
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
WASHINGTON, DC 20549

FORM 8-K

**CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported): December 6, 2007



**Burlington Northern Santa Fe
Corporation**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

1-11535
(Commission File Number)

41-1804964
(IRS Employer Identification No.)

**2650 Lou Menk Drive,
Fort Worth, TX**
(Address of Principal Executive Offices)

76131
(Zip Code)

(800) 795-2673
(Registrant's Telephone Number, Including Area Code)

(Not Applicable)
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

INFORMATION TO BE INCLUDED IN THE REPORT

Item 5.02 Compensatory Arrangements of Certain Officers.

On December 6, 2007, Burlington Northern Santa Fe Corporation (the “Company”) entered into amended and restated change-in-control agreements with each of the Company’s Named Executive Officers. The amendments included the following changes, which are more consistent with current market practices among large companies and most of which have the effect of reducing the overall benefits provided under the agreements. First, in the event of termination in connection with a change in control, the Named Executive Officers will receive a severance payment equal to 2 times, rather than 2.99 times, their annual salary and target incentive compensation award, plus an additional payment of 0.5 times their annual salary and target incentive compensation award in consideration of a 12-month non-competition provision. Second, in the event of termination in connection with a change in control, the Company-paid health and welfare coverage will be provided for 24 months, rather than 36 months. Third, the excise tax gross-up provision will be modified to provide for up to a 10% reduction of the total change-in-control benefit if such reduction would eliminate the excise tax. The reduction would be 5% in the first three years of employment. Fourth, the previous change-in-control agreements provided that equity awards granted after September 21, 2006 would not accelerate upon a change in control; however, if equity awards were not replaced with comparable equity in a change in control, the employee could terminate employment for good reason and the equity awards would accelerate. The amended agreements provide the Board of Directors (the “Board”) the discretion to determine if the replacement equity awards are comparable and then accelerate the vesting of the equity awards if the replacement equity is not comparable. Fifth, the agreements were amended to comply with the provisions of Section 409A of the Internal Revenue Code, including a revised definition of good reason and other technical changes. The amended agreements will be effective on December 31, 2007.

The form of change in control agreement is attached as Exhibit 10.1 to this Form 8-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 6, 2007, the Board of the Company unanimously approved an amendment and restatement of the Company’s By-Laws. Under the amended and restated Article II, Section 1, the Board was granted greater flexibility in scheduling the annual meeting of stockholders. In February 2007, the Company adopted “majority” voting standard for uncontested elections of Directors. Technical changes in furtherance of this policy were also adopted to both Article II, Section 7 and Article III, Section 1, to exclude withhold votes and abstentions from uncontested Director elections as well as other matters determined by majority vote of shareholders.

The amended and restated By-Laws are attached as Exhibit 3.1 to this Form 8-K.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	By-Laws of Burlington Northern Santa Fe Corporation, as amended and restated December 6, 2007
10.1	Form of Burlington Northern Santa Fe Change in Control Agreement, as amended and restated effective December 31, 2007

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**BURLINGTON NORTHERN SANTA FE
CORPORATION**

Date: December 11, 2007

By: /s/ James H. Gallegos

James H. Gallegos
Vice President & Corporate General Counsel

Exhibit 3.1

As Amended and Restated December 6, 2007

**BY-LAWS
OF
BURLINGTON NORTHERN SANTA FE CORPORATION**

BY-LAWS
OF
BURLINGTON NORTHERN SANTA FE CORPORATION

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BY-LAWS
OF
BURLINGTON NORTHERN SANTA FE CORPORATION

ARTICLE I.

OFFICES

SECTION 1. *Registered Office and Agent.*

The registered office of the corporation is located at 1209 Orange Street in the City of Wilmington, County of New Castle, State of Delaware 19801, and the name of its registered agent at such address is The Corporation Trust Company.

SECTION 2. *Other Offices.*

The corporation may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

SECTION 1. *Annual Meetings.*

A meeting of the stockholders for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held annually at such time on such day as shall be fixed by resolution of the Board of Directors. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

SECTION 2. *Special Meetings.*

Special meetings of the stockholders for any purpose or purposes may be called at any time by a majority of the Board of Directors, by the Chairman of the Board, or by the President and shall be called by the Secretary at the request of the holders of not less than fifty-one percent of all issued and outstanding shares of the corporation entitled to vote at the meeting.

SECTION 3. *Place of Meetings.*

The annual meeting of the stockholders of the corporation shall be held at the general offices of the corporation in the City of Fort Worth, State of Texas, or at such other place in the United States as may be stated in the notice of the meeting. All other

meetings of the stockholders shall be held at such places within or without the State of Delaware as shall be stated in the notice of the meeting.

SECTION 4. *Notice of Meetings.*

Except as otherwise provided by law, written notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the United States mails, postage prepaid, directed to such stockholder at his address as it appears in the stock ledger of the corporation. Each such notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

When a meeting is adjourned to another time and place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is given. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 5. *Quorum.*

At any meeting of the stockholders the holders of record of a majority of the total number of outstanding shares of stock of the corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for all purposes, provided that at any meeting at which the holders of any series or class of stock shall be entitled, voting as a series or class, to elect Directors or to take any other action, the holders of record of a majority of the total number of outstanding shares of such series or class, present in person or represented by proxy, shall constitute a quorum for the purpose of such election or action.

In the absence of a quorum at any meeting, the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or represented by proxy at the meeting, may adjourn the meeting, from time to time, until the holders of the number of shares requisite to constitute a quorum shall be present in person or represented at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally convened.

SECTION 6. *Organization.*

At each meeting of the stockholders, the Chairman of the Board, or if he or she so designates or is absent, the President, shall act as Chairman of the meeting. In the absence of both the Chairman of the Board and the President, such person as shall have been designated by the Board of Directors, or in the absence of such designation a person elected by the holders of a majority in number of shares of stock present in person or represented by proxy and entitled to vote at the meeting, shall act as Chairman of the meeting.

The Secretary or, in his or her absence, an Assistant Secretary or, in the absence of the Secretary and all of the Assistant Secretaries, any person appointed by the Chairman of the meeting shall act as Secretary of the meeting.

SECTION 7. *Voting.*

Unless otherwise provided in the Certificate of Incorporation or a resolution of the Board of Directors creating a series of stock, at each meeting of the stockholders, each holder of shares of any series or class of stock entitled to vote at such meeting shall be entitled to one vote for each share of stock having voting power in respect of each matter upon which a vote is to be taken, standing in his or her name on the stock ledger of the corporation on the record date fixed as provided in these By-Laws for determining the stockholders entitled to vote at such meeting or, if no record date be fixed, at the close of business on the day next preceding the day on which notice of the meeting is given. Shares of its own capital stock belonging to the corporation, or to another corporation if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the corporation, shall neither be entitled to vote nor counted for quorum purposes.

At all meetings of stockholders for the election of Directors the voting shall be as contemplated in Article III, Section 1. All other elections and questions submitted to a vote of the stockholders shall, unless otherwise provided by law or the Certificate of Incorporation, be decided by the affirmative vote of the majority of votes cast (meaning the number of shares voted "for" the subject matter must exceed the number of shares voted "against" it).

SECTION 8. *Inspectors.*

Prior to each meeting of stockholders, the corporation or the Board of Directors shall appoint two Inspectors who are not directors, candidates for directors or officers of the corporation, who shall receive and determine the validity of proxies and the qualifications of voters, and receive, inspect, count and report to the meeting in writing the votes cast on all matters submitted to a vote at such meeting. In case of failure of the corporation or the Board of Directors to make such appointments or in case of failure of any Inspector so appointed to act, the Chairman of the Board shall make such appointment or fill such vacancies.

Each Inspector, immediately before entering upon his or her duties, shall subscribe to an oath or affirmation faithfully to execute the duties of Inspector at such meeting with strict impartiality and according to the best of his or her ability.

SECTION 9. *List of Stockholders.*

The Secretary or other officer or agent having charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of

stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares of each class and series registered in the name of each such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, at the principal place of business of the corporation. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section, or the books of the corporation, or to vote in person or by proxy at any such meeting.

SECTION 10. *Business at Meetings of Stockholders.*

(a) *General.* The business to be conducted at any meeting of stockholders of the corporation shall be limited to such business and nominations as shall comply with the procedures set forth in this Article and Article XII of these By-laws.

(b) *Notification of Stockholder Business.* At any special meeting of stockholders only such business shall be conducted as shall have been brought before the meeting pursuant to the corporation's notice of special meeting. At an annual meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, including matters included pursuant to Rule 14a-8 of the Securities and Exchange Commission, or (ii) otherwise (a) properly requested to be brought before the meeting by a stockholder of record entitled to vote in the election of directors generally, and (b) constitute a proper subject to be brought before the meeting. In addition to any other applicable requirements, for business (other than the election of directors) to be otherwise properly brought before an annual meeting by a stockholder, the business must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be addressed to and received at the principal executive offices of the corporation, not more than 150 days and not less than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the meeting is more than 30 days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the 15th day following the day on which notice of the date of the annual meeting was mailed or public disclosure was made, whichever first occurs. A stockholder's notice to the Secretary shall set forth as to each matter (other than the election of directors) the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business and of each beneficial owner on behalf of which the stockholder is acting, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder and by any such beneficial

owner, (iv) a representation that the stockholder is a holder of record of capital stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to present such business, (v) any material interest of the stockholder and of any such beneficial owner in such business; and (vi) whether the proponent intends or is part of a group which intends to solicit proxies from other stockholders in support of such proposal.

Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 10 of Article II, *provided, however*, that nothing in this Section 10 of Article II shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting.

The Chairman of an annual or special meeting shall have the power and duty to determine and shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 10 of Article II, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

SECTION 11. *No Stockholder Action by Consent.*

Any action by stockholders of the corporation shall be taken at a meeting of stockholders and no action may be taken by written consent of stockholders entitled to vote upon such action.

ARTICLE III.

BOARD OF DIRECTORS

SECTION 1. *Number, Qualification and Term of Office.*

The business, property and affairs of the corporation shall be managed by a Board consisting of not less than three or more than twenty-one Directors. The Board of Directors shall from time to time by a vote of a majority of the Directors then in office fix within the maximum and minimum limits the number of Directors to constitute the Board. At each annual meeting of stockholders a Board of Directors shall be elected by the stockholders for a term of one year. Except as provided in Section 2 of this Article, each Director shall be elected by the vote of the majority of the votes cast with respect to the Director at any meeting for the election of Directors at which a quorum is present, provided that if the number of nominees exceeds the number of Directors to be elected, the Directors shall be elected by the vote of a plurality of the votes cast (instead of by votes cast for or against a nominee) in the election of Directors. For purposes of this Section, a majority of the votes cast means that the number of shares voted "for" a Director nominee must exceed the number of shares voted "against" that Director nominee. If a director does not receive a majority of the votes cast, the director shall offer to tender his or her resignation to the Board. The Directors and Corporate

Governance Committee shall consider the resignation offer and recommend to the Board whether to accept or reject the resignation, or whether other action should be taken. The independent Directors of the Board will act on the recommendation of the Directors and Corporate Governance Committee within 90 days following certification of the shareholder vote. Thereafter, the Board will promptly disclose their decision whether to accept or reject the Director's resignation offer and the reasons for such a decision. Within ten days from a Board determination on the tendered resignation, the Company will make a filing with the Securities and Exchange Commission announcing the decision and the reasons for the decision. In making its decision, the Board may consider the following range of actions: accept the resignation; refuse the resignation of the Director but address the underlying causes of the withheld votes; or take such other action as the Board deems to be in the best interests of the Company. Any Director who tenders his or her resignation offer pursuant to this provision shall not participate in the Directors and Corporate Governance Committee recommendation or Board action regarding whether to accept the resignation offer. If no members of the Directors and Corporate Governance Committee have received a majority of the votes cast in the election, then the independent directors of the Board will consider this matter and act without first receiving a recommendation from that Committee. Each Director shall serve until his or her successor is elected and shall qualify.

