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ENTERED
Office of Proceedings
May 13, 2022
Part of
Public Record

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May 13, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **FD 36594**
Texas Coastal Bend Railroad, L.L.C. — Change in
Operator Exemption — Railroad Lines in Nueces County, Tex.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Change in Operator Notice of Exemption of the Texas Coastal Bend Railroad, L.L.C.** filed pursuant to 49 C.F.R. part 1150, subpart D and a **Motion for Protective Order**. Payment of the applicable filing fee has been tendered electronically with this filing via Pay.gov.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter.

FEE RECEIVED
May 13, 2022
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,



Robert A. Wimbish
Attorney for Texas Coastal Bend Railroad, L.L.C.

Attachment

FILED
May 13, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36594

TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.

**VERIFIED NOTICE OF EXEMPTION OF
TEXAS COASTAL BEND RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

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(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEYS FOR TEXAS COASTAL BEND
RAILROAD, L.L.C.**

Dated: May 13, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36594

TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.

**VERIFIED NOTICE OF EXEMPTION OF
TEXAS COASTAL BEND RAILROAD, L.L.C.
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, Texas Coastal Bend Railroad, L.L.C. (“TCBR”), a non-carrier, hereby files this Verified Notice of Exemption (the “Notice”) to operate as a common carrier over approximately 12 miles of trackage (the “Lines”) owned by the Port of Corpus Christi Authority of Nueces County, Texas (the “Port”), and, as incidental to the operation, to acquire and exercise overhead trackage rights over a line of the Union Pacific Railroad Company (“UP”) necessary to effect interchange with third-party carriers at Corpus Christi, Texas, and to maintain service between otherwise disconnected portions of the Lines. TCBR would, under the proposed transaction, replace the Corpus Christi Terminal Railroad, Inc. (“CCTR”) as operator of the Lines,¹ thus terminating CCTR’s common carrier status and obligations with respect to the Lines upon effectuation of the proposed transaction. Concurrent with this Notice, Watco Holdings, Inc. (“Watco”) is filing a notice of exemption captioned as *Watco Holdings, Inc. — Continuance in Control — Texas Coastal Bend Railroad, L.L.C.*, FD

¹ *Corpus Christi Terminal Railroad — Lease and Operation Exemption — Port of Corpus Christi Authority of Nueces County, Tex. et al.*, FD 33436 (“CCTR - Exemption”) (Exhibit B to the Notice of Exemption filed July 24, 1997).

36595 under 49 C.F.R. § 1180.2(d) to continue in control of TCBR upon TCBR's consummation of the transaction encompassed by this proceeding.

In accordance with the requirements of 49 C.F.R. § 1150.33, TCBR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant is as follows:

Texas Coastal Bend Railroad, L.L.C.
315 W. Third Street
Pittsburg, KS 66782

Applicant's Representative: 49 C.F.R. § 1150.33(b)

TCBR's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500
rwimbish@fletcher-sippel.com

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

TCBR and the Port finalized the terms of a Short Line Railroad Operating Agreement (the "Agreement") under which, among other things, TCBR will replace CCTR, the current common carrier on the Lines. TCBR understands that CCTR does not object to the proposed change in common carrier that is the subject of this class exemption proceeding. TCBR is attaching as Exhibit A a highly confidential version of the Agreement with a motion for protective order for the Board to evaluate pursuant to *Anthony Macrie – Continuance in Control*

Exemption – New Jersey Seashore Lines, Inc., FD 35296 (STB served Aug. 31, 2010), 3. TCBR is also providing a redacted (public) version of the Agreement.

Operator of the Property: 49 C.F.R. § 1150.33(d)

TCBR will operate and provide all rail common carrier service to shippers on the Lines.

Background and Summary of the Transaction: 49 C.F.R. § 1150.33(e)

TCBR, a subsidiary of Watco, has reached an agreement with the Port to provide common carrier service over Port-owned trackage, and, in so doing, to replace CCTR as the provider of such services. In keeping with the terms of the Agreement, TCBR will commence common carrier operations over approximately 12 miles of trackage in Corpus Christi, Nueces County, Texas. Attached as Exhibit B is a map of the proposed operation. The Lines lie on the north and south sides of the Inner Harbor of the Corpus Christi Ship Channel (the “Channel”) which runs parallel with the south shoreline of Nueces Bay. The Port-owned tracks on either side of the Channel that comprise the Lines are connected to each other by way of an intervening segment of UP-owned railroad line (the “UP Connecting Segment”) extending between approximately UP milepost 140.5 (near the west leg of the Fulton Wye Connection) and approximately UP milepost 149.0, over which TCBR intends to acquire and exercise overhead trackage rights as incidental to TCBR’s planned operation of the Port-owned Lines.²

² The Port and serving Class Is are parties to numerous operating and service agreements governing interchange and purposely intended to “effectuate impartial, efficient, unified and economical switching services” at the Port, most recently codified in the Corpus Christi Joint Operating Agreement dated July 25, 1997. These agreements contemplate that the Port’s operator will enjoy incidental overhead trackage rights of the UP Connecting Segment to facilitate operation of otherwise disconnected portions of the Port’s lines on either side of the Channel. Accordingly, TCBR has incorporated the acquisition of such trackage rights (again, as incidental to TCBR’s commencement of common carrier service over the Port-owned

CCTR has operated the Lines since 1997 as the successor to the Corpus Christi Terminal Association, the former consortium operator of the Port's railroad facilities.³ The Port has selected TCBR to assume operations of the Lines in place of CCTR. Effectuation of the proposed change in operator will vest TCBR with the common carrier service obligations for the Lines, and CCTR will be relieved of its common carrier obligations going forward on the Lines.

The name and address of the transferor entity⁴ is as follows:

Port of Corpus Christi Authority of Nueces County, Texas
 Attention: Chief Operations Officer
 400 Harbor Drive
 Corpus Christi, Texas 78401

Map: 49 C.F.R. § 1150.33(f)

A map depicting the Lines is attached as Exhibit B.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

The proposed transaction will not cause TCBR revenues to meet or exceed the Class I or II thresholds. See the attached Certification and Verification.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The agreements governing this transaction do not include any provision that may limit future interchange with a third-party connecting carrier. See the attached Certification and Verification.

Lines) into this Notice on the understanding that such incidental rights fall within the general scope of this class exemption proceeding.

³ CCTR - *Exemption*, 1 at n.1.

⁴ 49 C.F.R. § 1150.33(e) contemplates disclosure of a "railroad" transferor, but TCBR understands that the Port is not a railroad common carrier subject to the Board's jurisdiction.

Shipper Notice: 49 C.F.R. § 1150.32(b)

The Board's rules require the filer of a change in operator notice of exemption to notify customers of the proposed transaction. In compliance with this requirement, TCBR has provided shippers on the Lines contemporaneous notice of the proposed change in operator. A list of shippers and a text of the notice emailed to each is attached as Exhibit C. As indicated in Exhibit C, TCBR has also supplied each customer with a copy of the present Notice.

Advance Notice: 49 C.F.R. § 1150.32(e)

TCBR's annual revenues are expected to exceed \$5 million. Accordingly, the Port previously arranged to post notice of the proposed transaction at the workplace of CCTR employees (the "Labor Notice"). TCBR has certified to the Board on March 21, 2022, that, on that same day, it had complied with the advance notice posting requirements 49 C.F.R. § 1150.32(e), as the record in this proceeding reflects (stating at the time that it had been advised that no labor union represents CCTR employees, obviating the need for labor notice service under Section 1150.32(e)). TCBR understands that the Port is a non-carrier owner of the track assets comprising the Lines, and that the Port has no employees that conduct rail operations on the Lines (CCTR currently does), nor any employees that would be displaced by the proposed transaction.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(1)(i), the change in operator transaction is exempt from environmental reporting requirements. The transaction will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the change in operator transaction is also exempt from historic preservation reporting requirements. The proposed transaction is to ensure common carrier rail service continues. Additionally, a common carrier operator requires further Board approval to discontinue service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.32(a)

A Caption Summary is attached as Exhibit D.

Respectfully submitted,

By: 

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR TEXAS COASTAL BEND
RAILROAD, L.L.C.**

Dated: May 13, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36594

**TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.**

EXHIBIT A

OPERATING AGREEMENT

SHORT LINE RAILROAD OPERATING AGREEMENT

This Short Line Railroad Operating Agreement (this “*Agreement*”) is made and entered into this 15th day of February, 2022 (“*Effective Date*”), by and between the Port of Corpus Christi Authority of Nueces County, Texas, a political subdivision of the State of Texas (“*PCCA*” or “*Port Authority*”), and Texas Coastal Bend Railroad, L.L.C., a limited liability company organized under the laws of the State of Delaware (“*Authority’s Contractor*” or “*Contractor*”).

PCCA and the Contractor are sometimes collectively referred in this Agreement and the “*Parties*.”

Recitals

WHEREAS, PCCA is political subdivision of the State of Texas operating as a navigation district, and the Authority’s Contractor is short line common carrier; and

WHEREAS, PCCA owns certain railroad tracks and facilities on the north and south sides of the Inner Harbor of the Corpus Christi Ship Channel; and

WHEREAS, on July 1, 2021, PCCA issued a request for proposals from experienced operators to provide short line rail service to PCCA’s customers located in the Inner Harbor under a new long-term operating contract; and

WHEREAS, the Contractor’s proposal is hereby determined to provide the best value to PCCA considering evaluation factors set forth in the request for proposals; and

WHEREAS, the Parties wish to enter into this Agreement to set forth the terms and conditions under which the Authority’s Contractor will be responsible for providing the terminal railroad switching and track maintenance services described herein;

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 CERTAIN DEFINITIONS AND INTERPRETIVE MATTERS

Section 1.1 Definitions. Capitalized terms in this Agreement shall have the meanings given to them in this Section 1.1 or in the text of this Agreement the first time they are used:

“*1997 Joint Operating Agreement*” has the meaning given to it in Section 2.3(a).

