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party or arbitrators entitled to appoint that arbitrator shall promptly nominate a successor. If the arbitrators are unable to agree on a replacement third arbitrator, then the AAA shall make the appointment according to the Rules.

D. The arbitrator or arbitrators, having taken and subscribed an oath before a person authorized by law to administer oaths to the effect that he or they will try to impartially and justly decide the matter or controversy according to the best of his or their ability, which oath shall be filled to his or their decision, shall, as soon as practicable after his or their decision, shall, as soon as practicable after his or their selection, hear the dispute or disputes submitted and shall give to each of the Parties reasonable notice of the time and place of such hearing. The hearing shall be conducted at the time and place designated as aforesaid, and, after hearing both Parties and taking such testimony or making such investigation as he or they may deem necessary. The arbitration award shall be in writing, shall give reasons for the decisions reached and shall be signed and dated by the arbitrator(s), and a copy of the award shall be delivered to each of the Parties. The Party against which an award assesses a monetary obligation or enters an injunctive or mandatory order shall pay that obligation or comply with that order on or before the 30th calendar day following the receipt of the award or by such other date as the award may provide. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the Parties.

E. Upon the presentation of such decision, each Party shall immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision is required of it.

F. Each Party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsels. The compensation, cost and expense of the single arbitrator or the third arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

G. Until a decision is made upon any dispute submitted to arbitration, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such dispute.

ARTICLE XV. EFFECTIVE DATE AND TERM

If it is determined that it is necessary to obtain labor contract agreement from the affected labor crafts, this Agreement is contingent on obtaining such approval. KRR will be responsible for obtaining any approvals necessary from the Surface Transportation Board and any other prerequisite legal authority at its cost. This Agreement shall be effective as of the later of execution of this agreement, approval by the Surface Transportation Board, if required, effective dates of an exemption, or as of such other date mutually agreed. Unless sooner terminated pursuant to Article XII hereof, this Agreement shall remain in effect for an initial term of one (1) year and thereafter shall automatically renew for additional terms of one year unless either party hereto give the other party written notice of its intent to terminate this Agreement at least ninety days prior to the end of the initial term or any renewal term thereof, as applicable. In the event the KCT Agreement is terminated or expires, this agreement will terminate at the same time. KCS shall have the right to terminate this agreement at any time if, in its sole discretion it determines the service provided by KRR is inadequate or does not meet the requirements of the KCT Agreement.

If KRR, or anyone gaining access to KCS's MCS system through KRR, or as a result of KRR's actions:

- (a) Intentionally accesses additional functions of the KCS MCS system other than the following functions: train set, switching, EEI, and weigh billing inquiry, for the purpose of utilizing the additional functions; or
- (b) Intentionally attempts to access or use any part of the KCS MCS system for any purpose other than in connection with its responsibilities under this Agreement,

then this Agreement may be terminated immediately by KCS without any obligation or liability to KRR other than that existing prior to such termination and KCS shall be entitled to a permanent injunction prohibiting the disclosure of any information obtained from the use of KCS's MCS system. In the event of any such unauthorized use KRR shall be responsible for all attorney's fees and costs KCS incurs to enforce this provision.

ARTICLE XVI. SERVICE OF NOTICES

Any notice herein provided for shall be in writing and deemed to be properly served if deposited in the United States mail, certified mail return receipt requested,

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postage prepaid, addressed to the party as follows, unless notice of change of address has been previously given in writing.

IF TO KCS: Senior Vice President Operations
 The Kansas City Southern Railway Company
 PO Box 219335
 Kansas City, MO 64121-9335

IF TO KRR: Executive Vice-President – Strategic Development
 Kaw River Railroad, Inc.
 315 w 3rd street
 Pittsburg, KS. 66762

ARTICLE XVII. AGREEMENT TO BE CONSTRUED LIBERALLY NOT FOR BENEFIT OF THIRD PARTIES

This Agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other third party.

ARTICLE XVIII. SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the respective successors, lessees and assigns of the parties hereto, provided however, KRR may not assign this Agreement to a third party without the written consent of KCS. Such consent shall not be unreasonably withheld if KRR assigns this agreement to a responsible third party in connection with the merger of KRR into, or the sale of all or substantially all of KRR's assets to, the assignee, but no assignment by KRR of this Agreement shall release KRR from its obligations hereunder.

