# Memorandum of Agreement Between BNSF Railway

And

# Brotherhood Railway Carmen Division/TCIU And

## International Association of Machinists and Aerospace Workers And

### International Brotherhood of Electrical Workers/System Council No. 16

This Agreement is entered into to provide for the establishment and staffing of "Rapid Responder" positions on territory encompassed by the former ATSF Railway and at other locations on the former BN as set forth in Attachment A to this Agreement. It is not the intent of this Agreement to establish "Rapid Responder" positions on former BN property. At the outset, 24 positions on the former ATSF property will be established.

Rapid Responder positions will be placed at strategic locations across the former ATSF Railway territory to effectuate repairs to trains traveling between terminals. A Rapid Responder will be required to perform all troubleshooting and repairs to expedite train movement, which they have the qualifications and equipment to perform, regardless of craft affiliation.

The Parties have agreed that the number of Rapid Responder positions will be allocated equally among the Crafts involved if there are a sufficient number of applicants from the Crafts.

I. Rapid Responder positions pay, days and hours of assignment will be established as follows:

# Employees Assigned To a Rapid Responder Position – Paid On Monthly Basis

The rate for monthly rated employees assigned to Rapid Responder positions will be \$5000.00 per month, contemplating 213 hours per month. This rate is subject to future General Wage Increases and Cost-Of-Living Adjustments and covers all services rendered, except as specifically provided in this Agreement. Two (2) twelve-hour shifts daily will be established at each location identified in Side Letter 1 to this Agreement and at any additional locations where Rapid Responder positions may be established in the future. The Rapid Responder positions will work three (3) days followed by three (3) rest days, followed by three (3) work days, followed by three (3) rest days, etc.

To determine the straight time hourly rate, divide the monthly rate by 213 hours. Rapid Responders working a fractional part of a month shall be paid a percentage of the monthly rate equal to the percentage of the month the employee is working as a Rapid Responder. For example, if an employee begins working a Rapid Responder position on March 16 and works it through the end of the month, he or she would receive 52% (16/31) of the monthly rate.

The Carrier may use assigned Rapid Responders to fill vacancies at that location and perform additional duties outside their regular assigned hours. Any hours worked beyond 213 in a month will be paid at the overtime rate.

For any regularly assigned work day a Rapid Responder is off work without pay, his or her pay will be reduced by twelve (12) hours at the straight time hourly rate, hourly rate to be determined by dividing the monthly rate by 213 hours.

- (a) Where meals and lodging are not furnished by the Company, or when the service requirements make the purchase of meals and lodging necessary while away from their assigned Rapid Responder location, employees will be reimbursed for such actual necessary receipted expenses.
  - (b) The regular starting time of the two shifts shall be:
    - (1) First Shift Not earlier than 6:00 AM nor later than 8:00 AM
    - (2) Second Shift Not earlier than 6:00 PM nor later than 8:00 PM

Changes within the above starting time restriction may be made by the Company as necessary, provided the employees involved are notified before the end of the shift before the change is made.

The starting times of the assignments at any location may be changed and set outside the above restrictions by mutual agreement between the employees working at that location with the approval of their Supervisor and the General Chairmen involved. If such a change is contemplated, the General Chairmen involved will be given a 48 hour advance notice of the proposed change in starting time.

- II. Establishing of Rapid Responder Positions will be handled as follows:
- (a) At the outset, the Carrier will advertise the need to fill the newly-established Rapid Responder positions on the BNSF public internet site, at all Shops and normal locations for Carmen across the BNSF system seeking internal applicants from which to establish a pool of candidates for appointment to the available positions. An employee wanting to be considered for appointment to a Rapid Responder positions will be required to provide their resume' to the address on the posting and to the appropriate General Chairman. As the need arises for additional employees to be considered for appointment to Rapid Responder positions, the Carrier will advertise for additional candidates through the BNSF public internet site and by postings at all Shops across the BNSF system with interested employees being required to provide a resume' to the address on the posting and to the appropriate General Chairman.
  - (b) The Carrier will establish the mix of Craftsmen at each location.
- (c) The number of positions assigned to each Craft will be equalized as nearly as possible. As of the date of this Agreement thirteen (13) Carmen, six (6) Machinists and two (2) Electricians have been chosen to assume the duties of Rapid Responders.