“*1997 Switching Fees*” has the meaning given to it in Section 2.3(b).

“*Affiliate*” means, with respect to the Contractor, any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Contractor. For purposes of this definition, “control” means (1) the beneficial

ownership of greater than fifty percent (50%) of the outstanding voting ownership interests of another business entity, or (2) the ability to direct the day-to-day management and long-term policies of another business entity, whether by contract or otherwise.

“Agreement” has the meaning given to that term in the introductory paragraph of this Agreement.

“Authority Parties” means the Authority, and its Port Commissioners, officers and employees, collectively.

“Authority’s Contractor” or **“Contractor”** has the meaning given to that term in the introductory paragraph of this Agreement.

“Betterments” has the meaning given to that term in Section 9.1.

“Bulk Terminal” means PCCA’s dry bulk terminal, which is located on the north side of the Corpus Christi Ship Channel in the Port of Corpus Christi Inner Harbor. The Bulk Terminal includes two dry bulk docks, storage pads, and the Bulk Terminal Tracks.

“Bulk Terminal Tracks” means the railroad tracks designated as such on **Exhibit A-1**.

“Change in Control” of the Contractor shall be deemed to have occurred if and when any person or group of persons shall, subsequent to the Effective Date, have acquired ownership of or the right to vote or to direct the voting of ownership interest in the Contractor representing fifty-one (51%) percent or more of the total voting interest of the Contractor.

“Claims” means all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, claims, costs, expenses (including reasonable attorneys’ and experts’ fees and expenses), suits, settlements or judgments of any nature whatsoever (including claims for personal injury, bodily injury, and real and personal property damage), specifically excluding, however, all such Claims for consequential, punitive, or exemplary damages.

“Class I Railroads” means, on any date, the Class I Railroads that are parties to the 1997 Joint Operating Agreement on that date, and their successors and assigns. On the Effective Date the Class I Railroads are the Union Pacific Railroad Company, The Kansas City Southern Railway Company, and the BNSF Railway Company. Other Class I Railroads may become parties to the 1997 Joint Operating Agreement in accordance with its terms.

“Commencement Date” means August 3, 2022, unless the parties mutually agree in writing on an earlier or later date.

“Commissioners” means the members of the governing body of the Port Authority.

“Contractor Parties” means the Contractor and any of its Affiliates, and their respective owners, officers, managers, agents, invitees, guests, contractors, subcontractors or licensees acting on behalf of the Contractor or any of its Affiliates.

“**Effective Date**” has the meaning given to that term in the introductory paragraph of this Agreement.

“**Environmental Contamination**” means any contamination of the Railroad Properties arising from the deposit, acceptance, use, storage, transport, disposal or release of Hazardous Substances to, or under the Railroad Properties as a result of the receipt, transportation, delivery, use or storage of the Hazardous Substances by any of the Contractor Parties.

“**Environmental Laws**” has the meaning given to that term in Article 11.

“**Event of Default**” has the meaning given to that term in Section 12.1(b).

“**First Operating Year**” means the period beginning on the Commencement Date and ending on July 31, 2023.

“**FRA**” means the Federal Railroad Administration.

“**FRA Class 2 Condition**” means the FRA track safety standards set forth in 49 CFR Part 213 for a Class 2 track, as amended.

“**Guaranteed Maintenance Expenditure**” has the meaning given to that term in Section 6.6(b).

“**Hazardous Substances**” has the meaning given to that term in Article 11.

“**Interim Period**” has the meaning given to that term in Section 3.1.

“**Interline Service Agreements**” mean the interline service agreements between the Contractor and the Class I Railroads that govern the Contractor’s interchange schedules and times with the Class I Railroads.

“**Nueces River Rail Yard**” means PCCA’s common railroad interchange yard, which comprises the railroad tracks designated on **Exhibit A** as Tracks 101, 102, 103, 104, and 105.

“**Parties**” or “**parties**” means PCCA and the Contractor and their permitted successors and assigns.

“**PCCA**” or “**Port Authority**” means the Port of Corpus Christi Authority of Nueces County, Texas.

“**PCCA Railroad Tracks**” means the railroad tracks designated on **Exhibit A** as *Port Authority Tracks Contracted To Authority’s Contractor For Operations And Maintenance*, as **Exhibit A** may be amended from time to time, together with all related tracks, trackage, track materials, bridges, trestles, culverts, turnouts, switches, ballast, ties, switch ties, signals, detectors, crossing protection devices, track fixtures and appurtenances of every kind or nature, owned by PCCA and utilized by the Contractor in providing Services under this Agreement.

“Operating Year” means the First Operating Year and each twelve-month period thereafter during the Term of this Agreement. In other words, each Operating Year after the First Operating Year will begin on August 1st and end on the following July 31st.

“PCCA railroad shipper,” “PCCA shipper,” “rail shipper,” and **“shipper”** all mean a PCCA rail customer that ships or receives carloads by rail.

“Port Commission” means the governing body of the Port Authority.

“Port Commissioners” means the members of the governing body of the Port Authority.

“Railroad Office and Shop” means approximately 1.2 acres of real property in Nueces County, Texas, which is shown on the map attached hereto as **Exhibit B**, including all improvements now or hereafter constructed thereon by the Port Authority.

“Railroad Properties” means PCCA Railroad Tracks and the Railroad Office and Shop, collectively.

“RCAF-U” means the Rail Cost Adjustment Factor (Unadjusted) published quarterly by the Surface Transportation Board. If the RCAF-U is discontinued, the parties will negotiate in good faith to agree upon a substitute index.

“Services” means the services the Contractor is required or permitted to provide under this Agreement.

“STB” means the Surface Transportation Board.

“Term” has the meaning given to it in Section 4.1.

Section 1.2 Certain Interpretive Matters. Unless the context of this Agreement requires otherwise, (1) “it” or “its” or words of any gender include each other gender, (2) words using the singular or plural number also include the plural or singular number, respectively, (3) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement, (4) the terms “Article,” “Section,” or “Exhibit” refer to the specified Article, Section, or Exhibit of or to this Agreement, and (5) the terms “include,” “includes” and “including” will be deemed to be followed by the words “without limitation” (whether or not so expressed). Whenever this Agreement refers to a number of days, such number will refer to calendar days unless business days are specified and whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day, then such period or date will be extended until the immediately following business day. As used herein, “business day” means any day other than Saturday, Sunday or a United States federal holiday.

ARTICLE 2

RAILROAD PROPERTIES AND 1997 JOINT OPERATING AGREEMENT

Section 2.1 Condition of Railroad Properties. With the maintenance expenditures provided in Article 6, the Contractor acknowledges that the Railroad Properties are suitable for the

Contractor's intended use under this Agreement. The Authority makes no representation or warranty to the Contractor as to the physical condition of the Railroad Properties or the condition of the legal title.

Section 2.2 Existing Lease of Railroad Properties. Contractor acknowledges and understands that the Railroad Properties are currently subject to a lease between PCCA and a short line railroad that will not expire until August 2, 2022, unless terminated earlier pursuant to its terms.

Section 2.3 1997 Joint Operating Agreement.

(a) The Authority, the Union Pacific Railroad Company, the Southern Pacific Transportation Company, The Texas Mexican Railway Company, and The Burlington Northern and Santa Fe Railway Company entered into the Corpus Christi Joint Operating Agreement effective as of July 25, 1997 (the "**1997 Joint Operating Agreement**") to provide for changes in operations made necessary by the transfer of the terminal switching and railroad facility maintenance services to a short line railroad on that date. The parties to the 1997 Joint Operating Agreement on the Effective Date are the Authority, the Union Pacific Railroad Company, The Kansas City Southern Railway Company, and The BNSF Railway Company. A copy of the 1997 Joint Operating Agreement without its exhibits is attached hereto as **Appendix One**.

(b) The switching fees payable to the Contractor under the 1997 Joint Operating Agreement are described in and calculated in accordance with *Exhibit C* to the 1997 Joint Operating Agreement and are referred to herein as the "**1997 Switching Fees**". A copy of the 1997 Switching Fees is attached hereto as **Exhibit C**.

(c) If the parties to the 1997 Joint Operating Agreement decide to amend or restate the 1997 Joint Operating Agreement, including the 1997 Switching Fees, the Authority agrees that it will ask for and consider the Contractor's input on any such amendment or restatement and that the Contractor will not be unfavorably affected by the provisions of any such amendment or restatement. Furthermore, the Authority agrees that it will ask for and consider the Contractor's input before terminating the 1997 Joint Operating Agreement and that the Contractor will not be adversely affected financially by any such termination.

ARTICLE 3

CONTRACTOR'S OBLIGATIONS BEFORE THE COMMENCEMENT DATE

Section 3.1 Interim Period. The period from the Effective Date until 11:59 p.m., Central Time, on the day before the Commencement Date is referred to herein as the "**Interim Period**." During the Interim Period, the Contractor must complete all the undertakings contained in this Article 3.