SECTION 2. *Vacancies.*

Vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of Directors may be filled by a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director, at any regular or special meeting of the Board of Directors.

SECTION 3. *Resignations.*

Any Director may resign at any time upon written notice to the Secretary of the corporation. Such resignation shall take effect on the date of receipt of such notice or at any later date specified therein; and the acceptance of such resignation, unless required by the terms thereof or Section 1 of this Article, shall not be necessary to make it effective. When one or more Directors shall resign effective at a future date, a majority of the Directors then in office, including those who have resigned, shall have power to fill such vacancy or vacancies to take effect when such resignation or resignations shall become effective.

SECTION 4. *Removals.*

Any Director may be removed, with or without cause, at any special meeting of the stockholders called for that purpose, by the affirmative vote of the holders of a majority in number of shares of the corporation entitled to vote for the election of Directors, and the vacancy in the Board caused by any such removal may be filled by the stockholders at such a meeting.

SECTION 5. *Place of Meetings; Books and Records.*

The Board of Directors may hold its meetings, and have an office or offices, at such place or places within or without the State of Delaware as the Board from time to time may determine.

The Board of Directors, subject to the provisions of applicable law, may authorize the books and records of the corporation, and offices or agencies for the issue, transfer and registration of the capital stock of the corporation, to be kept at such place or places outside of the State of Delaware as, from time to time, may be designated by the Board of Directors.

SECTION 6. *Annual Meeting of the Board.*

The first meeting of each newly elected Board of Directors, to be known as the Annual Meeting of the Board, for the purpose of electing officers, designating committees and the transaction of such other business as may come before the Board, shall be held as soon as practicable after the adjournment of the annual meeting of stockholders, and no notice of such meeting shall be necessary to the newly elected Directors in order legally to constitute the meeting, provided a quorum shall be present. In the event such meeting is not held due to the absence of a quorum, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or as shall be specified in a written waiver signed by all of the newly elected Directors.

SECTION 7. *Regular Meetings.*

The Board of Directors shall, by resolution, provide for regular meetings of the Board at such times and at such places as it deems desirable. Notice of regular meetings need not be given.

SECTION 8. *Special Meetings.*

Special meetings of the Board of Directors may be called by the Chairman of the Board or the President and shall be called by the Secretary on the written request of three Directors on such notice as the person or persons calling the meeting shall deem appropriate in the circumstances. Notice of each such special meeting shall be mailed to each Director or delivered to each Director by telephone, telegraph or any other means of electronic communication, in each case addressed to the Director's residence or usual place of business, or delivered in person or given to the Director orally. The notice of meeting shall state the time and place of the meeting but need not state the purpose thereof. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

SECTION 9. *Quorum and Manner of Acting.*

Except as otherwise provided by statute, the Certificate of Incorporation or these By-Laws, the presence of a majority of the total number of Directors shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Directors, and the act of a majority of the Directors present at any such meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the Directors present may adjourn the meeting, from time to time, until a quorum is present. Notice of any such adjourned meeting need not be given.

SECTION 10. *Chairman of the Board.*

A Chairman of the Board shall be elected by the Board of Directors from among its members for a prescribed term and may or may not be, at the discretion of the Board of Directors, an employee or an officer of the corporation. If the Chairman is neither an employee nor an officer of the corporation he or she may be designated "non-executive." The Chairman of the Board shall perform such duties as shall be prescribed by the Board of Directors and, when present, shall preside at all meetings of the stockholders and the Board of Directors. In the absence or disability of the Chairman of the Board, the Board of Directors shall designate a member of the Board to serve as Chairman of the Board and such designated Board Member shall have the powers and perform the duties of the office; provided, however, that if the Chairman of the Board shall so designate or shall be absent from a meeting of stockholders, the President shall preside at such meeting of stockholders.

SECTION 11. *Organization.*

At every meeting of the Board of Directors, the Chairman of the Board or, in his or her absence the President or, if both of these individuals are absent, a Chairman chosen by a majority of the Directors present shall act as Chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary or, in the absence of the Secretary and all the Assistant Secretaries, any person appointed by the Chairman of the meeting shall act as Secretary of the meeting.

SECTION 12. *Consent of Directors in Lieu of Meeting.*

Unless otherwise restricted by the Certificate of Incorporation or by these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board, may be taken without a meeting by a unanimous consent of the Directors or committee members in writing or by electronic transmission, and such written consent is filed with the minutes of the proceedings of the Board or committee.

SECTION 13. *Telephonic Meetings.*

Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting.

SECTION 14. *Compensation.*

Each Director who is not a full-time salaried officer of the corporation or any of its wholly owned subsidiaries, when authorized by resolution of the Board of Directors, may receive Director compensation in the form of a retainer and in addition may be paid a fixed fee and reimbursed for his or her reasonable expenses for attendance at each regular or special meeting of the Board or any Committee thereof.

ARTICLE IV.

COMMITTEES OF THE BOARD OF DIRECTORS

SECTION 1. *Executive Committee.*

The Board of Directors may, in its discretion, designate annually an Executive Committee consisting of not less than three Directors as it may from time to time determine. The Committee shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it, but the Committee shall have no power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, (ii) adopting, amending or repealing any By-Law of the corporation or (iii) such other matters as the Board may from time to time specify.

SECTION 2. *Audit Committee.*

The Board of Directors shall designate annually an Audit Committee consisting of not less than three Directors as it may from time to time determine. The Audit Committee shall provide assistance to the Board in fulfilling its oversight responsibility with respect to the integrity of the financial statements of the corporation, the performance of the corporation's internal audit function and the independent auditor, the independent auditor's qualifications and independence, the compliance by the corporation with legal and regulatory requirements and such other matters as prescribed by the Board from time to time. The Board shall adopt a charter for the Audit Committee, and the Audit Committee shall review and assess the adequacy of the charter on an annual basis. All members of the Audit Committee shall meet the requirements of the charter and of the New York Stock Exchange and any other relevant regulatory body, as interpreted by the Board in its reasonable business judgment. The Board may elect or appoint a Chairman of the Audit Committee who will have authority to act on behalf of the committee

between meetings. The Chairman may appoint a temporary Chairman in his or her absence.

SECTION 3. Compensation and Development Committee.

The Board of Directors shall designate annually a Compensation and Development Committee, consisting of not less than three Directors as it may from time to time determine. The Compensation and Development Committee shall provide assistance to the Board in discharging its responsibilities relating to the compensation and development of the Chief Executive Officer and other executive officers as designated by the Board, and with respect to equity-based plans, incentive compensation plans, retirement plans, and employee benefit plans, and such other matters as are prescribed by the Board from time to time. The Board shall adopt a charter for the Compensation and Development Committee, and the Compensation and Development Committee shall review and assess the adequacy of the charter on an annual basis. All members of the Compensation and Development Committee shall meet the requirements of the charter and of the New York Stock Exchange and any other relevant regulatory body, as interpreted by the Board in its reasonable business judgment. The Board may elect or appoint a Chairman of the Compensation and Development Committee who will have authority to act on behalf of the committee between meetings. The Chairman may appoint a temporary Chairman in his or her absence.

SECTION 4. Directors and Corporate Governance Committee.

The Board of Directors may, in its discretion, designate annually a Directors and Corporate Governance Committee, consisting of not less than three Directors as it may from time to time determine. The Directors and Corporate Governance Committee shall provide assistance to the Board in discharging its responsibility for ensuring the effective governance of the corporation and such other matters as are prescribed by the Board from time to time. The Board shall adopt a charter for the Directors and Corporate Governance Committee, and the Directors and Corporate Governance Committee shall review and assess the adequacy of the charter on an annual basis. All members of the Directors and Corporate Governance Committee shall meet the requirements of the charter and of the New York Stock Exchange and any other relevant regulatory body, as interpreted by the Board in its reasonable business judgment. The Board may elect or appoint a Chairman of the Directors and Corporate Governance Committee who will have authority to act on behalf of the committee between meetings. The Chairman may appoint a temporary Chairman in his or her absence.

SECTION 5. Committee Chairman, Books and Records.

Unless designated by the Board of Directors, each Committee shall elect a Chairman to serve for such term as it may determine. Each committee shall fix its own rules of procedure and shall meet at such times and places and upon such call or notice as shall be provided by such rules. It shall keep a record of its acts and proceedings, and all

action of the Committee shall be reported to the Board of Directors at the next meeting of the Board.

SECTION 6. *Alternates.*

Alternate members of the Committees prescribed by this Article IV may be designated by the Board of Directors from among the Directors to serve as occasion may require. Whenever a quorum cannot be secured for any meeting of any such Committee from among the regular members thereof and designated alternates, the member or members of such Committee present at such meeting and not disqualified from voting, whether or not that member or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Alternate members of such Committees shall receive a reimbursement for expenses and compensation at the same rate as regular members of such Committees.

SECTION 7. *Other Committees; Subcommittees; Delegation.*

The Board of Directors may designate such other Committees, each to consist of one or more Directors, as it may from time to time determine, and each such Committee shall serve for such term and shall have and may exercise, during intervals between meetings of the Board of Directors, such duties, functions and powers as the Board of Directors may from time to time prescribe. Any Committee of the Board may create one or more subcommittees of the Committee and delegate to the subcommittee any or all of the powers and authority of the Committee. A subcommittee shall consist of one or more members of the Committee.

SECTION 8. *Quorum and Manner of Acting.*

At each meeting of any Committee the presence of a majority of the members of such Committee, whether regular or alternate, shall be necessary to constitute a quorum for the transaction of business, and if a quorum is present the concurrence of a majority of those present shall be necessary for the taking of any action; provided, however, that no action may be taken by the Executive Committee when two or more officers of the corporation are present as members at a meeting of such Committee unless such action shall be concurred in by the vote of a majority of the members of such Committee who are not officers of the corporation.

SECTION 9. *Election under Delaware General Corporation Law.*

The corporation elects to be governed by paragraph (2) of Section 141(c) of the Delaware General Corporation Law in determining the authority of the Board of Directors to delegate powers to a committee of the Board of Directors.

ARTICLE V.

OFFICERS

SECTION 1. *Number.*

The officers of the corporation shall be a President, a Vice President and Chief Financial Officer, a Vice President-Law, a Secretary, and a Treasurer, each of which officers shall be elected by the Board of Directors, and such other officers as the Board of Directors may determine, in its discretion, to elect. Any number of offices may be held by the same person. Any officer may hold such additional title descriptions or qualifiers such as "Chief Executive Officer," "Chief Operating Officer," "Senior Vice President," "Executive Vice President" or "Assistant Secretary" or such other title as the Board of Directors shall determine.