Those already chosen will be given the first right of refusal – that is each will be given the option to remain on a Rapid Responder position or return to his or her former, position. Once it is determined which employees will be selecting the Rapid Responder positions, craftsmen will be chosen to fill the remaining positions with efforts being made to equalize the number of craftsmen from each craft. The Carrier will first seek qualified Electricians to fill the available positions not filled by the twenty-one (21) employees already selected as Rapid Responders. If not enough Electricians apply for the vacant positions, the Carrier will then attempt to fill the positions with Machinists that apply. If not enough Machinists apply for the vacant positions, the Carrier will then attempt to fill the positions with Carmen that apply.

The Parties recognize there may be situations that arise that will make it extremely difficult to maintain the proper ratio of Craftsmen. When unique circumstances arise, the Parties agree to work together to correct inequities as quickly as possible.

- (d) When Rapid Responder positions are established, the Carrier, after considering qualifications, work history and seniority, will have the right of selection to each position. That is, the Carrier has the right to choose the candidate to fill the position regardless of seniority and Craft affiliation.
- (e) When a Rapid Responder position is vacated, the vacated position will be filled as follows:
  - (1) A vacated Rapid Responder position will be posted to the BNSF public internet site and advertised at all BNSF Shop locations and normal locations for Carmen specifying, when necessary, which craft will have preference to the vacated position.
    - (2) If craft affiliation is specified on the job posting:
    - (a) An employee with the necessary craft affiliation already assigned and working as a Rapid Responder at the location where the Rapid Responder position is vacated will have first opportunity to fill the vacated position. Selection will be made based on the relative seniority dates of the employees at the locations from which transferred.
    - (b) If there are no candidates for the position with the necessary craft affiliation working as a Rapid Responder at the location where the vacancy exists, an employee who has been assigned to and working a "Rapid Responder" position at another location for twelve or more months may file a request to transfer. If the Rapid Responder requesting to transfer meets the craft affiliation requirement of the vacant position, the Carrier will consider the employee for assignment before filling the vacant position from other sources.
    - (c) If none of the employees holding Rapid Responder positions at the location where the vacancy exists meet the craft affiliation requirement

and if the Carrier does not choose a Rapid Responder assigned at another location requesting to transfer, the Carrier will have the right of selection to fill the vacated position from other employees who meet the craft affiliation requirement.

- (d) If there are no candidates for the position meeting the craft affiliation requirement, the position will be assigned to the senior employee requesting the position who is assigned and working as a Rapid Responder at the location where the vacancy exists regardless of craft affiliation.
- (e) If none of the employees assigned to and working as a Rapid Responder at the location where the vacancy exists request to fill the vacant position or if no Rapid Responder requesting transfer from one location to another is chosen to fill the position, the Carrier will have the right of selection to fill the position.
- (3) If craft affiliation is not specified on the job posting:
- (a) An employee already assigned and working as a Rapid Responder at the location where the Rapid Responder position is vacated will have first opportunity to fill the vacated position. Assignments will be made based on the relative seniority dates of the employees at the locations from which transferred.
- (b) If there are no candidates for the position working as a Rapid Responder at the location where the vacancy exists, an employee who has been assigned to and working a Rapid Responder position at another location for twelve or more months may file a request to transfer. The Carrier will consider the employee for assignment before filling the vacant position from other sources.
- (c) If none of the employees assigned to and working as a Rapid Responder at the location where the vacancy exists request to fill the vacant position or if no Rapid Responder requesting transfer from one location to another is chosen to fill the position, the Carrier will have the right of selection to fill the position.
- (f) Once the "Rapid Responder" location is established for each set of "Rapid Responder" positions, each "Rapid Responder" location will be "attached" to an established seniority point. See Side Letter No. 1
- (g) Once an employee is appointed to a "Rapid Responder" position, the employee will be required to complete at least six months service on the position before he or she will be allowed to bid to a different position or vacate the position for any other reason. The Carrier can hold an employee who has successfully bid off of a Rapid Responder position or vacated the position for other reasons for up to three months while a replacement is selected and trained.