Section 3.2 Governmental Approvals. Before performing any Services under this Agreement, the Contractor shall file with the Surface Transportation Board ("**STB**") such paperwork as may be necessary to receive common carrier operating authority for short line railroad operations on PCCA Railroad Tracks unless the Contractor already possesses such authority. The Contractor must obtain, at its expense, any other state and federal licenses, permits, or authorizations, or exemptions from such licenses, permits, or authorizations, as may be required

to operate as a Class III common carrier by railroad on PCCA Railroad Tracks. The Contractor must file any and all tariffs, contracts and other related documents that may be required to be filed by federal or state law. The Contractor will provide PCCA with copies of all filings it may submit to obtain the appropriate licenses, permits, or authorizations, or exemptions therefrom, and the responses to such filings. PCCA will support and cooperate with the Contractor in obtaining any necessary governmental authorizations. The Contractor will notify PCCA as soon as practicable after it receives all of the regulatory approvals it needs to begin operating under this Agreement, but in no case any later than August 2, 2022.



Section 3.4 Insurance. Before performing any Services under this Agreement, the Contractor shall satisfy the insurance requirements set forth in Exhibit D, which are incorporated in this Agreement.

Section 3.5 Texas Ethics Commission Filing. Contemporaneously with the execution of this Agreement, the Contractor shall comply with the provisions of Section 2252.908 of the Texas Government Code and Chapter 46 of the Texas Ethics Commission Rules by preparing and submitting Texas Form 1295, “Certificate of Interested Parties” and submitting the signed form to PCCA. PCCA will provide the Contractor with the project number and description necessary to complete Texas Form 1295.

Section 3.6 Interline Service Agreements and Other Required Agreements. Before the end of the Interim Period, the Contractor shall have entered into an Interline Service Agreement with each of the Class I Railroads and shall have entered into all other necessary agreements and received all other approvals needed from the Class I Railroads, including, without limitation, payments worked out, run-through power for unit trains, and daily operating call schedules.

ARTICLE 4 TERM

Section 4.1 Term. The “**Term**” of this Agreement is the period beginning on the Commencement Date and ending at 11:59 p.m., Central Time, on July 31, 2032, unless this Agreement is terminated earlier as provided herein or the Term is extended as provided in Section 4.2.

Section 4.2 Term Extension.

(a) Either Party shall have the right and option to request an extension of the Term for two (2) additional periods of five (5) years each as provided in this Section 4.2 (each an “**Extension Period**”). To request an extension of the Term for an additional five-year period, the requesting Party (“**Requesting Party**”) shall give written notice of such request (“**Extension Request**”) to the other Party (“**Receiving Party**”) at least eighteen (18) months, but not more than twenty-four (24) months, prior to the end of the then effective Term. Notwithstanding anything to the contrary contained in this Agreement, the Contractor may not request an extension of the Term or be granted an extension of the Term at a time when an Event of Default is continuing.

(b) An Extension Request must contain any changes to the Agreement desired by the Requesting Party. The Receiving Party shall deliver a written response to any Extension Request within sixty (60) days after the Receiving Party's receipt of an Extension Request. The Receiving Party's response ("*Extension Response*") may:

(1) accept the Extension Request, including the Requesting Party's requested changes to the Agreement, in its entirety, in which case the Agreement will be extended for the applicable Extension Period on the terms and conditions stated in the Extension Request;

(2) reject the Extension Request in its entirety, in which case the Agreement will terminate no later than the last day of the existing Term; or

(3) accept the Extension Request, subject to any conditions precedent and changes to the Agreement the Receiving Party may request ("*Conditional Acceptance*").

(c) Should the Requesting Party receive a Conditional Acceptance from the Receiving Party, the Requesting Party shall deliver a written response to the Receiving Party's Conditional Acceptance within sixty (60) days after the Requesting Party's receipt of the Conditional Acceptance. The Requesting Party's response may:

(1) accept the Conditional Acceptance, including the Receiving Party's requested conditions precedent and changes to the Agreement, in its entirety, in which case the Agreement will be extended for the applicable Extension Period on the terms and conditions stated in the Conditional Acceptance;

(2) reject the Conditional Acceptance in its entirety, in which case the Agreement will terminate no later than the last day of the existing Term; or

(3) provide written comments on the terms of the Receiving Party's Conditional Acceptance and request a meeting with the Receiving Party's representatives to determine whether the Parties can mutually agree on the terms and conditions of the Agreement for the upcoming Extension Period.

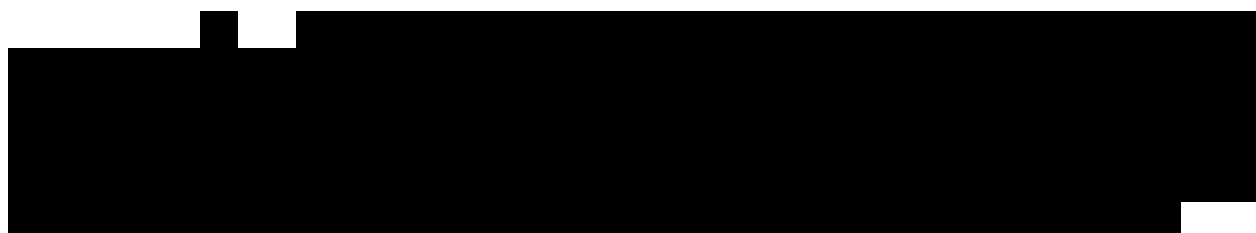
(d) If the Requesting Party requests a meeting as described in and in accordance with subsection (c)(3), above, the Parties shall have sixty (60) days in which to reach agreement on the terms and conditions of the Agreement for the upcoming Extension Period. Should the Parties be unable to do this, the Agreement will terminate no later than the last day of the existing Term.

(e) For the absence of doubt, should the Parties be unable to reach agreement on the terms and conditions of this Agreement for an Extension Period in accordance with this Section 4.2, this Agreement will automatically terminate as of the last day of the existing Term, if it does not terminate before then.

ARTICLE 5
RESPONSIBILITIES AND OBLIGATIONS OF CONTRACTOR

Section 5.1 Switching and Interchange Services.

(a) Subject to the terms and conditions stated herein, PCCA hereby grants the Contractor the exclusive right to provide the Services on, over, and across the PCCA Railroad Tracks during the Term of this Agreement. The Contractor hereby agrees to provide common carrier rail service on the PCCA Railroad Tracks as provided in this Agreement during the Term of this Agreement. Each Service is described in more detail in this Agreement.



(d) The Contractor shall deliver empty or loaded unit trains to PCCA shippers and return same to interchange.

Section 5.2 Additional Services.

7.2.



Section 5.3 Equipment.

(a) The Contractor shall supply a sufficient number of locomotives to meet the [REDACTED] provide agreed-to interchange to the Class I Railroads, including a sufficient number of spare locomotives so service days are not missed during the Term of this Agreement. The Contractor shall paint each of the locomotives with the Port of Corpus Christi logo and color scheme after the Authority has approved a computer-generated image or similar rendition of a locomotive with this logo and color scheme.

(c) The Contractor shall supply all needed equipment, tools, and supplies required for railroad operations and maintenance under this Agreement, including inspections, crew transport, and general management.

(d) The Contractor shall deliver to the Railroad Properties before the end of the Interim Period all equipment necessary to efficiently provide the Services described herein.

Section 5.4 Safety and Training.

(a) The Contractor shall strive for an incident and accident-free service and operating environment that does not impact rail service and service to the PCCA rail shippers.

(b) The Contractor shall be responsible for adherence to all governing safety rules and regulations that pertain to railroad operations, including hazardous materials (hazmat) training.

(c) The Contractor shall be responsible for all training of its employees, including hazmat training.

(d) The Contractor shall establish a safety plan and/or safety procedures for review and approval of PCCA and such plan and/or procedures shall be updated periodically with PCCA's approval, which shall not be unreasonably conditioned or withheld.

Section 5.5 Management.

(a) The Contractor shall provide sufficient, trained on-site personnel to manage all aspects of railroad operations and maintenance under this Agreement and quickly remedy any issues that arise to the satisfaction of PCCA and the PCCA railroad shippers in the Port of Corpus Christi Inner Harbor.

(b) The Contractor shall have sufficient, knowledgeable personnel to manage all required back-office reporting of data to the shippers, railroads, and PCCA, along with the necessary information technology resources.

Section 5.6 Reporting.

(a) The Contractor will be responsible for all required data reporting to Class I Railroads, shippers, the rail industry, and PCCA.

(b) The Contractor will be responsible for all on-going reporting to any federal or state agencies arising out of any maintenance or operations covered by this Agreement.

[REDACTED]

[REDACTED]

(e) [REDACTED]

Section 5.7 Relationships.

(a) The Contractor will be responsible for operational relationships with all PCCA railroad shippers and the connecting Class I Railroads.

(b) The Contractor will support commercial relationships with all PCCA railroad shippers and the Class I Railroads.

(c) The Contractor shall have sufficient marketing or commercial resources to address customer service, extra services and/or assist in operating issues that may arise between the PCCA shippers and Class I Railroads.

Section 5.8 Emergency Response. Contractor shall have an emergency plan to safely and effectively respond to potential railway emergencies. An emergency shall be defined as any event which adversely affects normal operations on PCCA Railroad Tracks, including, without limitation, a derailment, run-through switches, broken rails, broken joint bars, pull-apart, specific switches operating in manual mode and/or inclement weather or other unforeseen occurrences that impact PCCA shippers service or Class I Railroad interchange for more than twenty-four (24) hours. For an emergency involving a train derailment, hazardous substances, or other major event, Contractor shall respond within two (2) hours of the incident and report to PCCA all required repairs to PCCA Railroad Tracks and/or the Railroad Properties within five (5) business days following the occurrence of the incident.

Section 5.9 Derailments.