ARTICLE XIX. SECTION HEADINGS

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

ARTICLE XX. INDEPENDENT CONTRACTOR

KRR is an independent contractor, providing its own tools, equipment, supervision, and employees, and KRR's employees shall not be considered to be the employees of KCS for any purpose whatsoever.

ARTICLE XXI. CONFIDENTIALITY

KRR agrees to maintain the confidentiality of all shipper information received

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in the performance of this contract, including but not limited to rates, origins, destinations, customer contact information and to use such information only for the purpose of performing its obligations under this agreement. Upon termination or expiration of this Agreement, KRR agrees to return all such information and any compilations, memos, summaries or other documents containing such information. The parties agree that all of the terms of this Agreement are confidential and shall not be disclosed by any party without the written consent of the other parties, to individuals not employed by or acting as counsel for or consultants to KCS or KRR respectively, except as required by law, provided that the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking STB approval or exemption of the Agreement under applicable STB confidentiality procedures.

The obligation of confidentiality contained in this section shall not include information which (i) becomes lawfully available to the public other than as a result of a disclosure by the parties, its representatives, or its agents, or, (ii) was lawfully available to KRR on a non-confidential basis prior to its disclosure to KRR or its agents or representatives under this Agreement or as a result of performance of this Agreement.

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

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: Michael R. Hunt
Title: Chairman, President & CEO

KAW RIVER RAILROAD, INC.

By: [Signature]
Title: General Counsel & Asst Secretary

ATTACHMENT B

TO

TRACK SUB-LEASE AND SWITCHING AND MAINTENANCE AGREEMENT

KCT TRACKAGE

<u>Customer Name</u>	<u>Trackage Served From</u>	<u>Frequency</u>	<u>Current Job</u>
Procter and Gamble	KCT	7 days/wk	YKS105 (0630)
Meridian Rail	KCT	5 days/wk	YKS112 (0800)
Total Distribution	KCT	As needed	YKS112 (0800)
Ace Pallet	KCT	As needed	YKS112 (0800)
Thomas	KCT	As needed	YKS112 (0800)
Inland Container	KCS	5 days/wk	YKS112 (0800)
KC Hardwood	KCS	As needed	YKS112 (0800)
KC Railcar	KCS	As needed	YKS112 (0800)
Colgate Palmolive	KCS	Evry other day	YKS112 (0800)
Lite-Weight Products	KCS	As needed	YKS112 (0800)
Philadelphia Quartz	KCS	5 days/wk	YKS112 (0800)
Kaw River Shredding	KCT	6 days/wk	YKS217 (1500)
National Compressed Stl.	KCT	6 days/wk	YKS217 (1500)
Kansas City Star (Watco)	KCT	5 days/wk	YKS217 (1500)
Constar	KCT	As needed	YKS217 (1500)
Darling	KCT	As needed	YKS217 (1500)
KCS/Knoche Transfer ¹	KCT	6 days/wk	YKS310 (2359)
UP/Neff Yard	KCT	2-3 days/wk	YKS310 (2359)
BNSF/Argentine Yard ²	KCT	1-2 days/wk	YKS310 (2359)

Blocking on outbound train departing Mill Street Yard

Blue Springs
Odessa
Higginsville
Marshall
Slater
Mexico
East St.Louis

¹ All IC&E and NS traffic originating in Mill Street Yard is hauled to Knoche Yard with other KCS traffic on the KCS Knoche Transfer.

² On occasion, BNSF traffic is hauled to Knoche Yard on the KCS Knoche Transfer for furtherance by KCS to BNSF.

EXHIBIT C

PUBLIC VERSION

SHORT TERM LOCOMOTIVE LEASE AGREEMENT

THIS SHORT TERM LOCOMOTIVE LEASE AGREEMENT

("Agreement") made and entered into this 1st day of June 2004 by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("KCS")** and **KAW RIVER RAILROAD, INC. ("KRR" or "LESSEE")**.