SECTION 2. *Election, Term of Office and Qualifications.*

The officers of the corporation shall be elected annually by the Board of Directors. Each officer elected by the Board of Directors shall hold office until the officer's successor shall have been duly elected and qualified, or until the officer shall have died, resigned or been removed in the manner hereinafter provided.

SECTION 3. *Resignations.*

Any officer may resign at any time upon written notice to the Secretary of the corporation. Such resignation shall take effect at the date of its receipt, or at any later date specified therein; and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make it effective.

SECTION 4. *Removals.*

Any officer elected or appointed by the Board of Directors may be removed, with or without cause, by the Board of Directors at a regular meeting or special meeting of the Board. Any officer or agent appointed by any officer or committee may be removed, either with or without cause, by such appointing officer or committee or by the Board of Directors.

SECTION 5. *Vacancies.*

Any vacancy occurring in any office of the corporation may be filled for the unexpired portion of the term in the same manner as prescribed in these By-Laws for regular election or appointment to such office.

SECTION 6. *Compensation of Officers.*

The compensation of all officers elected by the Board of Directors shall be approved or authorized by the Board of Directors or by the President when so authorized by the Board of Directors or these By-Laws, subject to the responsibilities reserved for the

Compensation and Development Committee pursuant to Article IV, Section 3 of these By-Laws.

SECTION 7. President and Chief Executive Officer.

The President shall be the chief executive officer of the corporation and shall have, subject to the control of the Board of Directors, the general executive responsibility for the management and direction of the business and affairs of the corporation, and the general supervision of its officers, employees and agents. He or she shall have the power to appoint any and all officers, employees and agents of the corporation not required by these By-Laws to be elected by the Board of Directors or not otherwise elected by the Board of Directors in its discretion. He or she shall have the power to accept the resignation of or to discharge any and all officers, employees and agents of the corporation not elected by the Board of Directors. He or she shall sign all papers and documents to which his or her signature may be necessary or appropriate and shall have such other powers and duties as shall devolve upon the chief executive officer of a corporation, and such further powers and duties as may be prescribed for the President by the Board of Directors.

SECTION 8. Vice President and Chief Financial Officer.

The Vice President and Chief Financial Officer shall have responsibility for development and administration of the corporation's financial plans and all financial arrangements, its insurance programs, its cash deposits and short-term investments, its accounting policies, and its federal and state tax returns. Such officer shall also be responsible for the corporation's internal control procedures and for its relationship with the financial community.

SECTION 9. Vice President-Law.

The Vice President-Law shall be the chief legal advisor of the corporation and shall have charge of the management of the legal affairs and litigation of the corporation.

SECTION 10. Secretary.

The Secretary shall record the proceedings of the meetings of the stockholders and directors, in one or more books kept for that purpose; see that all notices are duly given in accordance with the provisions of the By-Laws or as required by law; have charge of the corporate records and of the seal of the corporation; affix the seal of the corporation or a facsimile thereof, or cause it to be affixed, to all certificates for shares, to the extent such shares are certificated, prior to the issue thereof and to all documents the execution of which on behalf of the corporation under its seal is duly authorized by the Board of Directors or otherwise in accordance with the provisions of the By-Laws; keep a register of the post office address of each stockholder, director or member, sign with the Chairman of the Board or President certificates for shares of stock of the corporation, to the extent such shares are certificated, the issuance of which shall have been duly authorized by resolution of the Board of Directors; have general charge of the stock transfer books of the corporation; and, in general, perform all duties incident to the office of Secretary and such

other duties as from time to time may be assigned by the Board of Directors, the Chairman of the Board, the President or the Vice President-Law.

SECTION 11. *Treasurer.*

The Treasurer shall have the responsibility for the custody and safekeeping of all funds of the corporation and shall have charge of their collection, receipt and disbursement; shall receive and have authority to sign receipts for all monies paid to the corporation and shall deposit the same in the name and to the credit of the corporation in such banks or depositories as the Board of Directors shall approve; shall endorse for collection on behalf of the corporation all checks, drafts, notes and other obligations payable to the corporation; shall sign or countersign all notes, endorsements, guaranties and acceptances made on behalf of the corporation when and as directed by the Board of Directors; shall give bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors may require; shall have the responsibility for the custody and safekeeping of all securities of the corporation; and in general shall have such other powers and perform such other duties as are incident to the office of Treasurer and as from time to time may be prescribed by the Board of Directors or delegated by the President or the Vice President and Chief Financial Officer.

SECTION 12. *Absence or Disability of Officers.*

In the absence or disability of the Chairman of the Board or the President, the Board of Directors may designate, by resolution, individuals to perform the duties of those absent or disabled. The Board of Directors may also delegate this power to a committee or to a senior corporate officer.

ARTICLE VI.

STOCK CERTIFICATES AND TRANSFER THEREOF

SECTION 1. *Uncertificated Shares and Stock Certificates.*

The Board of Directors by resolution may determine that shares of some or all of any or all classes or series of stock of the corporation shall be uncertificated and shall not be represented by certificates, except to the extent as may be required by applicable law or as otherwise may be authorized by the Secretary or an Assistant Secretary. Notwithstanding the foregoing, shares of stock represented by a certificate and issued and outstanding prior to the adoption of a Board of Directors resolution pursuant to the preceding sentence shall remain represented by a certificate until surrendered to the corporation. In the event shares of stock are represented by a certificate, such certificates of stock of each class and series shall be signed by either the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares, and the class and series thereof, owned by such holder in the corporation. Any and all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to

be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

SECTION 2. *Transfer of Stock.*

Transfer of shares of the capital stock of the corporation shall be made only on the books of the corporation by the holder thereof, or by the holder's attorney thereunto duly authorized, and, with regard to certificated shares, on surrender of the certificate or certificates for such shares. A person in whose name shares of stock stand on the books of the corporation shall be deemed the owner thereof as regards the corporation, and the corporation shall not, except as expressly required by statute, be bound to recognize any equitable or other claim to, or interest in, such shares on the part of any other person whether or not it shall have express or other notice thereof.

SECTION 3. *Transfer Agent and Registrar.*

The corporation shall at all times maintain a transfer office or agency as required by applicable law. The corporation may, in addition to the said offices, if and whenever the Board of Directors shall so determine, maintain in such place or places as the Board shall determine, one or more additional transfer offices or agencies, each in charge of a transfer agent designated by the Board, where the shares of capital stock of the corporation of any class or classes shall be transferable, and also one or more registry offices, each in charge of a registrar designated by the Board of Directors, where such shares of stock of any class or classes shall be registered. Except as otherwise provided by resolution of the Board of Directors in respect of temporary certificates, no certificates for shares of capital stock of the corporation shall be valid unless countersigned by a transfer agent and registered by a registrar authorized as aforesaid.

SECTION 4. *Additional Regulations.*

The Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of the capital stock of the corporation.

SECTION 5. *Lost, Destroyed or Mutilated Certificates.*

The Board of Directors may provide for the issuance of new certificates, or may provide procedures for the issuance of uncertificated shares, of stock to replace certificates of stock lost, stolen, mutilated or destroyed or alleged to be lost, stolen, mutilated or destroyed upon such terms and in accordance with such procedures as the Board of Directors shall deem proper and prescribe.

SECTION 6. *Record Date.*

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive

payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE VII.

DIVIDENDS, SURPLUS, ETC.

Except as otherwise provided by statute or the Certificate of Incorporation, the Board of Directors may declare dividends upon the shares of its capital stock either (1) out of its surplus, or (2) in case there shall be no surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year, whenever, and in such amounts as, in its opinion, the condition of the affairs of the corporation shall render it advisable. Dividends may be paid in cash, in property or in shares of the capital stock of the corporation.

ARTICLE VIII.

SEAL

The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE IX.

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January of each year.

ARTICLE X.

INDEMNIFICATION

SECTION 1. *Right to Indemnification.*

Each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a

"proceeding"), by reason of the fact that he or she is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the full extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), or by other applicable law as then in effect, against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators, *provided, however*, that except as provided in Section 2 of this Article with respect to proceedings seeking to enforce rights to indemnification, the corporation shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); *provided, however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee while a director or officer, including, without limitation, service to an employee benefit plan, except as required by law) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such indemnitee is not entitled to be indemnified under this Section 1, or otherwise.

SECTION 2. *Right of Indemnitee to Bring Suit.*

If a claim under Section 1 of this Article is not paid in full by the corporation within sixty days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the indemnitee shall be entitled to be paid also the expense of prosecuting such suit. The indemnitee shall be presumed to be entitled to indemnification under this Article upon submission of a written claim (and, in an action brought to enforce a claim for an advancement of expenses where the required undertaking, if any is required, has been tendered to the corporation), and thereafter the corporation shall have the burden of proof to overcome the presumption that the indemnitee is so entitled. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its

stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the indemnitee is not entitled to indemnification shall be a defense to the suit or create a presumption that the indemnitee is not so entitled, except as required by law.

SECTION 3. *Nonexclusivity of Rights.*

The rights to indemnification and to the advancement of expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 4. *Insurance, Contracts and Funding.*

The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law. The corporation may enter into contracts with any indemnitee in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

SECTION 5. *Definition of Director and Officer.*

Any person who is or was serving as a director of a wholly owned subsidiary of the corporation shall be deemed, for purposes of this Article only, to be a director or officer of the corporation entitled to indemnification under this Article.

SECTION 6. *Indemnification of Employees and Agents of the Corporation.*

The corporation may, by action of its Board of Directors from time to time, grant rights to indemnification and advancement of expenses to employees and agents of the corporation with the same scope and effects as the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

ARTICLE XI.

CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

SECTION 1. *Checks, Drafts, Etc.; Loans.*

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall, from time to time, be determined by resolution of the Board of Directors. No loans shall be contracted on behalf of the corporation unless authorized by the Board of Directors. Such authority may be general or confined to specific circumstances.

SECTION 2. *Deposits.*

All funds of the corporation shall be deposited, from time to time, to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select, or as may be selected by any officer or officers, agent or agents of the corporation to whom such power may, from time to time, be delegated by the Board of Directors; and for the purpose of such deposit, the Chairman, the President, any Vice President, the Treasurer or any Assistant Treasurer, the Secretary or any Assistant Secretary or any other officer or agent to whom such power may be delegated by the Board of Directors, may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the corporation.

ARTICLE XII.

NOMINATIONS OF DIRECTOR CANDIDATES

SECTION 1. *General.*

Nomination of candidates for election as directors of the corporation at any meeting of stockholders called for election of directors (an "Election Meeting") may be made by the Board of Directors or by any stockholder entitled to vote at such Election Meeting.

SECTION 2. *Nominations by Board of Directors.*

Nominations made by the Board of Directors shall be made at a meeting of the Board of Directors, or by written consent of directors in lieu of a meeting, not less than 30 days prior to the date of the Election Meeting. At the request of the Secretary of the corporation each proposed nominee shall provide the corporation with such information concerning himself or herself as is required, under the rules of the Securities and Exchange Commission, to be included in the corporation's proxy statement soliciting proxies for his or her election as a director.