(a) In the event a derailment occurs on PCCA Railroad Tracks which is caused by the Contractor while performing its Services on the PCCA Railroad Tracks, including failure to properly maintain PCCA Railroad Tracks, the Contractor will, at its expense, promptly clear the derailment, rerail rolling equipment (cars, locomotives, etc.), and restore any affected track to a serviceable condition, and the Contractor will, at its expense, provide all equipment, materials and labor necessary to accomplish this work.

(b) Contractor shall resolve all issues and apportionment of responsibilities with regards to derailments between the Class I Railroads and/or shippers, but in no case shall any responsibility fall on PCCA.

Section 5.10 Fines. The Contractor shall bear full fiscal responsibility for any fines or late fees arising out of any maintenance or operations covered by this Agreement.

Section 5.11 Utilities. The Contractor shall pay any and all charges for water, gas, electricity, and other utility services provided to the Railroad Properties and used by the Contractor in providing Services hereunder.

ARTICLE 6

INSPECTION AND MAINTENANCE OF PCCA RAILROAD TRACKS

Section 6.1 Required Inspections of PCCA Railroad Tracks.

(a) After the Commencement Date, Contractor shall inspect all of the PCCA Railroad Tracks as often as required under and in accordance with the then current FRA Track Safety Standards in 49 CFR Part 213, Subpart F, the then current FRA Roadway Worker Protection in 49 CFR Part 214, Subpart C, the Contractor's safety policies good railroad practices, and any other applicable law.

(b) The Parties shall jointly perform two pre-Commencement Date inspections of the Railroad Tracks. The first inspection shall be performed by the Parties within thirty (30)

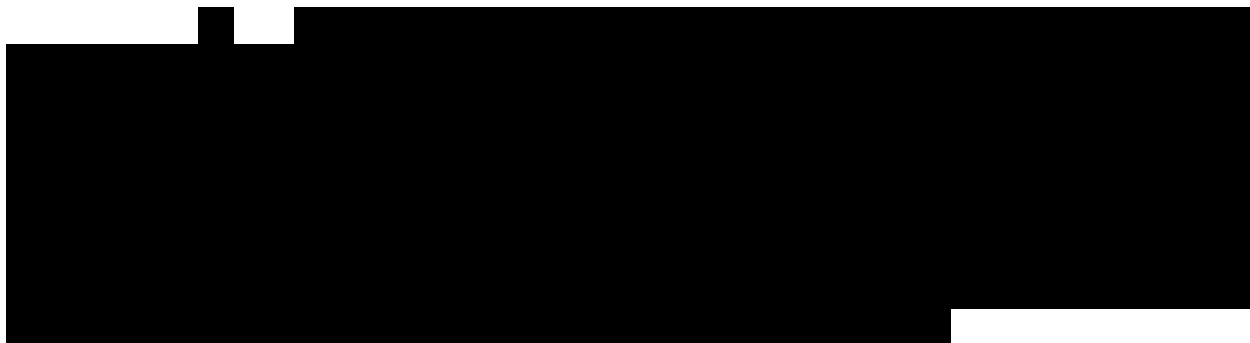
days of the Effective Date. The second inspection shall be performed by the Parties within thirty (30) days prior to the Commencement Date.



Section 6.2 Routine Track Maintenance and Repair. Contractor, at its sole expense, shall be responsible for all routine and preventative maintenance and repair of the PCCA Railroad Tracks during the Term of this Agreement. For the avoidance of doubt, such responsibility shall not include constructing any Betterments to the PCCA Railroad Tracks that PCCA may desire to construct in accordance with Section 9.1 hereof. The Contractor will, however, be required to maintain these Betterments after they have been completed and added to the PCCA Railroad Tracks. The Contractor shall prepare monthly reports detailing the routine maintenance work performed on the PCCA Railroad Tracks, which reports shall be made available promptly upon request by PCCA. PCCA shall have the right to inspect the condition of the PCCA Railroad Tracks during normal business hours and on reasonable advance notice. The Contractor agrees to minimize any interference with the operation over the PCCA Railroad Tracks resulting from routine maintenance of the tracks; provided, however, PCCA acknowledges that the Contractor does not guarantee that interruptions in service will not occur.

Section 6.3 Maintenance Standards.

 Contractor shall also oversee all maintenance work on the PCCA Railroad Tracks during the Term to ensure customary and normal quality measures are satisfied.



[REDACTED]

Section 6.5

[REDACTED]

[REDACTED]

[REDACTED]

Section 6.6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 7
RECEIPT OF SWITCHING AND ANCILLARY FEES
AND PAYMENT OF OPERATING FEES

Section 7.1 Description of Operator's Sources of Revenue.

Section 7.2 Revenue to the Contractor for Ancillary Services and Storage.

(a) The Contractor may issue a tariff or contract and charge shippers directly for inter- or intra- plant switching services and other customary railroad service fees, such as special switches and inter- or intra- plant switch moves; provided, however, that PCCA shall be entitled to an approval right prior to the publishing of that tariff or contract and each time that tariff or contract is modified or amended. The Contractor may also collect storage revenue, including switch in/out and daily storage fees. All of the payments to the Contractor pursuant to this Section 7.2 shall be collectively referred to as “**Ancillary Fees.**”) Notwithstanding anything to the contrary contained herein, the Authority agrees that the Contractor's car repair revenue and customer track repair revenue shall be excluded from Ancillary Fees for purposes of this Section 7.2.

[illegible]

[REDACTED]

[REDACTED]

(c) Notwithstanding anything to the contrary contained herein, when the Term of this Agreement ends, the Operating Year in which the termination occurs shall be deemed to be extended for purposes of this Section 7.4 until the last day on which the Contractor receives a payment of the Basic Switching Fees and/or Ancillary Fees payable to it by the Class I Railroads. So, for the absence of doubt, Contractor shall continue to pay to the Authority the Basic Operating Fees out of the Basic Switching Fees and Ancillary Fees it receives after the Term ends as if such fees had been paid in the Operating Year in which the Term ends.

[REDACTED]

Section 7.6 Audit. The Contractor shall establish and maintain books, records, and

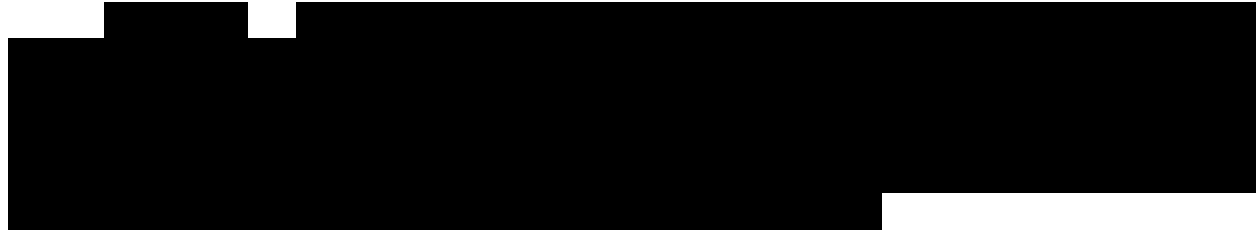
[REDACTED]

ARTICLE 8

OTHER TERMS AND CONDITIONS

Section 8.1 Personnel. Contractor shall provide all personnel necessary to perform the Services, and such personnel shall be under the sole control and direction of Contractor. Neither party shall direct the work of, or provide work instructions to, the employees of the other party. Contractor shall provide its employees with all proper training (including hazardous materials training) and testing necessary for them to operate on PCCA Railroad Tracks in a safe and efficient manner and in accordance with all FRA regulations. PCCA shall have the right to exclude from PCCA Railroad Tracks any employee of Contractor determined by PCCA, in its sole discretion, to be in violation of PCCA's rules, regulations, orders, practices or instructions promulgated in the normal course of business. The decision to bar any employee of Contractor from PCCA Railroad Tracks will not be interpreted as a request for Contractor to terminate or otherwise vary the

individual's employment. Contractor shall release, indemnify, defend, and hold PCCA harmless from and against any and all proven claims and expenses resulting from such exclusion. Neither party shall have the right to determine or to have input into any personnel decisions of the other party, including decisions regarding hiring, discipline, and discharge. The employees of one party to this Agreement shall not be deemed to be employees or agents of the other party.



Section 8.3 Performance Standards. All Services shall be performed (i) in an efficient, good and workmanlike manner, (ii) in conformance with all applicable laws, statutes, regulations and ordinances of federal, state and local governmental entities, and (iii) in accordance with accepted industry standards and reasonable shipper requirements. Contractor, at its expense, shall be responsible for all job site cleanup and restoration, including removal of all construction materials, debris, litter and other waste materials resulting from Contractor's maintenance work to the reasonable satisfaction of PCCA.

Section 8.4 Interference. The provision of Services by Contractor on PCCA Railroad Tracks shall not unreasonably interfere with the operations of PCCA, as determined by PCCA in its reasonable discretion. Contractor agrees to use commercially reasonable efforts to ensure that neither Contractor nor any of its contractors or subcontractors causes any such unreasonable interference or safety violation on or adjacent to PCCA Railroad Tracks. In the event PCCA determines, in its reasonable discretion, that Contractor's activities on PCCA Railroad Tracks are unreasonably interfering with operations on PCCA Railroad Tracks or causing a safety violation, PCCA reserves the right to require Contractor to take prompt action to prevent such interference or safety violation, and failure to take such prompt action shall be deemed a default by Contractor, if such failure is not cured within the cure period provided under Section 12.1.

Section 8.5 Oversight. PCCA staff will have oversight responsibility for this Agreement, including review of reports, as required, and the Annual Maintenance Plan of the Contractor. PCCA staff will be responsible for all reporting to the Port Commission as it relates to the operation of the Railroad Properties.

