

## RAIL OPERATIONS PROCEDURES

May 1, 2012

This document describes the procedures and fees for rail operations on tracks (“**City Tracks**”) owned and operated by the City of Shafter (“**City**”). “**City Services**” include switching services for rail cars between the BNSF main line and spur tracks serving customers (“**Customers**”) located within the City. All tracks on City property are under the control of the City as per the map located on the City website (www.shafter.com). City Services will be provided on the following basis:

1. Fees for City Services will be as set forth by the City Council and posted on the City website.

2. City Services will be provided after notification (including car identification) from Customer within forty eight (48) Business Hours (7:30 a.m. through 4:30 p.m. on Business Days) following (a) receipt of rail cars from BNSF (incoming); or (b) Customer notification (including car identification and a copy of rail release) to the City (outgoing). All calls for City Services shall be made to the Rail Service Manager, whose contact information will be on the City website.

3. Customers will be responsible for construction and maintenance of spur tracks serving the Customer’s facility. Customer will be responsible to assure that its spur track is safe to switch cars onto and that no obstruction or foreign object impedes the safe performance of City Services. Customer will notify City when repairs are made within the gated area of Customer’s facility and City will inspect such repairs in order to assure that City Services may be safely conducted. Track repairs between the Customer property and City Tracks shall be performed by City or its agents, for the account of Customer. Customer is solely responsible for track repairs inside its gate or on Customer’s property. Any track repairs causing an interruption of City Services must be communicated to the City.

4. Customer has provided to City a maximum number of rail cars (Customer Capacity) that will be on City Tracks and require City Services. The capacity of City Tracks depends on the actual capacity purchased by Customer prior to the commencement of rail operations. Customer will immediately notify City if the number of rail cars requiring City Services materially increases or decreases. If Customer regularly exceeds such estimate, Customer will be liable for demurrage charges. City Tracks are not available for rail car storage without prior arrangement and Customer must have capacity to receive all cars delivered by the BNSF. City reserves the right to charge a per diem fee for any rail cars for the account of a Customer remaining on the City Tracks more than one (1) Business Day, through no fault of City.

5. Customers must be in good standing with BNSF. Customers are responsible to arrange rail car delivery from BNSF, with costs billed to the Customer, with a destination of BNSF rail head “Crome” Shafter California. Customers are also responsible to arrange rail car pick up by BNSF and a copy of the release will be given to City. Any additional charges are for the account of the Customer.

6. City is not a common carrier and standard carrier liability will not apply. All demurrage and damage charges are for the account of the Customer.

7. City Services do not include security patrols or other policing of the City Tracks. City will not be liable for:

(a) damage or vandalism occurring while rail cars are located on City Tracks;

(b) occurrences beyond City's control, including (without limitation) acts of God, terrorist activities, strikes or other labor actions or actions or services performed or provided by others;

(c) charges, costs, losses or penalties or for interruptions to Customers' business, including liabilities in the nature of consequential damages.

8. Prior to the performance by City of City Services hereunder, Customer will name City as an additional insured under Customers' public liability coverage, as evidenced by appropriate certificates provided to City evidencing such coverage and additional insured designation.

9. City is not responsible for the condition of rail cars and cargos contained therein. Customers will comply with all BNSF rules, regulations and requirements regarding shipment of cargo by rail, including proper packing of cargo, weight restrictions, hazardous substances and proper closure, sealing and security of rail cars. Loaded cars received from Customers will not be moved unless all doors, hatches, gates and tie-down devices are secured.

10. Customer will indemnify City from liability for any loss of life, personal injury or damage to property as a result of the overloading or improper loading of rail cars.

11. City Services do not include the loading and unloading of cargos. No loading or unloading on the City Tracks will be permitted. City Services do not include "intra plant" moves, from one portion of a Customer's facility to another.

12. Customer and/or BNSF will be solely responsible for any rail cars or cargos requiring special handling including, without limitation, refrigerated units and cargos consisting of or containing hazardous substances or materials. Customer will advise City of any cargos consisting of or containing hazardous substances or materials as defined by applicable federal, state or local statutes, rules and regulations, including flammable, explosive or radioactive materials. Customer will be solely responsible for leaks, spills and other releases from or associated with rail cars on City Tracks for Customers' account and will defend, indemnify and hold City free and harmless with respect to any such occurrences, including payment of all remediation costs.