SECTION 3. *Nominations by Stockholder.*

Any stockholder who intends to make a nomination at the annual meeting of stockholders shall deliver a notice addressed to the Secretary of the corporation and received at the principal executive offices of the corporation in compliance with the timeliness requirements applicable to a stockholder's notice under Article II, Section 10 of these By-laws and setting forth (a) as to each nominee whom the stockholder proposes to nominate for election as a director, (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of the corporation which are beneficially owned by the nominee and (iv) any other information concerning the nominee that would be required, under the rules of the Securities and Exchange Commission, in a proxy statement soliciting proxies for the election of such nominee; and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder, (ii) the class and number of shares of capital stock of the corporation which are beneficially owned by the stockholder and (iii) whether the proponent intends or is part of a group which intends to solicit proxies from other stockholders in support of the nomination; *provided, however*, that in the event that an Election Meeting is called that is not the annual meeting of stockholders, notice by the stockholder to be timely must be so delivered not later than the close of business on the 15th day following the day on which such notice of the date of the meeting was mailed or public disclosure of such date was made, whichever first occurs. Such notice shall include a signed consent to serve as a director of the corporation, if elected, of each such nominee. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as a director of the corporation.

SECTION 4. *Substitute Nominees.*

In the event that a person is validly designated as a nominee in accordance with Section 2 or Section 3 of this Article XII and shall thereafter become unable or unwilling to stand for election to the Board of Directors, the Board of Directors or the stockholder who proposed such nominee, as the case may be, may designate a substitute nominee.

SECTION 5. *Void Nominations.*

If the Chairman of the Election Meeting determines that a nomination was not made in accordance with the foregoing procedures, such nomination shall be void.

ARTICLE XIII.

AMENDMENTS

These By-Laws may be altered or repealed and new By-Laws may be made by the affirmative vote, at any meeting of the Board, of a majority of the whole Board of Directors, or without a meeting by a unanimous consent of the Directors in writing or by

electronic transmission, subject to the rights of the stockholders of the corporation to amend or repeal By-Laws made or amended by the Board of Directors by the affirmative vote of the holders of record of a majority in number of shares of the outstanding stock of the corporation present or represented at any meeting of the stockholders and entitled to vote thereon, provided that notice of the proposed action be included in the notice of such meeting.

Amended and Restated Change in Control Agreement as of December 31, 2007

Mr. XXXXXXXXXXXXXXXX:

Burlington Northern Santa Fe Corporation (the “Corporation”) considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. In this connection, the Board of Directors of the Corporation (the “Board”) recognizes that, as is the case with many publicly held corporations, the possibility of a Change in Control (as defined in Section 2) may exist, and that such possibility, and the uncertainty and questions which it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Corporation and its stockholders.

The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Corporation’s management, including yourself, to their assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control.

In order to induce you to remain in the employ of the Corporation or any entity with which the Corporation is considered to be a single employer under Section 414 (b) or Section 414(c) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”) (all such entities, collectively, “Affiliates”), the Corporation agrees that you shall receive the severance benefits set forth in this letter agreement (the “Agreement”) in the event your employment with the Corporation is terminated under the circumstances described below subsequent to a Change in Control, and that you shall be eligible for the parachute tax gross-up and certain other benefits described in this Agreement.

1. TERM. The “Agreement Term” shall begin on December 31, 2007 (the “Effective Date” of this Agreement), and shall end on December 31, 2008, subject to the following:

(i) As of January 1, 2009, and each January 1 thereafter, the Agreement Term shall automatically be extended to the next following December 31; provided, however, that no such extension shall take place if, on or before the September 30 next preceding the date on which the extension would otherwise take place, the Corporation has given notice that it does not wish to extend the Agreement Term; and further provided that no such extension shall take place if the effect of the extension would be to extend the Agreement Term beyond the December 31 coincident with or next following the two-year anniversary of the date on which you cease to be in a position that is at or above salary band 36 (unless, as of such December 31, you are again in a position that is at or above salary band 36); and further provided that subject to paragraph 1(ii) below no such extension shall take place if a Change in Control has occurred prior to the date on which the extension would otherwise take place. For the avoidance of doubt, it is recited here that if a Change in Control described in paragraph 2(i) or 2(iii) occurs, and your Date of Termination occurs after the 24-month anniversary of the date of the Change in Control but before consummation of the transaction approved by the shareholders and before the Agreement Term expires by reason of paragraph (iii) below (relating to a Board

determination that consummation will not occur), the Agreement Term shall be extended to your Date of Termination.

(ii) Subject to paragraph 1(iii) next below, if a Change in Control occurs during the Agreement Term (as it may be extended from time to time), the Agreement Term shall be extended for a period of twenty-four (24) months beyond the last day of the calendar month in which the Change in Control occurs, but in no event less than twelve (12) months beyond the date of the consummation of the Change in Control.

(iii) If a Change in Control described in paragraph 2(iii) or 2(iv) occurs during the Agreement Term (as it may be extended from time to time), but the Board thereafter determines that it will not consummate the transaction or regulatory approval for the transaction is not obtained, then the Board may reduce the 24-month extension period set forth in paragraph 1(ii) next above; provided that the Agreement Term may not end earlier than six (6) months after such notice of reduction is provided by the Board or, if earlier, the date such Agreement Term would end in the absence of action under this paragraph 1(iii).

(iv) In no event, however, shall the Agreement Term extend beyond the end of the calendar month in which your 65th birthday occurs if you are subject to mandatory retirement at such age or to the extent permitted by law.

2. CHANGE IN CONTROL. A “Change in Control” shall be deemed to have occurred if:

(i) Any “person” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than the Corporation, any trustee or other fiduciary holding securities under an employee benefit plan of the Corporation, or any company owned, directly or indirectly, by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation), is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 25% or more of the combined voting power of the Corporation’s then outstanding securities.

(ii) During any period of two consecutive years (not including any period prior to the Effective Date), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Corporation to effect a transaction described in paragraphs (i), (iii) or (iv) of this definition) whose election by the Board or nomination for election by the Corporation’s stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof.

(iii) The stockholders of the Corporation approve a merger or consolidation of the Corporation with any other company other than (a) a merger or consolidation which

would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 80% of the combined voting power of the voting securities of the Corporation (or such surviving entity) outstanding immediately after such merger or consolidation, or (b) a merger or consolidation effected to implement a recapitalization of the Corporation (or similar transaction) in which no “person” (as hereinabove defined) acquires more than 25% of the combined voting power of the Corporation’s then outstanding securities.

(iv) The stockholders of the Corporation adopt a plan of complete liquidation of the Corporation or approve an agreement for the sale or disposition by the Corporation of all or substantially all of the Corporation’s assets. For purposes of this paragraph 2(iv), the term “the sale or disposition by the Corporation of all or substantially all of the Corporation’s assets” shall mean a sale or other disposition transaction or series of related transactions involving assets of the Corporation or of any direct or indirect subsidiary of the Corporation (including the stock of any direct or indirect subsidiary of the Corporation) in which the value of the assets or stock being sold or otherwise disposed of (as measured by the purchase price being paid therefor or by another objective method in a case where there is no readily ascertainable purchase price) constitutes more than two-thirds of the fair market value of the Corporation (as hereinafter defined). For purposes of the preceding sentence, the “fair market value of the Corporation” shall be the aggregate market value of the outstanding shares of common stock of the Corporation (on a fully diluted basis) plus the aggregate market value of the Corporation’s other outstanding equity securities (excluding employee stock options). The aggregate market value of the shares of common stock of the Corporation (on a fully diluted basis) outstanding on the date of the execution and delivery of a definitive agreement with respect to the transaction or series of related transactions (the “Transaction Date”) shall be determined by the average closing price of the shares of common stock of the Corporation for the ten trading days immediately preceding the Transaction Date. The aggregate market value of any other equity securities of the Corporation shall be determined in a manner similar to that prescribed in the immediately preceding sentence for determining the aggregate market value of the shares of common stock of the Corporation.

A Change in Control that occurs prior to the beginning of the Agreement Term shall be disregarded for purposes of this Agreement.

3. **BASIS OF EMPLOYMENT TERMINATION.** If (x) your Date of Termination (or the date of delivery of the applicable Notice of Termination) occurs during the Agreement Term and is coincident with or follows the occurrence of a Change in Control or (y) if you have a disability during the Agreement Term after the occurrence of a Change in Control, then you shall be eligible for payments and benefits in accordance with, and to the extent provided by, Section 4, with such eligibility determined on the basis for your termination of employment. For purposes of this Agreement, the basis for your termination of employment shall be determined in accordance with this Section 3.

(i) Disability. If, as a result of your incapacity due to physical or mental illness or injury, you shall have been absent from the full-time performance of your duties with the Corporation for six (6) consecutive months, and within thirty (30) days after written Notice of Termination is given by the Corporation, you shall not have returned to the full-time performance of your duties, your employment may be terminated by the Corporation for unavailability due to “Disability.” Notwithstanding any other provision of this Agreement, a termination of employment under this paragraph 3(i) shall not cause you to be considered a terminated employee within the meaning of the Corporation’s long term disability plan and your rights thereunder shall not be affected by this Agreement.

(ii) Cause. Your Date of Termination shall be deemed to have occurred for “Cause,” if your Date of Termination occurs because of circumstances described in paragraph 3(ii)(a) or paragraph 3(ii)(b) next below, as determined in accordance with the procedures set forth in paragraphs 3(ii)(A), (B) and (C) next below:

(a) the willful and continued failure by you to substantially perform your duties with the Corporation (other than any such failure resulting from your incapacity due to physical or mental illness or injury, or any such actual or anticipated failure after the issuance of a Notice of Termination by you for Good Reason); or

(b) the willful engaging by you in conduct which is demonstrably and materially injurious to the Corporation, monetarily or otherwise.

For purposes of this paragraph 3(ii), no act, or failure to act, on your part shall be deemed “willful” unless done, or omitted to be done, by you not in good faith and without a reasonable belief that your action or omission was in the best interest of the Corporation. Your Date of Termination shall not be deemed to have occurred for “Cause” unless the procedures described in paragraphs 3(ii)(A), (B) and (C), next below, have been satisfied:

(A) A written notice of alleged Cause is delivered to you by the Board or a member of the Board. In the case of “Cause” described in paragraph 3(ii)(a) (relating to a failure to perform your duties), the written notice shall consist of specific identification of the manner in which the Board or such Board member believes that you have not substantially performed your duties, and shall include a demand for such performance. In the case of “Cause” described in paragraph 3(ii)(b) (relating to conduct injurious to the Corporation), the written notice shall consist of specific identification of the manner in which the Board or such Board member believes that you have engaged in conduct which is demonstrably and materially injurious to the Corporation.

(B) You have received an opportunity to be heard by the Board or a member of the Board, which will consist of delivery to you of reasonable advance written notice of a Board meeting (to be delivered at or after the time you receive the notice of alleged Cause, described in paragraph 3(ii)(A) next above), at which you, together with your counsel, may be heard by the Board, concerning the contents of the notice of alleged Cause and, in the case of “Cause” described in

paragraph 3(ii)(a), the manner in which you intend to achieve substantial performance.