ARTICLE 9 CHANGES TO PCCA RAILROAD TRACKS

Section 9.1 Additions or Improvements to the PCCA Railroad Tracks. PCCA, from time to time, and at its sole cost and expense, may make changes to, including additions and improvements to, and retirements from, the PCCA Railroad Tracks as shall, in its sole discretion, be necessary or desirable for the efficient or safe operation thereof, or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction; provided that it provides Contractor with at least ninety (90) days prior written notice and affords Contractor the opportunity to review and comment on the plans for any such additions and improvements, which

comments PCCA shall consider in good faith. Such additions and improvements shall become part of the PCCA Railroad Tracks and such retirements shall be excluded from the PCCA Railroad Tracks, without any further action necessary; provided, however, that PCCA shall deliver updated railroad maps to the Contractor from time to time that properly depict the PCCA Railroad Tracks at that time for purposes of this Agreement and any such map that is labeled “**Replacement Exhibit A of the Short Line Railroad Operating Agreement**” shall replace and supersede the Exhibit A to this Agreement at that time whether or not the Replacement Exhibit A is actually attached to an executed copy this Agreement. Contractor acknowledges and agrees that it shall not be permitted to alter or improve the Railroad Properties without the express written consent of PCCA’s Chief Operating Officer which consent shall be conditioned upon Contractor complying with all engineering requirements related to any improvement project. The additions and improvements to the PCCA Railroad Tracks described in this Section are collectively referred to in this Agreement as “***Betterments.***”

Section 9.2 Betterments. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Contractor be responsible for constructing, performing, or for contributing to the cost of, any Betterments to the PCCA Railroad Tracks.

Section 9.3 Lease of Individual Tracks.

(a) PCCA reserves the right to lease individual tracks that are part of PCCA’s Railroad Tracks to private parties from time to time on such terms and conditions as PCCA deems appropriate; provided, however, that PCCA will give the Contractor thirty (30) days’ prior written notice of its intention to do so; and provided further, however, that PCCA will retain one hundred percent (100%) of the revenue payable to PCCA under such leases.

(b) PCCA reserves the right to construct and lease additional tracks under specific circumstances such as tracks built by PCCA for specific purposes such as storage tracks. PCCA will retain one hundred percent (100%) of the revenue payable to PCCA under such agreements. If the Authority decides to construct and lease additional tracks as provided in this Section 9.3(b), the Authority agrees that it will ask for and consider the Contractor’s input on any such plan.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 10
LIABILITY AND INDEMNIFICATION**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

its



**ARTICLE 11
ENVIRONMENTAL**

ARTICLE 12 DEFAULT AND TERMINATION

Section 12.1 Event of Default and Termination. Upon the occurrence of an Event of Default (as hereinafter defined), and subject to subsection (b) below, this Agreement may be terminated by written notice of the non-defaulting party to the defaulting party in accordance with this Section.

(a) Any one or more of the following events shall constitute an event of default under this Agreement (each an “*Event of Default*”):

[REDACTED]

(ii) The Contractor’s failure to observe and perform any of the terms, covenants, conditions, limitations or commitments under this Agreement to be observed or performed by the Contractor (other than payment of Operating Fees).

(iii) The Contractor shall discontinue any Services or vacate any portion of the Railroad Properties without PCCA’s prior written consent.

(iv) A federal or state tax lien is filed against the Contractor affecting the Railroad Properties and remains undischarged within sixty (60) days after its filing.

(v) A final judgment for the payment of money in excess of \$25,000 shall be rendered against the Contractor and such judgment shall remain undischarged for a period of sixty (60) days during which execution shall not be effectively stayed.

(vi) The Authority’s failure to observe and perform any of the terms, covenants, conditions, limitations or commitments under this Agreement to be observed or performed by the Authority.

(b) Notwithstanding the preceding subsection (a), upon an Event of Default described only in subsection (a)(ii) or subsection (a)(vi) above, such Event of Default may be cured (and no Event of Default will be deemed to have occurred) if the defaulting party, after receiving written notice from the non-defaulting party demanding cure of such default: (1) either cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates to cure the default within thirty (30) days to the satisfaction of the non-defaulting party and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, but in no event later than one hundred twenty (120) days after written notice demanding cure of such default was delivered.

(c) In the event the defaulting party commits an Event of Default, which Event of Default is not timely cured (to the extent curable as provided in subsection (b) above), then the non-defaulting party shall have the right, in addition to any other rights and remedies available at law or equity, which shall not be limited, to immediately terminate this Agreement upon written notice to the defaulting party; provided, however, that a termination of the Agreement pursuant to this section shall not relieve either party of any obligations (financial or otherwise) that have accrued on or before such termination.

Section 12.2 Bankruptcy. Notwithstanding the foregoing, in the event Contractor files, or has filed against it, any petition or action for relief under any creditor's law (including bankruptcy, reorganization, or similar actions), either in state or federal court, or becomes insolvent, or makes any transfer in fraud of creditors, or has a receiver appointed for its assets, or makes an assignment for the benefit of creditors, this Agreement shall terminate immediately without any notice required, subject to any necessary regulatory approvals.

Section 12.3 Surrender of Railroad Properties. Contractor covenants that at the termination or expiration of this Agreement it will quietly surrender the Railroad Properties, and any assigned area for storage, in the same condition as received or as improved. Any improvements made to the Railroad Properties by Contractor shall remain the exclusive property of PCCA. Contractor shall, at such time, remove from the Railroad Properties all equipment, trade fixtures, and personal property belonging to it (collectively "***Personal Property***"), and repair any damage to the Railroad Properties caused by the removal of such Personal Property. Any Personal Property that is not removed within sixty (60) days after the expiration or termination of this Agreement shall be deemed abandoned and unclaimed. After the sixty (60) day period has expired, PCCA, in its sole discretion, may sell, at public or private sale, or dispose of any abandoned and unclaimed Personal Property and shall be entitled to use the proceeds of any sale at its discretion.

Section 12.4 Discontinuance of Operations. Upon expiration or termination of this Agreement for any reason, the Contractor shall immediately file for discontinuance with the STB and shall cease operations on the Railroad Properties promptly upon grant of discontinuance authority or qualification of a successor pursuant to a change in operator filing with the STB and shall assist the Authority in making the transition to a new operator.

ARTICLE 13 GENERAL PROVISIONS.

Section 13.1 Compliance with Laws.

(a) Contractor shall fully comply with all applicable laws, rules, regulations, permits, procedures and approvals, whether or not presently contemplated, of all federal, state, county and local governmental bodies, in regard to (i) the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over PCCA Railroad Tracks and (ii) the provision of Services hereunder, including, without limitation, security and safety rules and regulations of PCCA applicable to the Railroad Properties; provided that compliance with Environmental Laws is governed exclusively by Article 11 hereof. Operation over PCCA Railroad Tracks is contingent upon Contractor obtaining any required regulatory and government approvals. Contractor agrees that all of its operations on PCCA Railroad Tracks and the provision of Services hereunder shall be subject to and in all respects in conformance with all applicable rules and regulations of the Association of American Railroads ("***AAR***"), the STB, the FRA and any other federal administrative rules and regulations, including, without limitation, those related to locomotive engineer certification and the use of air brakes and safety appliances. Upon PCCA's request, Contractor shall provide certification and/or documentation of FRA compliance and shall possess and maintain any licenses and/or operating authority required of them by applicable laws. Contractor shall be responsible for all reporting

requirements of AAR and FRA and agrees to generate any other reports as requested by PCCA from time to time.

(b) Should implementation of this Agreement require the taking of any action by PCCA or Contractor at the STB or its successor agency, each party, at its own cost and expense will initiate and thereafter diligently prosecute such action. Each party shall assist and support efforts of the other party to meet the requirements of any laws and regulations applicable to use of PCCA Railroad Tracks.

Section 13.2 Records. The records of each party hereto, insofar as they pertain to matters covered by this Agreement will be available for inspection, during normal business hours and upon reasonable advance notice, by the other party for a minimum period of five (5) years after such records are created, subject to any lawful limitations related to disclosure of records or record retention.

Section 13.3 No Partnership or Joint Venture. It is understood and agreed that this Agreement and the relationship created hereby shall not be considered to be a partnership, joint venture or an employer/employee relationship, and neither Contractor nor PCCA shall have the right or authority to represent the other in any capacity or to transact any business or incur any obligations, contractual or otherwise for, in the name of, or on behalf of the other, unless otherwise authorized to do so in writing.

Section 13.4 No Third-Party Beneficiaries. This Agreement and each and every provision hereof is for the exclusive benefit of the parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against the parties.

Section 13.5 Force Majeure. Each party will be excused from its obligations under this Agreement, other than payment obligations, if and to the extent it is prevented or delayed from satisfying those obligations by conditions that constitute force majeure; provided such party is unable by the exercise of all reasonable efforts to prevent, overcome or mitigate the effects of such force majeure. Force majeure shall not include events caused by the negligence or willful misconduct of the party claiming force majeure. If a party wishes to take advantage of the relief provided in this Section 13.5, it must as soon as reasonably practicable, advise the other party in writing of the existence of the force majeure condition and the estimated time of its duration. The duration of the relief from a party's obligation as a result of an event of force majeure shall be coterminous with the effects of such force majeure event on the party's ability to perform the obligation. Force majeure shall include acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, washout or explosion, strike, lockout, work stoppage or labor disputes experienced by a party hereto, FRA orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the reasonable control of, and not caused by the negligence of, the party invoking such force majeure as an excuse for non-performance; provided, however, that a pandemic or epidemic shall not constitute a force majeure under this Agreement regardless of its severity.