RECITALS:

1. KCS owns or leases with the right to sublease the one or more locomotives listed on Appendix "A" ("Locomotive(s)"), attached hereto and incorporated herein by reference; and
2. LESSEE desires to lease one or more Locomotives from KCS on a short term basis solely for LESSEE's use in providing switching services to customers located in Kansas City, Kansas; and
3. KCS is agreeable to leasing the Locomotive(s) to LESSEE on a short term basis under the terms of this Agreement;

WHEREFORE, KCS and LESSEE agree as follows:

SECTION I

Term of Lease

KCS agrees to lease the Locomotive(s) to LESSEE for a period of thirty (30) days (the "Initial Term"). The Initial Term will commence with the interchange of Locomotives to LESSEE in Kansas City, Kansas. The Lease shall continue for a maximum period of thirty (30) days, unless extended by the mutual written consent of the parties. This Agreement will not terminate until locomotive(s) leased to LESSEE under this Agreement are returned to KCS. LESSEE shall have no right to use or possess the Locomotives beyond the Initial Term, as extended from time to time. The obligations and duties of LESSEE to pay all accrued rent as

KCS in compliance with the terms of this Agreement at Kansas City. For any payment of rent not received by KCS within 10 days after the date it is due, LESSEE shall owe an additional late payment charge of of such payment.

(b) LESSEE may, in lieu of making rental payments for the Locomotives, supply KCS with comparable sized and horsepower rated locomotives ("KRR Locomotives"), as identified on Appendix "B" attached hereto and made a part hereof, for use by KCS in exchange for each Locomotive supplied by KCS for LESSEE's use under this Agreement. Should LESSEE select this option, KCS will fully inspect each KRR Locomotive so supplied by LESSEE prior to acceptance, and shall reject the KRR Locomotives and notify LESSEE if any material defects or deficiencies are discovered. KCS's use of a KRR Locomotive following delivery by LESSEE shall be deemed acceptance of that KRR Locomotive. Acceptance of the KRR Locomotives shall be conclusive evidence that the KRR Locomotives were received by KCS free of defects, fully serviced and in good condition. KCS shall return each KRR Locomotive to LESSEE at Kansas City, Kansas at KCS's cost, fully fueled and supplied upon return of each Locomotive to KCS for which one of the KRR Locomotives was supplied. KCS shall provide LESSEE at the conclusion of KCS's use of each of the KRR Locomotives, and as requested, records showing all inspection, maintenance and repair work performed by KCS or its agents on the KRR Locomotives. LESSEE shall inspect the KRR Locomotives within a reasonable time after the return interchange and shall notify KCS of any defects or adverse conditions discovered on inspection.

SECTION IV **Maintenance**

(a) LESSEE shall, at LESSEE's expense, maintain and return the Locomotives to KCS in the same condition as they were received, ordinary wear and tear excepted. LESSEE shall bear all ordinary and necessary inspection, maintenance and repair costs while the Locomotives are in LESSEE's possession. LESSEE shall return the Locomotive to KCS for any extraordinary maintenance or repair, which extraordinary maintenance or repair shall be performed by KCS or its designee at LESSEE's sole expense.

(b) KCS shall, at KCS's expense, maintain and return the KRR Locomotives to LESSEE in the same condition as they were received, ordinary wear and tear excepted. KCS shall bear all ordinary and necessary inspection, maintenance and repair costs while the KRR Locomotives are in KCS's possession.

SECTION V **Destruction of Locomotives**

(a) In the event of destruction of a Locomotive during the term of this Agreement, LESSEE shall pay to KCS the replacement value applicable to Locomotives listed on Appendix "A" hereto for each Locomotive destroyed. Payment shall be made within 10 days of date of destruction. LESSEE shall continue to pay rent on the damaged Locomotive until the casualty value is paid to KCS or it is returned to KCS' service in a condition complying with the terms of this Lease.

(b) In the event of destruction of a KRR Locomotive during the term of this Agreement, KCS shall pay to LESSEE the replacement value applicable to KRR Locomotives listed on Appendix "A" hereto for each KRR Locomotive destroyed. Payment shall be made within 10 days of date of destruction.