- (h) If a "Rapid Responder" position(s) is to be abolished, the Carrier will provide the employee(s) involved and the appropriate General Chairman with a thirty-day advance notice of the abolishment and cover the necessary moving expenses as provided for herein, for the employee to return to his home point or the new assignment location.
- (i) Other than specifically provided for herein, all Rules of the ATSF scheduled Agreements applicable to other employees of the same crafts, shall apply to the service of the employees assigned to these Rapid Responder Positions. Where provisions of this Agreement conflict with other Rules of the ATSF scheduled Agreement, this Agreement applies.
- III. Seniority of employees assigned to Rapid Responder positions.
- (a) An employee appointed to a Rapid Responder position will establish seniority at a point agreed to by the Carrier and the Organizations and the Rapid Responder position to which the employee may be assigned will be "attached" to the seniority point where the employee establishes seniority. Employees working at the location where a Rapid Responder position is "attached" may be used to relieve Rapid Responder positions when necessary.

The Carrier will make every effort to provide qualified relief to cover scheduled absences of one week or more, including scheduled vacations and scheduled training. If there is no qualified employee available at the point where the Rapid Responder position is attached, the Carrier to be the judge of qualifications, the Carrier may use employees from other locations to provide relief. Unscheduled absences and scheduled absences of less than one week will be filled by the employees assigned at that point as determined by the supervisor.

- (b) Employees establishing seniority at a point where they do not presently hold seniority will maintain their seniority standing on the roster from which transferred.
- (c) An employee bidding from a position as a Rapid Responder to a position at the location where the Rapid Responder position is "attached", will forfeit his or her seniority on the seniority roster from which transferred.
- (d) An employee bidding from a position as a Rapid Responder to a position on the Seniority District or Seniority Point from which transferred, will forfeit the seniority established at the "attached" point if seniority was established at the time the employee was appointed to the Rapid Responder position.
- (e) A list of current "Rapid Responder" locations and its respective attached seniority point will be maintained by the Parties. When the Rapid Responder location or its attached seniority point changes by mutual agreement, the list will be updated by the Carrier and distributed to the Organizations signatory to this Agreement.

IV. The territories to be established and the locations where employees assigned to Rapid Responder positions may respond to train failures and other emergencies are outlined on Attachment A to this Agreement.

If Rapid Responder locations are added, or if Rapid Responder locations are reduced, the Carrier will provide the Organization with an updated list of Rapid Responder locations and the rail lines that will make up the appointed Rapid Responder territories. Neither Attachment A to this Agreement nor any subsequently prepared list of territories restricts an employee assigned to a Rapid Responder position on one territory from responding to an incident on another territory, as long as the employee is performing service on one of the lines outlined on Attachment A and any supplements to this Agreement.