Section 13.6 Notices. All notices permitted or required to be sent under this Agreement shall only be effective if in writing and sent via one of the following methods to an address specified below: (i) personal delivery; (ii) certified mail, return receipt requested; or (iii) nationally recognized overnight delivery service. Notices may also be sent via electronic mail and shall be deemed effective upon confirmation by the receiving party of successful transmission. Either party may change its notice address by providing written notice of such change in accordance with this paragraph:

If to PCCA:

Port of Corpus Christi Authority
Attention: Chief Operations Officer
400 Harbor Drive
Corpus Christi, Texas 78401
Email: crobertson@pocca.com

If to Contractor:

Texas Coastal Bend Railroad, L.L.C.
Attention: Chief Commercial Officer
315 W. 3rd St.
Pittsburg, KS 66762
Email: sloeb@watco.com

Section 13.7 Amendments. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be in writing and signed by both PCCA and Contractor.

Section 13.8 Assignment. Contractor may not assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, without the prior written consent of PCCA, which may be withheld in PCCA's discretion for any reason. For purposes of this Section, an assignment shall include any transfer of any rights under this Agreement, whether voluntary or involuntary or by operation of law, including any merger or consolidation of the Contractor. Any assignment or delegation of this Agreement, or of any rights or duties hereunder, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of PCCA, this Agreement may be terminated. Subject to this Section 13.8, this Agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

Section 13.9 Waivers. No failure of PCCA to exercise any power given PCCA hereunder or to insist upon strict compliance by Contractor of any obligation hereunder, and no custom, course of conduct or practice of the parties at variance with the terms hereof shall constitute a waiver of PCCA's right to demand exact compliance with the terms hereof.

Section 13.10 Confidentiality. Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party to enforce its rights under this

Agreement, during the Term and during a period of five (5) years subsequent to termination or expiration of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by PCCA or Contractor to any party other than each party's respective Affiliates, and their respective commissioners, directors, officers, agents, employees and attorneys, without the prior written approval of the other party.

Section 13.11 Governing Law.

(a) THIS AGREEMENT AND THE PERFORMANCE THEREOF SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, AND VENUE FOR ANY DISPUTE ARISING HEREUNDER SHALL BE NUECES COUNTY, TEXAS.

(b) This Agreement is subject to the orders, rules, and regulations of appropriate regulatory authorities, including the STB, having jurisdiction over the Contractor and the Authority. In the event that either party determines that it is necessary to participate in an administrative or judicial proceeding or to take a position before any governmental body which may affect the interests of the other or the Services provided hereunder, each party shall provide the other party reasonable advance notice of its intent to do so and the nature of the interest or position it will assert. In such case, the parties shall use their best efforts to communicate and coordinate their participation and/or positions.

Section 13.12 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument. Signatures of the parties transmitted by electronic mail will be binding and effective for all purposes.

Section 13.13 Representation of Authority. Subject to Section 13.15, below, each party hereto represents and warrants that (a) the person signing this Agreement on its behalf is duly authorized and has legal capacity to execute and deliver this Agreement, (b) the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized and (c) this Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Section 13.14 Conflict of Interest.

(a) The Contractor represents that it has completely disclosed to the Authority all facts bearing upon any possible interests, direct or indirect, that the Contractor believes any commissioner, officer, employee or agent of the Authority presently has, or will have, in this Agreement or in the performance of this Agreement.

(b) The Contractor shall comply with all codes of conduct and/or conflict of interest policies adopted by the Authority. The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of its obligations under this Agreement.

(c) The Contractor represents to the Authority that the Contractor has no present, and will have no future, conflict of interest between providing the Services contemplated

by this Agreement and any interest the Contractor may presently have, or will have in the future, with respect to any other person or entity that has any interest adverse or potentially adverse to the Authority, as determined in the reasonable judgment of the Authority.

(d) During the Term of this Agreement, Contractor agrees that it or its Affiliates will not enter into any new contract to provide similar services to any other Texas ports on the Gulf of Mexico or to any other facilities or customers within a 50-mile radius of the western end of the Nueces River Rail Yard without PCCA's prior written consent, which PCCA agrees will not to be unreasonably withheld or delayed. It is acknowledged by the Parties that Watco's facilities at Greens Port Industrial Park, and its facility in Refugio, Texas, do not require any further consent from PCCA and are already in operation at the Effective Date.

Section 13.15 Port Commission Approval Required. This Agreement will not become effective until it has been approved by the Port Commission, which is the governing body of PCCA, at a duly called meeting of the Port Commission.

Section 13.16 Change in Control. Contractor may undergo a Change of Control with the prior written consent of PCCA, which consent may be withheld in PCCA's discretion for any reason. If Contractor undergoes a Change of Control without PCCA's prior written consent, this Agreement may be terminated by PCCA in accordance with this Section 13.16. Said termination will be exercised by PCCA's delivery of written notice to the Contractor, such notice to be provided within one year after the date on which PCCA becomes aware of the Change of Control and not less than sixty (60) days prior to the effective date of such termination, which notice shall set forth the effective date of termination; provided that, in the event such written notice to Contractor is not delivered in accordance with the terms of this sentence, PCCA shall be deemed to have waived any rights to terminate this Agreement with respect to the particular Change of Control giving rise to the required notice.



Section 13.18 Consents and Approvals.

(a) Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

(b) Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the Authority, such act may be taken or performed or such approval or consent may be given by the Chief Executive Officer of the Authority or his designee and the Contractor may rely thereon in all respects.

IN WITNESS WHEREOF, PCCA and the Contractor and the Guarantor have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

PORT OF CORPUS CHRISTI AUTHORITY

By: _____
Sean C. Strawbridge,
Chief Executive Officer

TEXAS COASTAL BEND RAILROAD, L.L.C.

By: _____
Stefan R. Loeb,
EVP – Chief Commercial Officer

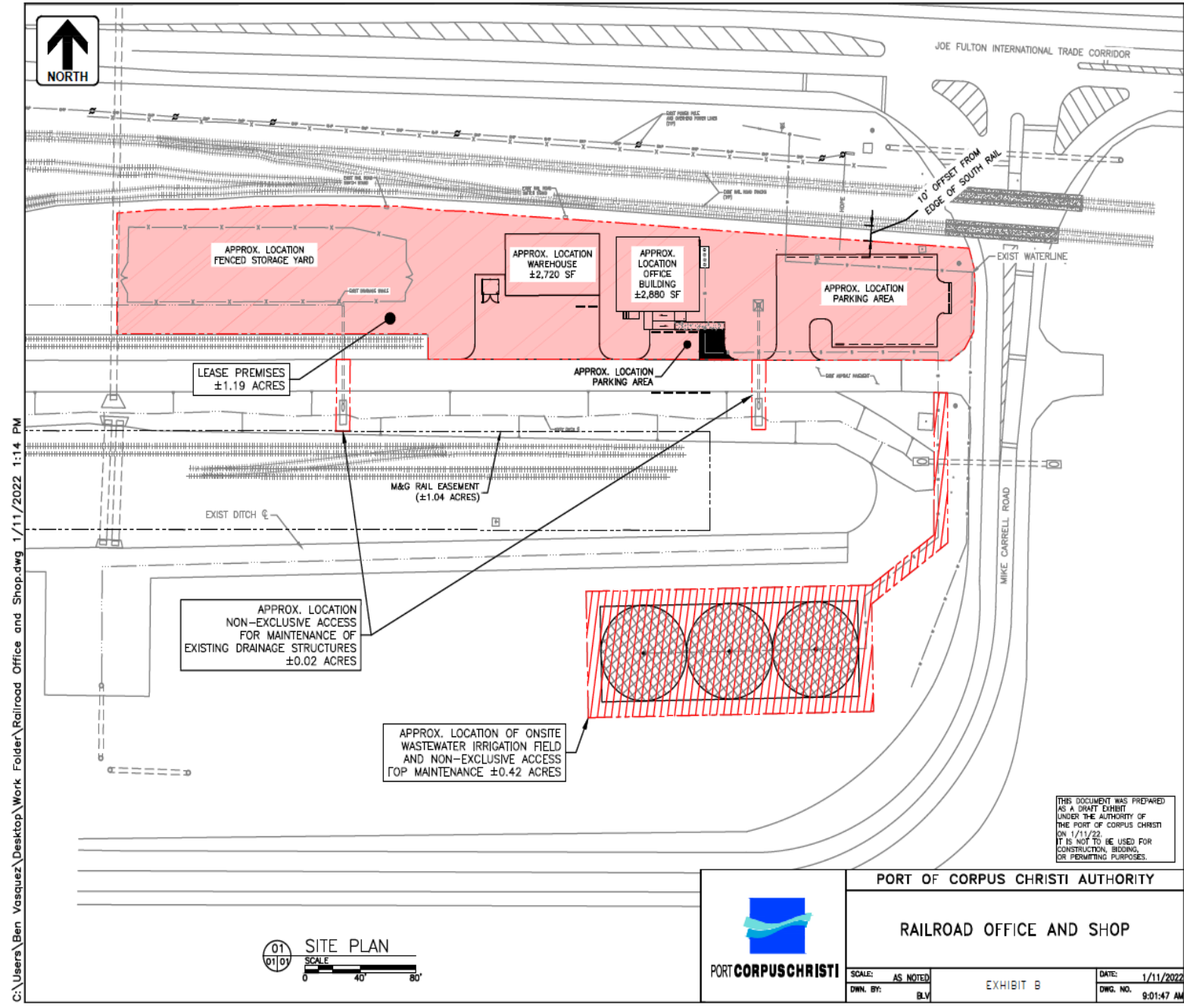
EXHIBIT A
PCCA RAILROAD TRACKS

[See attached drawing.]