(C) You have received a copy of your Notice of Termination, which will include a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters (3/4) of the entire membership of the Board at a meeting of the Board, which occurs after your opportunity to be heard by the Board (at that meeting or a subsequent meeting), and which finds that in the good faith opinion of the Board you were guilty of conduct set forth in the notice of alleged Cause and which specifies the particulars thereof in detail. The Date of Termination set forth in the Notice of Termination shall be not earlier than thirty (30) days after the notice of alleged Cause has been delivered to you in accordance with paragraph 3(ii)(A).

(iii) Good Reason. Subject to the procedures set forth in paragraphs 3(iii)(A), (B) and (C) next below, you shall be entitled to terminate your employment for Good Reason. For purposes of this Agreement, "Good Reason" shall mean, without your express written consent, the occurrence, after a Change in Control, of any of the circumstances described in paragraphs 3(iii)(a) through (h) next below. However, "Good Reason" shall not exist if such circumstances are fully corrected (or in the case of a relocation described in paragraph 3(iii)(c) next below, if the request to relocate your base of operations is withdrawn) prior to the Date of Termination specified in the Notice of Termination given in respect thereof.

(a) The assignment to you of any duties with a level of responsibility materially inconsistent with the position in the Corporation that you held immediately prior to the Change in Control, or a significant adverse alteration in the status of your responsibilities from those in effect immediately prior to such Change in Control.

(b) A material reduction by the Corporation in your annual base salary as in effect on the Effective Date, and adjusted to reflect such increases as may be made after the Effective Date and prior to the occurrence of a Change in Control, and also adjusted to reflect such decreases as may be made after the Effective Date, but taking decreases into account only to the extent that they are part of across-the-board salary reductions similarly affecting all management personnel of the Corporation and all management personnel of any person in control of the Corporation.

(c) The relocation of your base of operations for the Corporation or any of its Affiliates to a place that is fifty (50) miles farther from your residence immediately prior to the Change in Control than the distance from such residence to your former base of operations for the Corporation or such Affiliate. The determination of whether the distance exceeds 50 miles shall be performed in a manner that is consistent with Internal Revenue Service rules applicable to the determination of deductibility of moving expenses.

(d) The failure by the Corporation to pay to you any material portion of your current compensation or to pay to you any portion of an installment of deferred compensation under any deferred compensation program of the Corporation when such compensation is due.

(e) The failure by the Corporation to continue in effect any compensation plan in which you participate immediately prior to the Change in Control that is material to your total compensation, including but not limited to a material reduction in the benefits (or, in the case of incentive- or performance-based compensation, opportunities) provided to you under the Corporation's Retirement Plan, Supplemental Retirement Plan, Investment and Retirement Plan, Supplemental Investment and Retirement Plan, Incentive Compensation Plan, Stock Incentive Plan, or any substitute plans adopted prior to the Change in Control, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan, or the failure by the Corporation to continue your participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of your participation relative to other participants, as existed at the time of the Change in Control.

(f) The failure by the Corporation to continue to provide you with benefits substantially similar to those enjoyed by you under any of the Corporation's life insurance, medical, health and accident, or disability plans in which you were participating at the time of the Change in Control, the taking of any action by the Corporation which would directly or indirectly materially reduce any of such benefits or deprive you of any material fringe benefit enjoyed by you at the time of the Change in Control, or the provision by the Corporation to you of a number of paid vacation days that is materially less than the number of vacation days to which you were entitled on the basis of years of service with the Corporation in accordance with the Corporation's normal vacation policy in effect at the time of the Change in Control.

(g) The failure of the Corporation to obtain an agreement from any successor to assume and agree to perform this Agreement, as contemplated in Section 7.

(h) Any purported termination of your employment that is not effected pursuant to a Notice of Termination in material compliance with the requirements of paragraph 3(vi) (and, if applicable, the requirements of paragraph 3(ii)), which purported termination shall not be effective for purposes of this Agreement.

You shall not be deemed to have terminated employment for Good Reason unless, within a reasonable time (not more than six (6) months) after the initial existence of the circumstances constituting Good Reason, you have delivered a written Notice of Termination, which:

(A) identifies the circumstances, and the provisions of this paragraph 3(iii), which form the basis for your termination for Good Reason;

(B) demands correction; and

(C) specifies a Date of Termination which is not less than fifteen (15) days nor more than sixty (60) days after the Notice of Termination has been provided to the Corporation;

provided that if the Corporation is reasonably unable to correct the circumstances described in your Notice of Termination within the time period prior to your scheduled Date of Termination, and responds to you in writing within seven (7) days of the receipt of your Notice of Termination notifying you of the time reasonably required to correct the circumstances (which may not be more than thirty (30) days after receipt of your Notice of Termination), your scheduled Date of Termination in your Notice of Termination will be deemed to be postponed until the end of such correction period, and Good Reason will not exist if the circumstances are fully corrected (or, if applicable, the request for relocation is withdrawn) within that correction period. Your continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason hereunder, and your failure to relocate after filing the Notice of Termination will not adversely affect the characterization of the Corporation's relocation request as Good Reason under paragraph 3(iii)(c) above.

(iv) Discharge Absent Cause or Disability. You shall be deemed to have been discharged by the Corporation absent Cause or Disability if your employment is terminated by the Corporation other than in accordance with paragraph 3(i) (relating to Disability) or paragraph 3(ii) (relating to Cause). Your Date of Termination under this paragraph 3(iv) may not be earlier than sixty (60) days after the written Notice of Termination is delivered to you, except that the sixty (60) day notice requirement shall not apply to the extent the Date of Termination occurs prior to the date of a Change in Control. If your employment is terminated in accordance with this paragraph 3(iv) and the Notice of Termination is delivered to you within sixty (60) days prior to the occurrence of a Change in Control, your Date of Termination shall be deemed to be, for purposes of Section 4(iii), the day after such Change in Control; provided that, for purposes of the timing of any payments or benefits owed to you under Section 4, the Date of Termination shall be the date specified in the Notice of Termination.

(v) Payment in Lieu of Notice. The Corporation shall be deemed to have complied with the requirement of this Section 3 relating to advance Notice of Termination notwithstanding that the Corporation may have provided you with fewer days' notice than otherwise required pursuant to this Section 3, and in the event of a termination of employment by you for Good Reason, the Corporation may waive your obligation to provide the number of days of notice otherwise required pursuant to this Section 3 (and thereby cause your Date of Termination to occur earlier than the Date of Termination specified in your Notice of Termination for Good Reason) (the days of notice otherwise required to be given by the Corporation or you, as applicable, the "Required Notice Days" and the number of Required Notice Days less the number of days of notice actually provided by the Corporation or you, as applicable, the "Waived Notice Days"); provided that the Corporation shall pay you a cash amount equal to the base salary that you would have earned during the Waived Notice Days had the

Corporation provided you with, or you provided the Corporation with, as applicable, the number of Required Notice Days. Such payment shall be made in a lump sum no later than the fifth day following your Date of Termination.

(vi) Notice of Termination. “Notice of Termination” shall mean a notice that shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of your employment under the provision so indicated and shall specify a Date of Termination in accordance with this Section 3.

(vii) Date of Termination. “Date of Termination” shall mean your ceasing to be employed by the Corporation and the Affiliates; provided that the employment relationship will be deemed to have ended at the time you and your employer reasonably anticipate that the level of bona fide services you would perform for the Corporation and the Affiliates after such date (whether as an employee or independent contractor, but not as a director) would permanently decrease to no more than 20% of the average level of bona fide services performed over the immediately preceding 36 month period (or the full period of service to the Corporation and the Affiliates if you have performed services for the Corporation and the Affiliates for less than 36 months). In the absence of an expectation that you will perform at the above-described level, the Date of Termination of employment will not be delayed solely by reason of your continuing to be on the Corporation’s and the Affiliates’ payroll after such date. The employment relationship will be treated as continuing intact while you are on a bona fide leave of absence (determined in accordance with Treas. Reg. §1.409A-1(h)).

4. COMPENSATION UPON TERMINATION OR DURING DISABILITY. If (x) your Date of Termination (or the date of delivery of the applicable Notice of Termination) occurs during the Agreement Term and is coincident with or follows the occurrence of a Change in Control or (y) if you have a disability during the Agreement Term and after the occurrence of a Change in Control, then you shall be entitled to payments and benefits in accordance with, and to the extent provided by, this Section 4.

(i) Discharge for Cause and Voluntary Resignation. If your employment is terminated by the Corporation for Cause, or is terminated by you other than for Good Reason, the Corporation shall pay you your full base salary through the Date of Termination at the rate in effect at the time Notice of Termination is given, with payment to be made no later than the fifth day following your Date of Termination, plus all other amounts to which you are entitled under any compensation plan of the Corporation or any Affiliate at the time such payments are due, and the Corporation shall have no further obligations to you under this Agreement.

(ii) Disability. During any period that you fail to perform your full-time duties with the Corporation as a result of incapacity due to physical or mental illness or injury, you shall continue to receive your base salary at the rate in effect at the commencement of any such period, together with all compensation payable to you under any long term disability plan or other similar plan during such period, until your employment is terminated pursuant to paragraph 3(i). Thereafter, or in the event your

employment shall be terminated by reason of your death, your benefits shall be determined under the Corporation's retirement, insurance and other compensation programs then in effect in accordance with the terms of such program; however, your receipt of benefits under the long term disability plan will not be affected by your termination under this Agreement.

(iii) Termination for Good Reason and Discharge Absent Cause or Disability. If your employment is terminated by you for Good Reason, or by the Corporation absent Cause or Disability (as described in paragraph 3(iv)), then you shall be entitled to the payments and benefits described below, subject to Section 14:

(a) Prior Salary and Deferrals. The Corporation shall pay to you (1) your full base salary through your Date of Termination at the rate in effect at the time the Notice of Termination is given, with payment to be made no later than the fifth day following your Date of Termination; (2) a lump sum cash payment equal to your Bonus Rate (defined below) for the year in which your Date of Termination occurs, subject to a pro rata reduction for the portion of the year after your Date of Termination, with payment to be made at the time specified in paragraph 4(iv)(a); and (3) all other amounts to which you are entitled under any compensation plan of the Corporation, at the time such payments are due under the terms of such plans.

(b) Additional Salary and Severance. In lieu of any further salary or bonus payments to you for periods subsequent to your Date of Termination, and except as provided in paragraph 4(iv)(b), the Corporation will pay to you, at the time specified in paragraph 4(iv)(a), a lump sum salary and bonus distribution, in an amount equal to the sum of: (I) a severance payment of (1) 2.0 times your Salary Rate plus (2) 2.0 times your Bonus Rate plus (II) a payment in return for the imposition of the requirements of paragraph 4(iv)(b) (relating to competition) equal to (1) 0.5 times your Salary Rate plus (2) 0.5 times your Bonus Rate.

For purposes of this paragraph 4(iii)(b):

(A) Your "Salary Rate" shall be equal to the greatest of: (1) your annual salary as in effect as of the Date of Termination, inclusive of amounts that would have been included in annual salary if such amounts had not been deferred under the Burlington Northern Santa Fe Corporation Supplemental Investment and Retirement Plan or foregone under any other arrangement of the Corporation or its Affiliates providing for the elective deferral of salary, (2) your highest consecutive twelve (12) months' salary over the twenty-four (24) month period preceding the Date of Termination, or (3) your annual salary as in effect immediately prior to the Change in Control.