- V. The moving benefits as set forth below will be available only to eligible employees appointed to a Rapid Responder position who are required to change their place of residence. Eligibility for the moving benefits includes the requirement that an employee must make a bona fide relocation and change his or her principal place of residence to the new location.
- (a) The Carrier will arrange for the movement of a successful applicant's household goods from their current location to the location where assigned.
- (b) Each successful applicant will be allowed up to five days with pay to move to their new location.
  - (c) Mileage for up to two cars at the current I.R.S. rate.
- (d) With respect to the moving of household goods, mileage allowance and pay for time off to move, an employee transferring under this Agreement may elect a lump sum payment a gross amount of \$7,500.00 (subject to all applicable taxes) in lieu of all other benefits set forth in (a), (b) and (c) above.
- (e) In order to receive the moving benefits outlined in (a), (b), and (c) above, or the lump sum payment described in (d) above, the employee will sign an Employee Reimbursement Agreement. Under the terms of this Agreement, the employee will be required to repay any and all relocation expenses, or the lump sum, if the employee voluntarily leaves the Rapid Responder position within the first twelve months after first performing service as a Rapid Responder. Employees that may be moved from one Rapid Responder position to another by the Carrier will not be subject to the payback provision, unless that employee voluntarily leaves a Rapid Responder position within the twelve month period.
- VI. The Carrier maintains the right to remove an employee from a Rapid Responder position at any time during the first sixty (60) calendar days the employee is assigned to and working a Rapid Responder position. Thereafter, if the Carrier determines that an employee assigned to a Rapid Responder position is to be disqualified from the position, the employee's Supervisor will discuss the impending disqualification with the employee's representative. If the Organization continues to dispute the Carrier's decision

to disqualify the employee, the disputed disqualification will be handled directly between the CMO and the General Chairman of the craft involved. In the event no resolution is reached at this level and the employee is disqualified he shall be permitted to exercise his seniority under the provisions of his governing Agreement. An employee disqualified due to his or her inability to perform the duties of the position after the first sixty days on a Rapid Responder position will be entitled to those moving benefits set forth in Section V of this Agreement. In those circumstances wherein it is alleged an employee assigned to a Rapid Responder position has violated Carrier Rules, the employee will be covered by the provisions of the disciplinary Rule of the Shopcraft Agreements. If, as a matter of discipline, an employee is disqualified from a Rapid Responder position, the employee will not be entitled to the moving benefits set forth in Section V of this Agreement.

### VII. Vacations and Personal Leave Days

- (a) Employees who take a personal leave day while working a three on three off monthly rated position as a Rapid Responder will be charged with one (1) personal leave day and will not have the monthly rate reduced.
- (b) Vacation for monthly rated Rapid Responder will be predicated on a six-day per week work week.
  - (1) Four twelve-hour shifts will be treated as six (6) days towards vacation qualifying. If, at the end of the year an employee is ½ day short of being qualified for a vacation in the following year, the employee will be credited with an additional ½ day credit toward vacation qualifying.
  - (2) Employees assigned to and working three on-three off rapid responder positions will be entitled to four twelve-hour shifts of vacation for each week of vacation assigned under the National Vacation Agreement. Each single day of vacation taken will be accounted for as 1 ½ days of vacation time. For example, if an employee assigned to and working a Rapid Responder position has four weeks of vacation, the employee would be entitled to 16 twelve hour shifts of vacation.

#### VIII. Meal Periods

Employees working as Rapid Responders will be provided two thirty-minute meal periods without reduction in pay. Meal periods are to be taken during regular working hours when time is available.

IX. This Agreement is made without prejudice to the position of any of the parties involved and will not be referred to by the Carrier or any Organizations signatory hereto in any manner for any reason or purpose except for any dispute arising under this agreement.

Upon a 45 day advance written notice this agreement may be canceled by the Company, or collectively by all of the Organizations signatory hereto. During such advance notice period the parties will meet in an attempt to resolve the issues involved.

If the parties fail to resolve such issues within 45 days, the Agreement shall be terminated unless otherwise mutually agreed.

If less than all of the Organizations wish to cancel their participation in this agreement the same 45 day advance written notice and discussions referred to above will apply. However, if the parties fail to resolve the issues involved, the Rapid Responders represented by the canceling Organization may be held on their positions for up to 90 working days from Carrier's receipt of the 45 day advance notice in order to provide the Carrier time to select and train replacement workers from the remaining participating crafts.