EXHIBIT A-1
BULK TERMINAL TRACKS

[See attached drawing.]

EXHIBIT B
RAILROAD OFFICE AND SHOP



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THIS DOCUMENT WAS PREPARED
AS A DRAFT EXHIBIT
UNDER THE AUTHORITY OF
THE PORT OF CORPUS CHRISTI
ON 1/11/22.
IT IS NOT TO BE USED FOR
CONSTRUCTION, BIDDING,
OR PERMITTING PURPOSES.



PORT OF CORPUS CHRISTI AUTHORITY

RAILROAD OFFICE AND SHOP

SCALE: AS NOTED
DWN. BY: BLV

EXHIBIT B

DATE: 1/11/2022
DWS. NO. 9:01:47 AM

EXHIBIT C

BASIC SWITCHING FEES PAYABLE TO CONTRACTOR

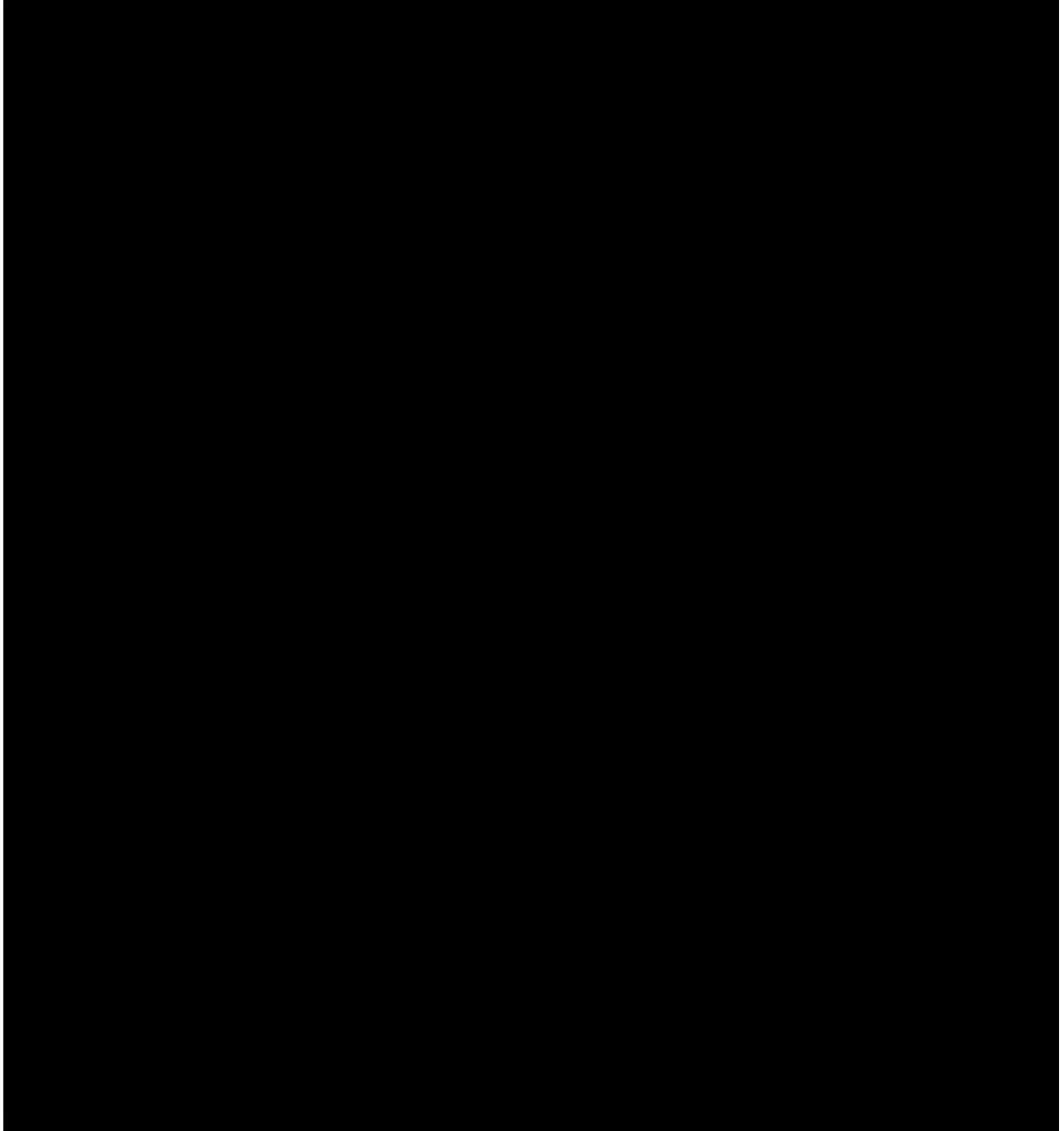
[Exhibit C to the 1997 Joint Operating Agreement]

