

**INDUSTRIAL TRACK AGREEMENT (NEW TRACK)  
NO.**



AGREEMENT made this 7th day of July, 1989, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", and CITY OF JONESBORO, ARKANSAS, a municipality, hereinafter called "Industry", whose address for the purpose of this Agreement is P. O. Box 1845, Jonesboro, Arkansas 72403.

WHEREAS, Industry desires the construction, maintenance, and operation of trackage and appurtenances thereto, including crossing, hereinafter called "Track" located at Jonesboro, Arkansas, shown between the letters A - H, on the plats hereto attached dated June 3, 1988, and July 6, 1988, marked Exhibits "A", and by this reference made a part hereof.

NOW, THEREFORE, the parties hereto agree to the construction, maintenance, operation, and use of said Track on the following terms and conditions:

**RIGHT-OF-WAY**

Section 1. Industry shall first procure without expense to Burlington all necessary right-of-way and all necessary public authority and permission for the construction, maintenance, and operation of the Track.

Industry further agrees that said Track shall be constructed, maintained, and operated subject to all provisions of any such public authority or permission and, regardless of the fact that same may be granted to Burlington, rather than to Industry, to assume any and all liability for and to indemnify, defend, and save harmless Burlington from and against any and all loss, cost, damage, suit, or expense in any manner arising or growing out of the compliance with or violation of the provisions of such public authority or permission.

If separation of the grade of the Track and any highway is ordered by public authority, the Industry shall indemnify Burlington against any expense in connection therewith or consent to the removal of said Track.

**CONSTRUCTION, MAINTENANCE, OPERATION, and OWNERSHIP**

Section 2. (a) Industry, at its own expense, will perform or will arrange for all grading and provide necessary drainage for Track which is located on Burlington property.

(b) Burlington will construct the Track from point of switch to point of clearance (14 feet from center to center of tracks) between the letters A - B on Exhibit "A" dated June 3, 1988, for the agreed amount of \$31,135.00 and from point of clearance to right-of-way line shown between the letters B - C on Exhibit "A" dated June 3, 1988, for the agreed amount of \$8,015.00 all at expense of Industry. Industry, before any construction is begun, shall pay to Burlington such agreed amounts. Industry, at its own expense, will construct trackage between the letters C - H on Exhibits "A" dated June 3, 1988 and July 6, 1988.

(c) Cost of construction of Track from point of switch to point of clearance between the letters A - B on Exhibit "A" dated June 3, 1988, paid for by Industry in the first instance in the amount of \$31,135.00 is subject to refund by Burlington to Industry or any assignee of Industry at the rate of \$35.00 for each car of freight delivered on or shipped from said Track, on which Burlington receives road-haul revenue in excess of \$400.00, during the period of five (5) years after receipt of the first carload shipped to or from General Foods USA, unless the total of such refund payments shall sooner equal such amount. Industry or its assignee shall submit a list of such cars to Burlington's Director Accounts Receivable and Contracts, P. O. Box 64952, St. Paul, Minnesota 55164, upon each six (6) month anniversary of this Agreement, and a settlement shall be made promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and dates, points of origin and destination.

(d) Burlington will maintain the Track between the letters A - B on Exhibit "A" dated June 3, 1988 at its expense and will maintain the Track between the letters B - C on Exhibit "A" dated June 3, 1988 at expense of Industry.

Industry will, at its own expense, maintain the Track between the letters C and H on Exhibits "A" dated June 3, 1988 and July 6, 1988.

Maintenance for the purpose of this Agreement shall include responsibility to provide proper drainage and to keep said Track free and clear of snow, ice, weeds, and other obstacles and debris and to provide a safe workplace for Burlington employees.

(e) Burlington will own the Track between the letters A - B on Exhibit "A" and Industry will own the Track between the letters B - H on Exhibits "A".

Industry shall bear and pay any and all costs for changes or alterations in that portion of Track owned by Industry that may be necessary in order to conform to any changes of grade or relocation of the tracks of Burlington at the point of connection with said Track required by any law, ordinance, or regulation, or necessary because of any other reason beyond Burlington's control.

Industry shall pay to Burlington from time to time the cost of maintenance, additions, and betterments performed by Burlington, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Any work performed by Industry in constructing or maintaining the Track or any facilities extending over, under, or across the same or in making additions and betterments thereto shall be done in a substantial and workmanlike manner and in accordance with Burlington's standards. Wire lines shall be constructed and maintained in accordance with Burlington's requirements, the National Electric Safety Code, and any statute, order, rule, or regulation of any public authority having jurisdiction. If Industry fails to maintain said facilities or that portion of the Track herein agreed by it to be maintained or to pay the bills therefor within the prescribed time, Burlington may refuse to operate over the Track.