Upon cancellation of the Agreement, the rights of the Company shall revert to those existing before the implementation of this Agreement.

AGREED:

AVP – Labor Relations

General Director - Labor Relations

Director Labor Relations

Chief Mechanical Officer - South

Date: august 2, 3006.

President/Directing General

Chairman IAMAW

General Chairman IAMAW

Mark School

General Chairman IAMAW

General Chairman IAMAW

General President BRC/TCU

ieneral Chairman BRC/TCU

General Chairman IBEW System

Council No. 16

## Attachment A – Rapid Responder Agreement Updated October 3, 2006

Responder Headquarters and Territory:

Goffs CA Needles Sub (Barstow CA to Needles CA)

(Formerly Needles CA)

Williams AZ Seligman Sub (Needles CA to Winslow AZ)

**Phoenix Sub** 

Vaughn NM Clovis Sub (Belen NM to Clovis NM)

Glorietta Sub El Paso Sub Carlsbad Sub

Woodward OK Panhandle Sub (Amarillo TX to Wellington KS

**Dalhart Sub** (Amarillo TX MP 336.0 to Dalhart TX MP 418.0) Boise City Sub (Dumas Jct TX MP 0.0 to Stratford TX MP 86.0)

Avard Sub (Avard OK MP 602.0 to Enid OK MP 546.0)

Red River Valley Sub (Amarillo TX MP 336.0 to Childress TX

MP 220.0)

Emporia KS Emporia Sub (Wellington KS to Kansas City KS)

Ark City Sub (Newton KS MP 185.1 to Ark City KS MP 263.4)
Douglas Sub (Augusta KS MP 185.3 to Winfield Jct MP 216.0)
La Junta Sub (Ellinor KS MP 124.7 to Newton MP 185.1)
Topeka Sub (Emporia KS MP 111.9 to Holiday KS MP 13.5)
Strong City Sub (Neva KS MP 0.0 to Courtland KS MP 133.7)

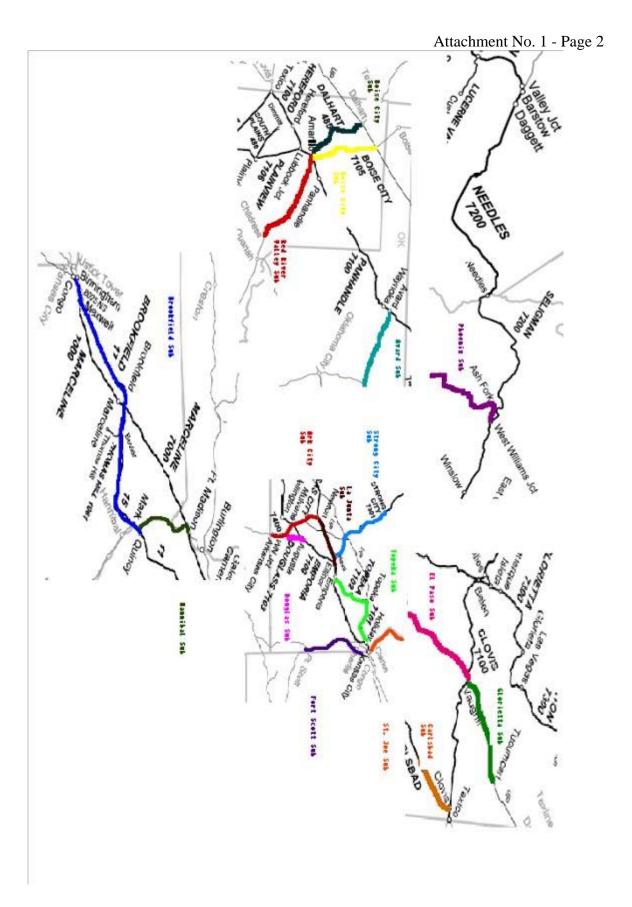
St Joseph Sub (KC to Napier MO MP 95.3) Fort Scott Sub (KC to Edwards KS MP 102.6)