(B) Your "Bonus Rate" shall be the amount which you would have received under the Corporation's Incentive Compensation Plan (or other successor annual bonus plan) for the calendar year in which your

Date of Termination occurs, if you had remained employed by the Corporation for that entire year, and the target level of performance established annually by the Corporation had been achieved for the year. For the avoidance of doubt, it is recited here that achievement of target level of performance shall mean the achievement of a performance level whereby all of the performance objectives for the year are at planned and budgeted levels of performance (as provided in the bonus plan); and such level of performance shall be greater than threshold level of performance (which is the minimum level of performance that will result in payment of any bonus), and shall be less than the maximum level of performance, which is a level of performance above the performance level planned and budgeted for the year, which would result in maximum bonus.

(c) Outstanding Stock Awards. The following provisions of this paragraph 4(iii)(c) shall apply to stock awards granted under the Corporation's 1996 Stock Incentive Plan, 1999 Stock Incentive Plan, or any similar successor plan:

(A) Except as provided in paragraph 4(iii)(d) below, the restrictions shall lapse (to the extent that they have not previously lapsed) on any stock option award or stock appreciation right award outstanding on the Date of Termination, such stock options and stock appreciation rights shall become fully exercisable beginning as of the Date of Termination, and such exercisability shall continue until it would otherwise terminate in accordance with the terms of the applicable award agreement.

(B) Except as provided in paragraph 4(iii)(c)(C) below and paragraph 4(iii)(d) below, the restricted period (or other vesting or similar period) with respect to any restricted stock, restricted stock units and, except for stock options and stock appreciation rights, all other stock-based awards granted to you as of a date prior to the date of the Change in Control shall lapse on your Date of Termination, and such shares shall be distributed to you at the same time as the cash payments described in paragraph 4(iv) are paid. However, any change in the time or form of distribution otherwise provided under this paragraph (B) shall be disregarded to the extent that such change would otherwise result in the application of penalties under Section 409A.

(C) The foregoing provisions of this paragraph 4(iii)(c) shall not apply to the vesting of Performance Stock Awards, and the vesting of Performance Stock Awards shall be governed by the applicable award agreements for such awards, without regard to the terms of this Agreement. For purposes of this Agreement, the term "Performance Stock Awards" shall have the meaning set forth in Section 9 of the 1999 Stock Incentive Plan (and shall include any awards expressly designated as "Performance Stock Awards" under any successor to the 1999 Stock Incentive Plan), but shall not include performance-based Restricted Stock, performance-based Restricted Stock Units, or any other awards.

(d) Awards Granted after Change in Control. For any stock option, stock appreciation right, restricted stock, restricted stock unit, or other stock-based award granted after a transaction that constitutes a Change in Control, such preceding transaction will not be treated as a Change in Control for purposes of paragraph 4(iii)(c) above.

(e) Legal Fees. The Corporation shall pay to you all legal fees and expenses incurred by you at any time during your lifetime as a result of such termination including all such fees and expenses, if any, incurred in contesting or disputing any such termination or in seeking to obtain or enforce any right or benefit provided by this Agreement; provided, however, that payment with respect to any legal action other than in connection with a tax dispute (which is addressed in Section 5) shall be made only if you are successful in the action. With respect to any such fees or expenses paid with respect to any legal action other than a tax dispute, any such payment to you shall be made no later than the end of the calendar year next following the year in which such legal fees or expenses are incurred by you; the amount of fees and expenses reimbursed in any calendar year shall not affect the amount reimbursed in any other year; and such right to reimbursement may not be liquidated or exchanged for any other benefit.

(f) Group Health Coverage. You and your eligible family members shall be entitled to group health coverage to the extent that such coverage is required to be provided in accordance with the provisions of Section 4980B of the Code and Section 601 of the Employee Retirement Income Security Act (sometimes referred to as “COBRA coverage”); provided that your eligibility for such coverage shall be determined as though such coverage was required for the greater of twenty-four (24) months after your Date of Termination or the period otherwise required under the applicable COBRA coverage provisions. For the twenty-four (24) month period during which you are entitled to such medical benefit coverage under this paragraph 4(iii)(f), the premiums for such coverage shall be paid by the Corporation (either by direct payment of such premiums, or by reimbursing you for the premiums, at the election of the Corporation), and the period of such coverage provided under this paragraph 4(iii)(f) shall be counted toward the Corporation’s obligation to provide COBRA coverage. (For the avoidance of doubt, it is recited that the value of all or a portion of such coverage may be included in your taxable gross income as reported by the Corporation.) Except as specifically permitted by Section 409A of the Code and the regulations thereunder as in effect from time to time (collectively, “Section 409A”), the amount of coverage provided pursuant to this paragraph 4(iii)(f) to you and your eligible family members during any calendar year will not affect the amount of such coverage to be provided to you and your eligible family members in any other calendar year, and any reimbursement for any premiums pursuant to this paragraph 4(iii)(f) shall be paid to you no later than the end of the calendar year next following the year in which you pay such premiums.

(g) Welfare Benefits. For the twenty-four (24) month period after your Date of Termination, the Corporation shall arrange to provide you with life

and disability insurance benefits substantially similar to those which you were receiving immediately prior to the Notice of Termination. Benefits otherwise receivable by you pursuant to this paragraph 4(iii)(g) shall be reduced to the extent comparable benefits are actually received by you from another employer or otherwise during the twenty-four (24) month period following your termination, and any such benefits actually received by you shall be reported to the Corporation. Except as specifically permitted by Section 409A, the amount of coverage provided to you pursuant to this paragraph 4(iii)(g) during any calendar year will not affect the amount of such coverage to be provided to you in any other calendar year.

(h) Retiree Coverage. You and your eligible family members shall be eligible for (I) retiree medical benefits under the Corporation's applicable plan, and (II) retiree life insurance coverage under the Corporation's applicable plan to the extent that if, on your Date of Termination, you had terminated employment with the Corporation and its Affiliates and you would have become eligible for severance benefits under the BNSF Railway Company Severance Plan (the "Severance Plan") if you had not been covered by this Agreement, and by reason of the terms of the Severance Plan, you would otherwise have qualified for medical or life coverage or benefits, respectively, either upon your Date of Termination or at such later date as provided in the Severance Plan. In determining whether you would have become eligible for severance benefits under the Severance Plan for purposes of the foregoing provisions of this paragraph 4(iv)(h), you will be treated as having been involuntarily terminated by the Corporation for reasons other than Cause under the Severance Plan, and thereby became an "Eligible Employee" under the Severance Plan, if your employment is terminated by you for Good Reason (as defined in this Agreement). Notwithstanding the foregoing, nothing in this paragraph 4(iv)(h) shall be construed to require your being provided with the benefits described in clause (I) or clause (II) above to the extent that:

(A) you would not have been covered by the Severance Plan as of your Date of Termination, or

(B) you would not have been eligible for such benefits under the Severance Plan as of your Date of Termination,

with such eligibility for coverage or benefits under paragraph (A) or (B) above determined as though you were not covered by this Agreement, and regardless of whether such reduction or elimination of eligibility for coverage or benefits occurs by reason of amendment or termination of the Severance Plan or for any other reason. For purposes of this paragraph (h), the term "Severance Plan" shall include any successor to the Severance Plan to the extent that it provides for post-termination health or life insurance benefits. Except as specifically permitted by Section 409A, the amount of coverage provided pursuant to this paragraph 4(iii)(h) to you and your eligible family members during any calendar year will

not affect the amount of such coverage to be provided to you and your eligible family members in any other calendar year.

(i) **Outplacement and Financial Assistance.** The Corporation shall pay you a lump sum cash payment equal to \$20,000 to be used for outplacement and financial assistance following your Date of Termination (provided that the financial assistance will not be available to you if, during the year in which your Date of Termination occurs, you are expected by the Corporation to be a named executive officer for that year for proxy reporting purposes), with payment to be made at the time specified in paragraph 4(iv)(A); provided that you must submit documentation of any such expenses to the Corporation. If, as of the date that is 12 months following your Date of Termination, you have not provided the Corporation with documentation showing that you have spent \$20,000 on outplacement and financial assistance, you shall repay to the Corporation in cash within five (5) business days after written demand made therefor by the Corporation an amount equal to \$20,000 less the amount you have spent on outplacement and financial assistance within the 12-month period following your Date of Termination.

(iv) **Form of and Restrictions on Payment.** The payments provided for in paragraph 4(iii)(a)(2), paragraph 4(iii)(b) and paragraph 4(iii)(i) (the “Severance Payments”) shall be paid in accordance with the following:

(a) The Severance Payments shall be made not later than the 60th day following your Date of Termination or, if earlier, the fifth day after the General Release and Covenant Not to Sue (as defined below) becomes irrevocable in accordance with its terms.

(b) If you are treated as terminating your employment for Good Reason, or if your employment is terminated by the Corporation without Cause, then, for the 12-month period immediately following your Date of Termination, you agree that:

(I) You will not, without the express written consent of the Chief Executive Officer of the Corporation, be in Competition. For purposes of this paragraph 4(iv)(b)(I), you shall be considered to be in “Competition” during any period in which you are employed by, perform any material services for, or own any interest in (except for an interest of not more than 1% in any publicly traded business) any “Competitor.” The term “Competitor” shall mean:

(A) any Class I railroad;

(B) any company or other enterprise that offers shipping services to the public (including, without limitation, trucking services, rail services, air-freight services, and water-going freight services);

(C) any shipper for or customer of the Corporation; and

(D) any Affiliate or agent of any entity described in paragraphs (A), (B) or (C) above, if the provision of services to or ownership of the interest in such Affiliate or agent could conflict with or impair the interests of the Corporation, in the reasonable judgment of its chief legal officer.

(II) You will not, without the express written consent of the Chief Executive Officer of the Corporation, solicit or attempt to solicit any party who is then or, during the 12-month period prior to such solicitation or attempt by you was (or was solicited to become), a customer or supplier of the Corporation or Affiliate; provided that the restriction in this paragraph 4(iv)(b)(II) shall not apply to any activity on behalf of a business that is not a Competitor.

(III) You will not, without the express written consent of the Chief Executive Officer of the Corporation, solicit, entice, persuade or induce any individual who is employed by the Corporation or any Affiliate of the Corporation (or was so employed within 90 days prior to your action) to terminate or refrain from renewing or extending such employment or to become employed by or enter into contractual relations with any other individual or entity other than the Corporation or its Affiliates, and you will not approach any such employee for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

If, during the 12-month period after your Date of Termination, you violate any of the foregoing provisions of this paragraph (b), you shall not be paid any of the Severance Payments if you have not yet been paid them as of the date of such violation, and the Corporation may, in its discretion, require you to immediately (or at such other time determined by the Corporation) repay to the Corporation all (or, in the discretion of the Corporation, less than all) Severance Payments previously paid to you. You agree that the Corporation, in addition to any other remedies available to it for such breach or threatened breach, shall be entitled to a preliminary injunction, temporary restraining order, or other equivalent relief, restraining you from any actual or threatened breach of the foregoing provisions of this paragraph 4(iv)(b).

(v) Mitigation and Set-Off. Except as provided in paragraph 4(iii)(f), paragraph 4(iii)(g) and paragraph 4(iv)(b), you shall not be required to mitigate the amount of any payment provided for in this Section 4 by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Section 4 be reduced by any compensation earned by you as the result of employment by another employer or by retirement benefits, or be offset against any amount claimed to be owed by you to the Corporation, or otherwise.