13. Any rail car delivered at Customer's request to BNSF that is refused by BNSF for any reason will be returned to Customer's spur track and an additional switching fee will be charged.

14. City reserves the right to withhold City Services from any Customer for a cause, which may include (without limitation) nonpayment and account delinquency or safety issues of any kind.

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CERTIFICATE OF GOVERNING BODY'S ACTION

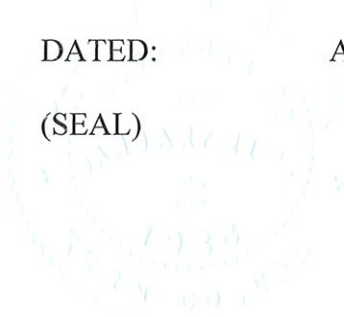

STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF KERN        )

I, Christine Wilson, City Clerk of the City of Shafter, California, DO HEREBY CERTIFY that the above RAIL OPERATIONS PROCEDURES was duly passed and adopted by the City Council of the City of Shafter at a Regular Meeting held on the 1<sup>st</sup> day of May, 2012, by the following vote:

AYES:                    Alvarado, Colvard, Johnston, Nelson, and Prout.  
NOES:                    None.  
ABSENT:                 None.  
ABSTAINING:            None.

DATED:                 August 27, 2012

(SEAL)

  
  
\_\_\_\_\_  
City Clerk of the City of Shafter

## EXHIBIT 1

### CITY RAIL OPERATIONS FEES

1. Switching Fee: \$300 per car (roundtrip).
2. Crew Standby Fee for additional switching/rail car movements: \$120 per hour.
3. Customer Contact for Invoices: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Fees will be billed only to Customer and not to any third party, including consignment suppliers.

4. Payment due within thirty (30) days of Invoice. Delinquent amounts bear interest at eighteen percent (18%) per annum. City Services will be suspended for amounts not received by City within forty-five (45) days following date of Invoice. Amounts remaining delinquent sixty (60) days following date of Invoice may be offset against any amounts due from any source from City to Customer.

5. Crew Standby Fees apply to normal Business Days (Monday through Friday and excluding state and national holidays) and normal Business Hours (7:30 a.m. through 4:30 p.m.). Customer requests for City Services at other times will result in switching fees and/or Crew Standby Fees from 50% to 100% in excess of those amounts described above.

6. City may elect to charge a demurrage fee per car per day for any rail cars remaining on the City Tracks through no fault of City: (1) Business Day following (a) delivery from the BNSF mainline or (b) switching to the City Tracks from Customer's facility, first 24 hours free, days 2-5 @ \$75 per day, days 6-10 @\$100 per day and day 11 and over @\$150 per day.

7. If a Customer requests City Services to reposition a car for purposes of unloading, City will bill the requesting Customer One Hundred Fifty Dollars (\$150) for each car that City turns and an additional Crew Standby Fee of One Hundred Twenty Dollars (\$120) per hour.

8. City may adjust City Fees at any time. City Fees may not be uniform among all Customers. Rates may vary based on the volume, level of service required by a Customer and other factors. Rates may also be adjusted periodically in accordance with City wage rates and prevailing industry standards. City will provide written notice to Customer of rate adjustments and post the same on the City website

**CITY OF SHAFTER  
RAIL OPERATIONS CONTACT INFORMATION FORM**

**Customer Contact for Accounts Payable:**

Preferred Billing Method:  Mail  Email

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Customer Contact for Certificate of Insurance:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Customer Contact in Case of Emergency:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Method of Quarterly Inspection of Industry Track: (CHECK ONE)**

Acceptance of City contracted inspections services at rate of \$\_\_\_\_\_ per quarter.

OR

Inspection performed by a certified rail track inspector as follows:

- ~ Inspection reports sent to the City of Shafter.
- ~ Inspection reports must show a visual inspection of all switches and single track .
- ~ Compliance with FRA Part 213 standards for Class 1 track.
- ~ Compliance with CPUC standards for walkways and clearances.
- ~ Immediate notification of the City consistent with the City Rail Operations Procedures.

**Acknowledgement:**

I acknowledge receipt of the City of Shafter Rail Operations Procedures, dated May 1, 2012, and hereby accept the terms and conditions outlined.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN TO:** City of Shafter, 336 Pacific Avenue, Shafter, CA 93263