Brookfield MO Marceline Sub (KC to Fort Madison IA)

St Joseph Sub (KC to Napier MO MP 95.3) Fort Scott Sub (KC to Edwards KS MP 102.6)

Hannibal Sub (Fort Madison IA to West Quincy MO MP 136.9)

Brookfield Sub (Birmingham MO MP 216.2 to West Quincy MO MP 263.4)



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Dennis J. Merrell Assistant Vice President Labor Relations BNSF Railway Company P.O. Box 961030 Fort Worth, TX 76161-0030 2600 Lou Menk Drive Fort Worth, TX 76131-2830 Phone: (817) 352-1024 Fax: (817) 352-7482

# Side Letter No. 1 – Rapid Responder Agreement Updated November 1, 2006

November 1, 2006

Mr. Danny L. Lancaster - General Chairman BRC/TCU

Mr. Dale Doyle - General Chairman IBEW System Council No. 16

Mr. Dell Babcock - General Chairman IAMAW

Mr. Mark Schmidt - General Chairman IAMAW

Mr. Mark Russ - General Chairman IAMAW

#### Gentlemen:

Below is the listing of the Rapid Responder locations and the seniority point to which each position will be attached.

Rapid Responder location	Attached Point
Goffs, California	Barstow, California
(Formerly Needles, CA) Williams, Arizona	Belen, New Mexico
Vaughn, New Mexico	Belen, New Mexico
Woodward, Oklahoma	Amarillo, Texas
Emporia, Kansas	Kansas City, Kansas
Brookfield, Missouri (Formerly Marceline, MO)	Kansas City, Kansas

Sincerely,

Dennis J. Merrell

NOV 6 2006

SYSTEM COUNCIL # 16
I.B.E.W.



Dennis J. Merrell Assistant Vice President Labor Relations BNSF Railway Company P.O. Box 961030 Fort Worth, TX 76161-0030 2600 Lou Menk Drive Fort Worth, TX 76131-2830 Phone: (817) 352-1024 Fax: (817) 352-7482

August 2, 2006

SIDE LETTER NO. 2 TO THE AUGUST 2, 2006 RAPID RESPONDER AGREEMENT

Mr. Danny L. Lancaster General Chairman BRC/TCU 1205 23<sup>rd</sup> Street, Buffalo Plaza – Suite 3B Canyon, Texas 79015

Dear Mr. Lancaster:

This refers to the recently established "Rapid Responder" positions at Needles, California; Williams, Arizona; Vaughn, New Mexico; Woodward, Oklahoma; Emporia, Kansas; and Marceline, Oklahoma. During our negotiations you were concerned that existing Road Trucks on the territories where Rapid Responders will be established might be reduced by adding the Rapid Responder positions.

It is not the Carrier's intent to reduce the number of Road Trucks through the Rapid Responder program. If an existing Road Truck on the locations on the former ATSF covered by the Rapid Responder Agreement is reduced there would first be a corresponding reduction in the number of Rapid Responder position(s) within the road truck territory.

Sincerely,

Dennis J. Merrell

# Side Agreement to the August 2, 2006 Rapid Responder Agreement

Memorandum of Agreement between BNSF Railway and the Brotherhood of Railway Carmen Division/TCIU (BRC) and the International Association of Machinists and Aerospace Workers (IAM) and the International Brotherhood of Electrical Workers/System Council No. 16 (IBEW)

This Agreement is made between BNSF and BRC/IAM/IBEW in consideration of the provisions of the Rapid Responder Agreement and will remain in effect for those employees covered by it so long as the Rapid Responder Agreement remains in effect.