(vi) Section 409A. It is intended that the provisions of this Agreement comply with Section 409A, and all provisions of this Agreement shall be construed and

interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A.

(a) Neither you nor any of your creditors or beneficiaries shall have the right to subject any deferred compensation (within the meaning of Section 409A) payable under this Agreement or under any other plan, policy, arrangement or agreement of or with the Corporation or any of its Affiliates (this Agreement and such other plans, policies, arrangements and agreements, the “Corporation Plans”) to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A, any deferred compensation (within the meaning of Section 409A) payable to you or for your benefit under the Corporation Plans may not be reduced by, or offset against, any amount owing by you to the Corporation or any of its Affiliates.

(b) If, at your separation from service (as defined under Treas. Reg. §1.409A-1(h)), (I) you are a Specified Employee and (II) the Corporation makes a good faith determination that an amount payable under a Corporation Plan constitutes deferred compensation (within the meaning of Section 409A) the payment of which is required to be delayed pursuant to the six-month delay rule set forth in Section 409A in order to avoid taxes or penalties under Section 409A, then the Corporation (or its Affiliate, as applicable) shall not pay such amount on the otherwise scheduled payment date but shall instead accumulate such amount and pay it, without interest, on the first day of the seventh month following such separation from service. “Specified Employee” shall be defined in accordance with Treas. Reg. §1.409A-1(i) and such rules as may be established by the Chief Executive Officer of the Corporation or his or her delegate from time to time.

(c) Notwithstanding any provision of any Corporation Plan to the contrary, in light of the uncertainty with respect to the proper application of Section 409A, the Corporation reserves the right to make amendments to this Agreement and any Corporation Plan as the Corporation deems necessary or desirable to avoid the imposition of taxes or penalties under Section 409A. In any case, except as specifically provided in Section 5, you are solely responsible and liable for the satisfaction of all taxes (together with interest and penalties thereon) that may be imposed on you or for your account in connection with any Corporation Plan (including any taxes and penalties under Section 409A), and neither the Corporation nor any Affiliate shall have any obligation to indemnify or otherwise hold you harmless from any or all of such taxes or penalties.

(vii) Vesting Of Stock Awards. Notwithstanding the foregoing provisions of this Section 4, the following provisions of this paragraph (vii) shall apply to awards described in this paragraph (vii) that were granted on or before September 21, 2006:

(a) If the consummation of a Change in Control occurs before your Date of Termination, the restrictions shall lapse (to the extent that they have not previously lapsed) on any stock option award or stock appreciation right award

outstanding on such consummation, such stock options and stock appreciation rights shall become fully exercisable upon such consummation, and such exercisability shall continue until it would otherwise terminate in accordance with the terms of the applicable award agreement.

(b) If the consummation of a Change in Control occurs before your Date of Termination, the restricted period (or other vesting or similar period) with respect to any restricted stock, restricted stock units and, except for stock options and stock appreciation rights, all other stock based awards granted to you shall lapse on such consummation, and such shares shall be distributed to you at the same time as the cash payments described in paragraph 4(iv) are paid. However, any change in the time or form of distribution otherwise provided under this paragraph (b) shall be disregarded to the extent that such change would otherwise result in the application of penalties under Code Section 409A.

(c) If your Date of Termination occurs prior to the consummation of a Change in Control, the vesting in the awards described in this paragraph (vii) shall be determined in accordance with paragraphs 4(i), (ii), (iii), and (iv), to the extent applicable, without regard to this paragraph (vii).

5. PARACHUTE TAX.

(i) In the event it shall be determined that any payment, benefit or distribution (or combination thereof) by the Corporation, any affiliate (as that term is used in Treas. Reg. §1.280G-1, Q/A-46) or associated company or any trust established by the Corporation, any such affiliate or associated company for the benefit of its employees, to or for your benefit (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement, or otherwise) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by you with respect to such excise tax (such excise tax, together with any such interest and penalties, hereinafter collectively referred to as the "Excise Tax"), you shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by you of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and the Excise Tax imposed upon the Gross-Up Payment, you retain an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. For purposes of this Section 5, "Payments" will include any payments, benefits or distributions to other persons with respect to awards granted to you and transferred by you to such other person in accordance with the terms of the awards, to the extent that such awards result in taxable income being attributable to you.

Notwithstanding the foregoing provisions of this paragraph (5)(i), if it is determined that you are entitled to a Gross-Up Payment, but that the value of the Parachute Payments (as defined below) does not exceed 110% (105% if you are Recently Hired (as defined below) by the Corporation) of the Safe Harbor Amount (as defined below), then no Gross-Up Payment will be made to you and the Payments, in the aggregate, will be reduced to the

Safe Harbor Amount. The reduction of the Payments to the Safe Harbor Amount will be made in the following order:

- (a) First, by reducing the cash amounts of Parachute Payments (including welfare benefits described in paragraph 4(iii)(g)) that would not constitute deferred compensation (within the meaning of Section 409A) subject to Section 409A (with the Payments subject to such reduction to be determined by you), to the extent necessary to decrease the Payments that would otherwise constitute Parachute Payments to the Safe Harbor Amount.
- (b) Next, if after the reduction to zero of the amounts described in paragraph (a) above, the remaining scheduled Parachute Payments are greater than the Safe Harbor Amount, then by reducing the cash amounts of Payments (excluding welfare benefits described in paragraph 4(iii)(g)) that constitute deferred compensation (within the meaning of Section 409A) subject to Section 409A, with the reductions to be applied first to the Payments scheduled for the latest distribution date, and then applied to distributions scheduled for progressively earlier distribution dates, to the extent necessary to decrease the Payments that would otherwise constitute Parachute Payments to the Safe Harbor Amount.
- (c) Next, if after the reduction to zero of the amounts described in paragraphs (a) and (b) above, the remaining scheduled Parachute Payments are greater than the Safe Harbor Amount, then, by reducing any of the remaining scheduled Payments, in an order to be determined by the Corporation, to the extent necessary to decrease the Payments that would otherwise constitute Parachute Payments to the Safe Harbor Amount.

The term “Parachute Payment” is the portion of the Payments that would be treated as parachute payments under Code Section 280G. The “Safe Harbor Amount” is the maximum amount of Payments that could be made to you without giving rise to any Excise Tax. You will be treated as “Recently Hired” by the Corporation if you were first employed by the Corporation or any of its Affiliates in a calendar year that is less than three years prior to the calendar year in which the change in control occurs for purposes of Code Section 280G.

(ii) Subject to the provisions of paragraph 5(iii), all determinations required to be made under this Section 5, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment, whether a reduction to the Safe Harbor amount is required and, if so, the amount of the reduction, and the assumptions to be utilized in arriving at such determination, shall be made by such nationally recognized certified public accounting firm as may be designated by the Corporation (the “Accounting Firm”), which shall provide detailed supporting calculations both to the Corporation and you within fifteen (15) business days of the receipt of notice from you that there has been a Payment, or such earlier time as is requested by the Corporation.

All fees and expenses of the Accounting Firm shall be borne solely by the Corporation. Any Gross-Up Payment, as determined pursuant to this Section 5, shall be paid by the Corporation to you within five (5) days after the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by you, it shall so indicate to you in writing. Any determination by the Accounting Firm shall be binding upon the Corporation and you. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Corporation should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Corporation exhausts its remedies pursuant to paragraph 5(iii) and you thereafter are required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Corporation to you or for your benefit.

(iii) You shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten (10) business days after you are informed in writing of such claim and shall apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid. You shall not pay such claim prior to the expiration of the thirty (30) day period following the date on which you give such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Corporation notifies you in writing prior to the expiration of such period that it desires to contest such claim, you shall:

- (a) give the Corporation any information requested by the Corporation relating to such claim;
- (b) take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Corporation;
- (c) cooperate with the Corporation in good faith in order to effectively contest such claim; and
- (d) permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold you harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this paragraph 5(iii), the Corporation shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any

and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may pay the tax claimed on your behalf and direct you to sue for a refund or contest the claim in any permissible manner, and you agree to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; provided, however, that if the Corporation pays the tax claimed on your behalf and directs you to sue for a refund, the Corporation shall indemnify and hold you harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such payment; and provided, further, that if you are required to extend the statute of limitations to enable the Corporation to contest such claim, you may limit this extension solely to such contested amount. The Corporation's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and you shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the payment by the Corporation of any tax claim pursuant to paragraph 5(iii), you become entitled to receive any refund with respect to such claim, you shall (subject to the Corporation's complying with the requirements of paragraph 5(iii)) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the payment by the Corporation of any tax claim pursuant to paragraph 5(iii), a determination is made that you shall not be entitled to any refund with respect to such claim and the Corporation does not notify you in writing of its intent to contest such denial of refund prior to the expiration of thirty (30) days after such determination, then the amount the Corporation paid in respect of such claim shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(v) You shall be eligible for benefits under this Section 5, and shall be subject to the terms of this Section 5, regardless of whether the Change in Control occurs or the payments are made during the Agreement Term, regardless of whether you are employed by the Corporation on or after the occurrence of a Change in Control and, if your Date of Termination shall have occurred, regardless of the reason for such termination.

(vi) Any amounts that you become entitled to receive in respect of taxes, interest and penalties pursuant to this Section 5 shall be paid to you (or to the applicable taxing authority on your behalf) not later than the last day of the calendar year after the calendar year in which you remit the underlying taxes to the applicable taxing authority, and any amounts that you become entitled to receive in respect of costs and expenses incurred in connection with a contest pursuant to this Section 5 shall be paid not later than the later of (a) the last day of the calendar year after the calendar year in which you remit the underlying taxes to the applicable taxing authority and (b) the last day of the calendar year after the calendar year in which the applicable contest is concluded. The foregoing provisions of this paragraph (vi) are intended to conform the payments under this paragraph 5 and reimbursements under this Agreement to the requirements of Section 409A, and shall not be construed to permit delay by the Corporation of payment of amounts due earlier in accordance with this Agreement.

6. RIGHTS OF EMPLOYMENT, CONTINUATION OF EQUITY AWARDS. Except as otherwise expressly provided in this Agreement:

(i) Nothing in this Agreement shall be construed as limiting your right to resign prior to the beginning or after the end of the Agreement Term.

(ii) Nothing in this Agreement shall be construed as limiting the Corporation's right to discharge you at any time prior to the beginning or after the end of the Agreement Term, or to renegotiate the terms of your employment for any period prior to the beginning or after the end of the Agreement Term.

(iii) Except as otherwise provided in paragraph 3(iv) (relating to discharge absent Cause or Disability), or as otherwise expressly provided in this Agreement, this Agreement shall be inapplicable to the determination of your rights to payments and benefits, if your Date of Termination occurs prior to the occurrence of a Change in Control, or if your Date of Termination occurs after the end of the Agreement Term and you are not subject to a disability after a Change in Control.

(iv) This paragraph 6(iv) will apply to any stock awards granted to you under the Corporation's 1996 Stock Incentive Plan, 1999 Stock Incentive Plan, or any similar successor Plan that you hold immediately before a Change in Control ("Equity Awards").