SECTION VI **Liability**

(A) LESSEE WILL INDEMNIFY, DEFEND AND HOLD KCS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS LEASE OR LESSEE'S POSSESSION, CONTROL, USE OR OPERATION OF THE LOCOMOTIVES. THESE PROVISIONS SHALL APPLY FROM THE TIME THE LOCOMOTIVES ARE INTERCHANGED TO LESSEE UNTIL THEY ARE RETURNED TO THE KCS IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT. LESSEE'S OBLIGATION TO INDEMNIFY, DEFEND AND HOLD KCS HARMLESS HEREUNDER APPLIES REGARDLESS OF KCS' NEGLIGENCE. LESSEE'S OBLIGATION TO INDEMNIFY, DEFEND AND HOLD KCS HARMLESS APPLIES TO ANY BASIS OF LIABILITY, INCLUDING (BUT NOT LIMITED TO) TORT, CONTRACT AND STRICT LIABILITY. BUT, REGARDLESS OF ANY PROVISION TO THE CONTRARY, LESSEE WILL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD KCS HARMLESS AGAINST ITS OWN GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

(A) KCS WILL INDEMNIFY, DEFEND AND HOLD LESSEE HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH KCS'S

POSSESSION, CONTROL, USE OR OPERATION OF THE KRR LOCOMOTIVES. THESE PROVISIONS SHALL APPLY FROM THE TIME THE KRR LOCOMOTIVES ARE INTERCHANGED TO KCS UNTIL THEY ARE RETURNED TO LESSEE IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT. KCS'S OBLIGATION TO INDEMNIFY, DEFEND AND HOLD LESSEE HARMLESS HEREUNDER APPLIES REGARDLESS OF LESSEE'S NEGLIGENCE. KCS'S OBLIGATION TO INDEMNIFY, DEFEND AND HOLD LESSEE HARMLESS APPLIES TO ANY BASIS OF LIABILITY, INCLUDING (BUT NOT LIMITED TO) TORT, CONTRACT AND STRICT LIABILITY. BUT, REGARDLESS OF ANY PROVISION TO THE CONTRARY, KCS WILL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD LESSEE HARMLESS AGAINST ITS OWN GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

SECTION VII

Ownership and Marking of Equipment

LESSEE and KCS both acknowledge that they have no ownership interest in each other's locomotives covered by this Agreement and agree not to directly or indirectly create any mortgage, pledge, lien, charge, encumbrance or claim with regard to any locomotive covered by this Agreement. Neither LESSEE nor KCS will obscure the markings or renumber any locomotive covered by this Agreement, and neither party will allow the name of any other person, association or corporation to be placed on any locomotive of the other party.

SECTION VIII

Modification of Locomotives

Neither LESSEE nor KCS shall modify any locomotives covered by this Agreement without the prior written consent of the other party.

SECTION IX

No Representations or Warranties

(a) KCS makes no warranty or representation, express or implied, as to the Locomotives, including (1) any warranty or representation as to the design, quality, or condition of the Locomotives, (2) the merchantability or fitness of the Locomotives for any particular purpose, or (3) with respect to patent infringement. All Locomotives are leased to and accepted by LESSEE on an "AS IS" basis. Any warranty or representation, express or implied, is hereby expressly denied.

(b) LESSEE makes no warranty or representation, express or implied, as to the KRR Locomotives, including (1) any warranty or representation as to the design, quality, or condition of the KRR Locomotives, (2) the merchantability or fitness of the KRR Locomotives for any particular purpose, or (3) with respect to patent infringement. All KRR Locomotives are leased to and accepted by KCS on an "AS IS" basis. Any warranty or representation, express or implied, is hereby expressly denied.

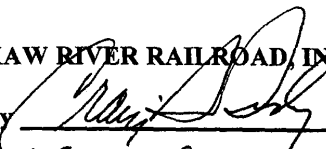
SECTION X

Governing Law

This Agreement is to be construed in accordance with and governed by the laws of the State of Missouri without giving effect to conflict of laws provisions.

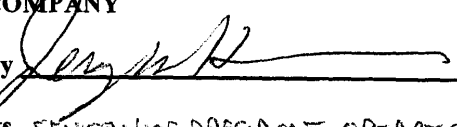
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first written herein.

KAW RIVER RAILROAD, INC.

By 

Its General Counsel & Asst Sec.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By 

Its SENIOR VICE PRESIDENT - OPERATIONS

Approved as to legal form: Thomas J. Healey 05/31/04 Associate General Counsel

APPENDIX A
KCS LOCOMOTIVES

<u>Locomotive Type</u>	<u>Locomotive ID</u>	<u>Daily Rate</u>	<u>Replacement Value</u>
SW 1200	_____		

APPENDIX B
KRR LOCOMOTIVES

<u>Locomotive Type</u>	<u>Locomotive ID</u>	<u>Daily Rate</u>	<u>Replacement Value</u>
SW 1500			