- (A) Effective August 1, 2006, a new profit sharing plan shall be established for employees represented by the Organizations signatory hereto who are assigned to and working Rapid Responder positions pursuant to the August 2, 2006 Rapid Responder Agreement (hereinafter "Rapid Responders"), according to the following terms.
- (B) Under the new plan ("PS Plan"), each Rapid Responder may receive a profit sharing payment no later than March 15 of the year immediately following each "performance" (calendar) year, the first one of which shall be 2006. For 2006, for each Rapid Responder, said payment shall have a maximum potential of (be up to) 2 percent of the Rapid Responder's regular earnings for the period August 1 to December 31, 2006 (regular earnings exclude such things as any bonus or lump sum, any retroactive payment not attributable to this portion of 2006 earnings, benefit buy-out payment, moving/real estate benefit, previous year's profit sharing payment, any earnings not attributable to hourly, daily, weekly or monthly rates of pay, etc.) as a Rapid Responder on BNSF property. For performance year 2007 and each subsequent performance year, the maximum potential shall be 2 percent of the Rapid Responder's regular earnings for the full performance year while assigned and working as a Rapid Responder, otherwise applied as indicated above for 2006.
- Each Rapid Responder's profit sharing payment will be determined based on the same company-wide goals, the same apportionment among the goals and the same performance standards in meeting those goals as are used for that performance year in the Incentive Compensation Plan for exempt employees ("ICP"). For example, at present, there are goals for earnings per share (55% of total); velocity (30% of total); and safety (personal injury frequency ratio, and lost and restricted time) (15% of total). The payout on each goal depends on the attainment of specific, pre-determined targets for the goals and the approval of the ICP Committee. Presently, a 150% payout level for the ICP is equal to a 100% payout under the PS Plan. Therefore, for example, for performance year 2007, if the company has an ICP payout level at Goal (the 150% ICP point), each Rapid Responder would get 2 percent as a profit sharing payment; if the company has an ICP payout level at Target (the 100% ICP point), each Rapid Responder would get 1.34 percent; and if the company has an ICP payout level at Threshold (the 15% ICP level) each Rapid Responder would get 0.2 percent as a profit sharing payment. There is no ICP or Profit Sharing payment for performance below threshold. For each performance year, the actual payout level will be as determined by the ICP Committee, and the same ICP

goals and method applied for exempt employees in the Operations Department will be used for BNSF Rapid Responders, in accord with the financial result illustrated in the previous examples.

- (D) If the design of the BNSF ICP itself (not the type or level of specific goals set from year to year) is ever changed in a way materially separating the interests of Rapid Responders still covered by the PS Plan from the interests of BNSF operations employees covered by the ICP, then the parties shall meet promptly to revise the PS Plan in a way which does not so separate the interests of Rapid Responders covered by it. If the parties cannot so agree, they shall submit the matter to expedited, parties-pay, final and binding arbitration before a single neutral. In such event, the arbitrator shall have jurisdiction exclusively to reformulate the PS Plan in a way which has no material adverse effect on either covered Rapid Responders or BNSF, and which effectuates the intent represented here in view of the changed conditions.
- (E) If the Rapid Responder Agreement is cancelled by BNSF, or collectively by the Organizations, or an individual Organization cancels its continued participation, this PS Plan is also cancelled in its entirety on the effective Rapid Responder Agreement cancellation date for either all Rapid Responders or for those represented by an individual canceling Organization, as appropriate. However, Rapid Responder regular earnings up to the effective date of cancellation will remain eligible for a pro-rated PS Plan payment.

SIGNED AT FORT WORTH, TEXAS THIS 2Nd DAY OF August, 2006.

Agreed for BRC/IAM/IBEW Agreed for BNSF Railway: Xice President Labor Relations Dennis J. Merrell Dell Babcock Asst. Vice President Labor Relations General Chairman IAMAW Mark Schmidt Ollie Wick General Chairman IAMAW General Director Labor Relations Wendell Bell General Director Labor Relations General Chairman IAMAW Dale Dovle General Chairman IBEW System Council 16