(a) The Board (as constituted immediately prior to the Change in Control) shall determine, not later than immediately before the Change in Control date, whether immediately after the Change in Control, the Equity Awards in each Award Category (as defined below) will be Comparable (as defined below) to the Equity Awards in that Award Category that you held immediately before the Change in Control. The three "Award Categories" are: (1) Appreciation Awards, which includes stock options, stock appreciation rights, and other similar awards based on appreciation in the price of the Corporation's stock after the grant date; (2) Non-Performance Based Full Value Awards, which includes restricted stock, restricted stock units, and other awards the value of which is based on the full value of the Corporation's stock (rather than being based on appreciation), and no portion of the value of which is based on performance measures other than stock value; and (3) Performance Based Full Value Awards, which includes restricted stock, restricted stock units and other awards (but not Performance Stock), the value of which is based in part on the full value of the Corporation's stock, where vesting or other aspects of the value of the awards is based on performance measures other than the value of the Corporation's stock. The following shall apply to that determination:

(I) The category of Appreciation Awards will not be treated as Comparable if, for any of the awards in that category, the intrinsic value of such award (that is, the excess of the fair market value of the shares covered by such award over the exercise price) immediately after the Change in Control is less than the intrinsic value of such award immediately before the Change in Control.

(II) The category of Performance Based Full Value Awards and the category of Non-Performance Based Full Value Awards, respectively, will not be treated as Comparable for any of the awards in that category unless the fair market value of the stock covered by the award immediately after the Change in Control is at least equal to the fair market value of the stock subject to the award prior to the Change in Control.

(III) In determining whether awards are Comparable, the Board shall take into account such factors as it determines to be relevant, including the credit quality of the acquiring or remaining entity, the business fundamentals of the entity whose shares are covered by the awards, and whether the shares subject to the awards will be readily tradable or saleable to the Corporation or its successor at fair market value after the Change in Control.

(IV) In determining whether awards are Comparable, the Board shall disregard reductions in value that are not material.

(b) If the Board determines in accordance with paragraph 6(iv)(a) that awards in any Award Category will not be Comparable after the Change in Control, the following will apply:

(I) If Appreciation Awards are determined not to be Comparable after a Change in Control, the restrictions on exercise (or any similar limitations) shall lapse (to the extent that they have not previously lapsed) for all awards in that category outstanding immediately prior to the Change in Control, all awards in that category shall become fully exercisable beginning immediately prior to the Change in Control, and to the extent such awards would otherwise remain outstanding, such exercisability shall continue until they would otherwise terminate in accordance with the terms of the applicable award agreement.

(II) If Non-Performance Based Full Value Awards, or Performance Based Full Value Awards, respectively, are determined not to be Comparable after a Change in Control, the restricted period (or other vesting or similar period) for all awards in the applicable category or categories shall lapse immediately before the Change in Control, and shares covered by the awards in the applicable category or categories shall be distributed to you immediately before the Change in Control. However, any change in the time or form of distribution otherwise provided under this paragraph 6(iv)(b)(II) shall be disregarded to the extent that such change would otherwise result in the application of penalties under Section 409A, and such shares shall instead be delivered at the earliest time that would not result in such penalties.

(III) If such determination applies to Performance Based Full Value Awards, the performance objectives for all awards in that category

will be deemed to have been achieved at the target level of performance (without reduction to reflect that the Change in Control occurred prior to the end of the performance period). However, the foregoing provisions of this paragraph 6(iv)(b)(III) shall not be applicable to Performance Stock, and the effect of a Change in Control with respect to such stock shall be determined in accordance with the provisions of the agreement governing the terms of such award.

(c) Nothing in this paragraph 6(iv) shall be construed to authorize the cancellation of Equity Awards without the grant of replacement awards in the absence of such authorization under the applicable Equity Award and/or stock plan or payment of cash or other property therefor.

7. SUCCESSORS; BINDING AGREEMENT.

(i) The Corporation will require (a) any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Corporation or (b) in the event of a transaction described in paragraph 2(iii) or (iv), the acquiring or surviving entity in such transaction, in each case, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform it if no such succession had taken place. Failure of the Corporation to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement. As used in this Agreement, "Corporation" shall mean the Corporation as hereinbefore defined and any successor to its business and/or assets or acquiring or surviving entity as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise, and "Board" shall mean the Board as hereinbefore defined or equivalent governing body of such successor or other entity, as applicable.

(ii) This Agreement shall inure to the benefit of and be enforceable by you and your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

8. NOTICE. For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided that all notices to the Corporation shall be directed to the attention of the Board with a copy to the Secretary of the Corporation, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

9. MISCELLANEOUS.

(i) Subject to paragraph 4(vi), no provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by you and such officer as may be specifically designated by the Board. No amendment, modification, or termination of this Agreement shall be adopted or effective if it would result in accelerated recognition of income or imposition of additional tax under Section 409A. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of law principles. All references to sections of the Exchange Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. Except as otherwise specifically provided in this Agreement, to the extent that the provision of payments or benefits to you results in your being liable for taxes, you shall not be entitled to any make-whole, gross-up, or other indemnification with respect to such taxes. The obligations of the parties to this Agreement shall survive the expiration of the Agreement Term. Capitalized terms used in this Agreement shall be defined as set forth in this Agreement.

(ii) If any amount owed to you hereunder is not paid on the applicable due date, then, upon the actual payment of such amount to you, you shall also receive interest thereon from the original due date until the date of actual payment at an annual rate of interest equal to the Prime Rate reported in The Wall Street Journal, Northeast Edition, on the last business day of the month preceding the Payment Date, compounded annually.

10. **VALIDITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

11. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

12. **ARBITRATION.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a panel of three arbitrators in Ft. Worth, Texas, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction; provided, however, that you shall be entitled to seek specific performance of your right to be paid until the Date of Termination during the pendency of any dispute or controversy arising under or in connection with this Agreement.

13. AMENDMENT. This Agreement may be amended or canceled only by mutual agreement of the parties in writing without the consent of any other person. So long as you shall live, no person, other than the parties hereto, shall have any rights under or interest in this Agreement or the subject matter hereof.

14. GENERAL RELEASE AND COVENANT NOT TO SUE. You agree that as a condition of receiving the Severance Payments and other benefits under paragraph 4(iii) of this Agreement in connection with your termination of employment, you shall execute the attached General Release and Covenant Not to Sue within thirty (30) days following your Date of Termination. You will be deemed to have executed a general release as described in the preceding sentence only if such release is properly executed by you and returned to the Corporation within such thirty (30) day period. Notwithstanding any other provision herein, unless the executed General Release and Covenant Not to Sue has been received by the Corporation within such thirty (30) day period and a seven (7) day revocation period from the date of execution has expired without your revoking such release, (i) no Severance Payments shall be provided and all entitlements to Severance Payments shall expire and be forfeited, (ii) the Corporation shall be relieved of all obligations to make any further payments, or provide or make available any further benefits, to you pursuant to paragraphs 4(iii)(e), 4(iii)(f), 4(iii)(g) and 4(iii)(h), (iii) you shall be required to repay the Corporation, in cash within five (5) business days after written demand is made therefor by the Corporation, an amount equal to the value of any benefits received by you pursuant to paragraph 4(iii)(e), 4(iii)(f), 4(iii)(g) or 4(iii)(h) and (iv) you shall forfeit any stock awards that vested or became exercisable pursuant to paragraph 4(iii)(c)(A) or 4(iii)(B) and any other stock-based or other awards that otherwise vested (without regard to this Agreement) under the terms of the applicable plan or award agreements by reason of your termination of employment following a change in control, as defined in this Agreement or any applicable plan or award agreement, and you shall not receive any shares with respect thereto.

15. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto; and any prior agreement of the parties hereto in respect of the subject matter contained herein is hereby terminated and canceled. This Agreement constitutes an amendment, restatement, and continuation of your Change in Control Agreement. The terms of this Agreement, as set forth herein, shall apply with respect to any Change in Control that occurs on or after December 31, 2007, and the terms of your Agreement in effect prior to this amendment and restatement shall be deemed to be completely replaced by the terms set forth herein. For the avoidance of doubt, it is recited here that this Agreement shall not apply to any award (regardless of when granted) if the document(s) applicable to such award provide that the terms of the award will be determined based solely on the provisions of such award document(s), or determined without regard to the terms of any other change in control arrangement.

If this letter sets forth our agreement on the subject matter hereof, kindly sign and return to the Corporation the enclosed copy of this letter, which will then constitute our agreement on this subject.

Sincerely,

Burlington Northern
Santa Fe Corporation

By: _____
James H. Gallegos
Vice President & Corporate General
Counsel

Agreed to this _____ day of _____, 20__.

Person's Name

GENERAL RELEASE AND COVENANT NOT TO SUE

For and in consideration of the terms of the Agreement between Burlington Northern Santa Fe Corporation and its Affiliates and _____ dated _____, _____, (“Agreement”), the undersigned (i) does hereby agree to comply with the restrictions applicable to me under the change in control agreement dated _____ between Burlington Northern Santa Fe Corporation and me (as well as any other restrictions applicable to me) after my termination of employment, and (ii) does hereby fully waive, release, acquit, and forever discharge Burlington Northern Santa Fe Corporation and any and all of its Affiliates, divisions, subsidiaries, benefit plans, officers, directors, stockholders, agents, advisors, fiduciaries, administrators, and employees, or any of their successors or assigns, from any and all claims, demands or causes of action, including but not limited to any claims for merger protection benefits pursuant to the Interstate Commerce Commission decision in the Northern Lines, BNSF, or Frisco merger proceedings, claims arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1981, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, et seq., the Federal Employers’ Liability Act, and any other federal, state or local law, order, regulation, common law, contract or collective bargaining agreement, which relates to my employment or cessation of employment by Burlington Northern Santa Fe Corporation and its Affiliates; provided however that the undersigned does not waive enforcement of rights to any benefits provided or extended pursuant to the terms of the Agreement or to assert any counterclaims in response to any litigation initiated by Burlington Northern Santa Fe Corporation against me. The undersigned specifically waives all claims, whether past or present, known or unknown, and whether or not in litigation, which I, or acting on my behalf, my heirs, successors, executors, administrators or assigns, may have based on any action, omission or event occurring prior to this date. Included in this Release are any and all claims for future damages allegedly arising from the alleged continuation of the effects of any past action, omission or event.

I acknowledge that (i) I have read the Agreement including this General Release and Covenant Not to Sue (“Release”); (ii) I am advised by the Corporation to consult, and have had the opportunity to consult, an attorney about the meaning and effect of this Agreement and Release; (iii) I have had sufficient time, and at least 45 days, to consider and fully understand the meaning and effect of signing this Agreement and Release; (iv) I have 7 days after signing to change my mind and revoke my acceptance by so notifying _____; (v) this Agreement and Release will not become effective and enforceable until that 7-day period has passed; (vi) I am not otherwise entitled to the benefits of the Agreement; (vii) I am not relying on any written or oral statement or promise other than as set out in the Agreement and Release; and (viii) this Agreement and Release shall be governed by and construed in accordance with the laws of the State of Texas.

This General Release and Covenant Not to Sue is executed knowingly and voluntarily, for adequate consideration, and is irrevocable and binding upon the undersigned.

ACCEPTED AND AGREED TO this _____ day of _____, 20____:

Person's Name: _____

Signature: _____