If said Track is used for the receiving, forwarding, or storing of hazardous commodities, Industry agrees to comply with Burlington's requirements and the requirements of any statute, order, rule, or regulation of any public authority having jurisdiction with respect thereto as the same may be modified, supplemented and amended from time to time.

**DEFINITION OF COST**

Section 3. "Cost", for the purpose of this Agreement, shall be actual labor and material costs including all assignable additives. Material and supplies shall be charged at current value where used.

**RIGHT OF BURLINGTON TO USE**

Section 4. Burlington shall have the right to use and extend said Track and construct spur tracks therefrom for the accommodation of the business of Burlington or the business of other parties, provided such use or extension does not unduly interfere with the use of said Track by Industry.

**CLEARANCES**

Section 5 Industry shall not place, permit to be placed, or allow to remain, any material, structure, pole, or other obstruction within 8½ feet laterally of the center or within 23 feet vertically from the top of the rail of said Track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section, then Industry shall strictly comply with such statute or order. However, vertical or lateral clearances, which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be, or deemed to be, a violation of this Section. Industry agrees to indemnify Burlington and save it harmless from and against any and all claims, demands, expenses, costs, and judgments arising or growing out of loss of or damage to property, and injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing.

Should either, or both, the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, Industry hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless Burlington from and against any and all claims, demands, expenses, costs, and judgments arising or growing out of loss of or damage to property, and injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

Burlington's operations over the Track with knowledge of an unauthorized reduced clearance shall not be or deemed to be a waiver of the foregoing covenants of Industry contained in this Section or of Burlington's right to recover for such damages to property, and injury to or death of persons that may result therefrom.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 7 HEREOF, THE LIABILITY ASSUMED BY INDUSTRY IN THIS SECTION 5 SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.**

**PUBLIC ASSESSMENTS**

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation, or person for the privilege of constructing, maintaining, and operating said Track.

## LIABILITY

Section 7. Industry shall indemnify and save harmless Burlington from any and all claims, demands, suits, losses, judgments, costs, damages, or expenses on account of injuries to or death of any and all persons whomsoever, and any and all loss or destruction of or damage to property to whomsoever belonging, including property owned by, leased or rented to, or in the care, custody or control of the parties hereto, arising or growing out of or in any manner connected with the construction, maintenance, operation, and use of the Track covered by this Agreement, or caused or occasioned, in whole or in part, by reason of or arising during the presence of the person of Industry, its subcontractors, the employees or agents of either, or third parties upon or in proximity to or while en route to or returning from the Track covered by this Agreement. If any claim or liability shall arise from the joint or concurring negligence of the parties hereto, it shall be borne by them equally.

In the event Industry permits a party or parties, hereinafter called "Permittee", other than Burlington to use said Track for receiving, forwarding, or storing shipments, Burlington hereby consents to such use, and in such case Industry hereby agrees to indemnify and hold harmless Burlington from and against any and all loss, damage, injury, and death resulting from or arising out of any act or omission of Permittee, its employees or agents, to the person or property of the parties hereto and said Permittee, and to the person or property of any other person or corporation while on or near said Track. **THE LIABILITY ASSUMED BY INDUSTRY RELATIVE TO SAID PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.**

## ASSIGNMENT

Section 8. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; however, Industry shall not assign this Agreement without the advance written consent of Burlington, and for any departure in this respect Burlington may terminate this Agreement.

## RIGHT TO DISCONNECT TRACK

Section 9. Burlington shall be privileged to terminate this Agreement and discontinue the maintenance and operation of said Track, and to remove its ownership, in the event of any of the following contingencies, to wit:

(a) Industry ceases, for a continuous period of one (1) year, the doing of business in an active and substantial way at the Industry or establishment served or does not receive or forward railroad cars upon or from the Track which is the subject of this Agreement.

(b) Burlington is authorized by competent public authority to abandon its line to which said Track is connected.

(c) Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this Agreement.

No recourse or claim will exist in favor of or be asserted by Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this Section of this Agreement.

**REMOVAL OF TRACK**

Section 10. Burlington agrees, upon discontinuance of the use of said Track, to remove from its right-of-way that portion of said Track owned by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it. If the cost of removing or recovering said Track exceeds the salvage value thereof, Industry shall pay Burlington the difference.

**JOINT USE BY OTHER RAILROADS**

Section 11. This Agreement is also made for the benefit of such other railroads which, either by prior understandings or agreements with Burlington have the right to use the Track, or which shall be admitted in the future to the use of the Track by Burlington, all of which railroads shall be deemed "Burlington" within the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_