Exhibit C
Page 1 of 3 Pages



Exhibit C
Page 2 of 3 Pages

ADJUSTMENTS



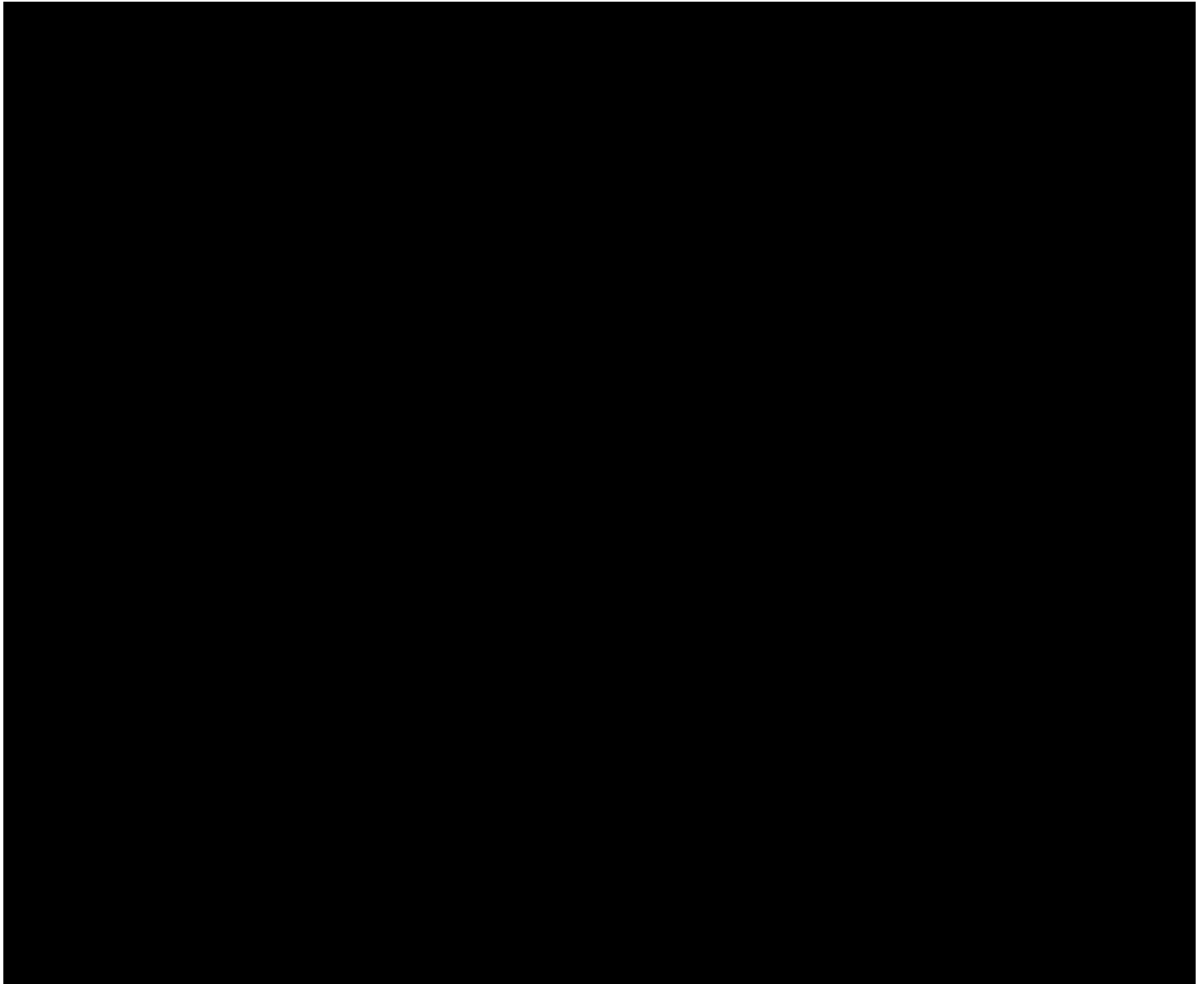
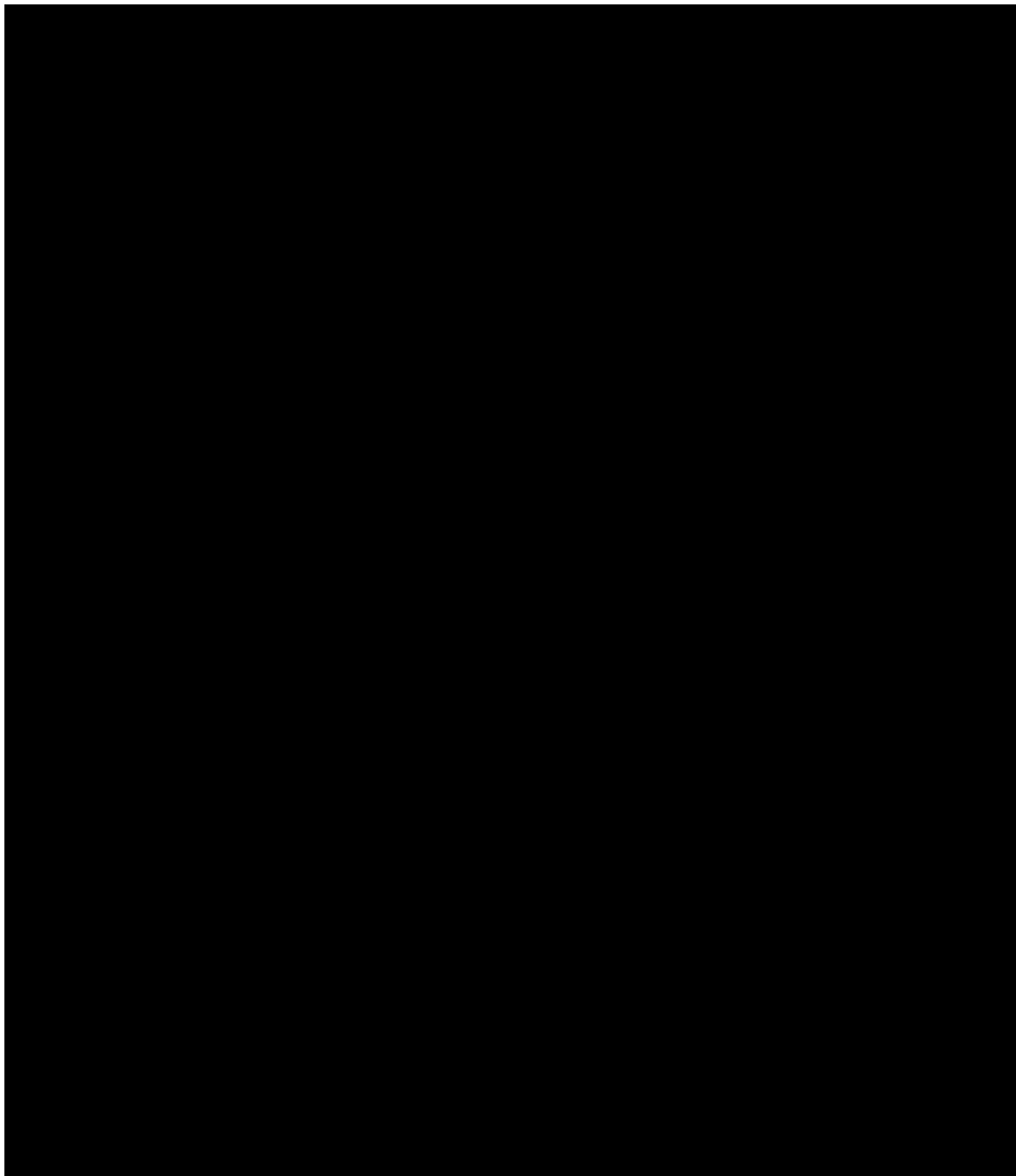
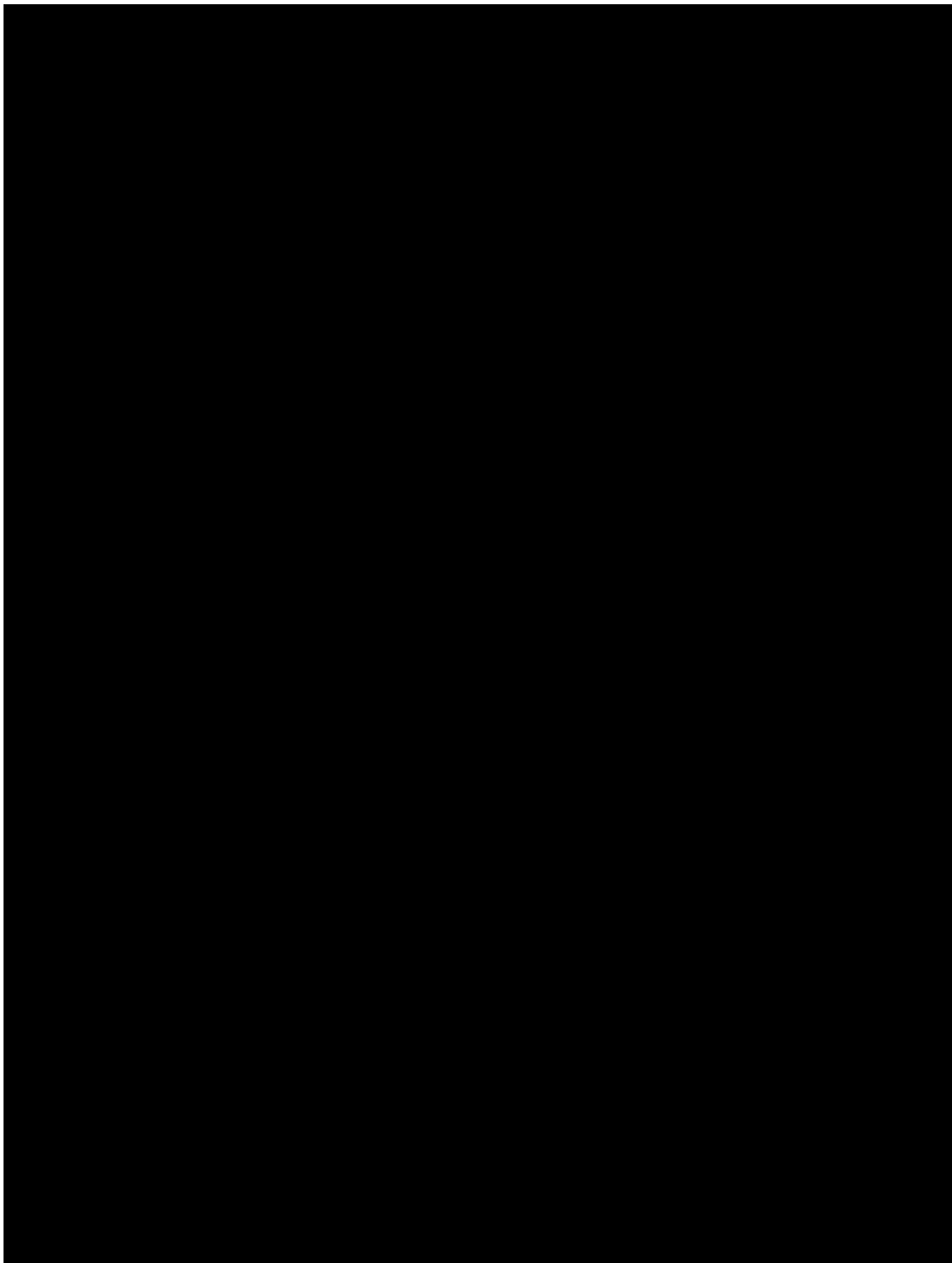
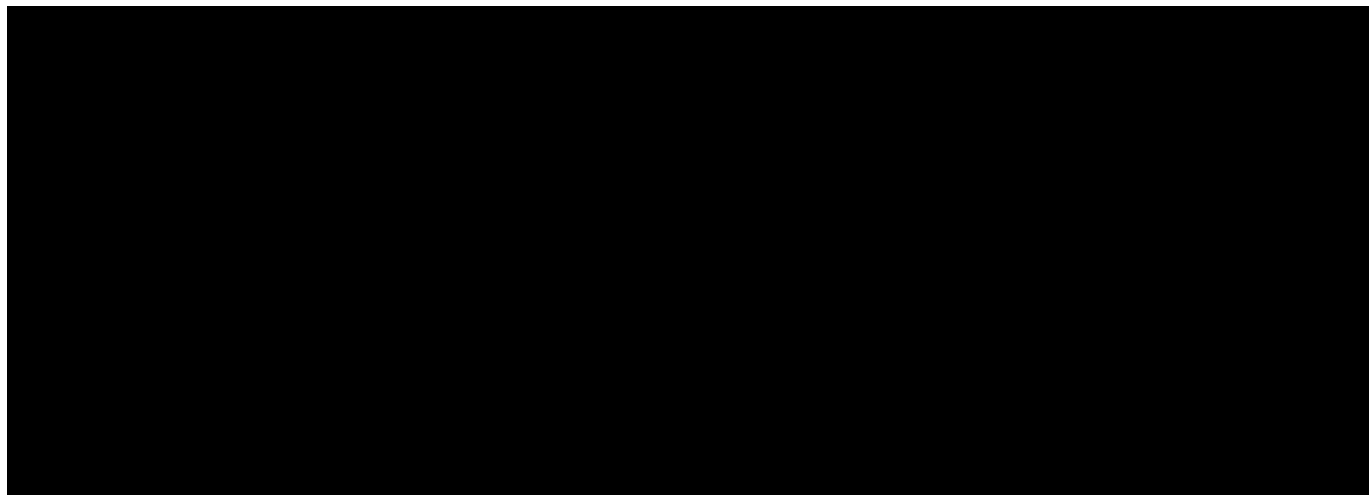


EXHIBIT D

INSURANCE REQUIREMENTS FOR CONTRACTOR







PORT OF CORPUS CHRISTI COUNTERPART
APPENDIX ONE -- Page 1 of 23

CORPUS CHRISTI JOINT OPERATING AGREEMENT

This Agreement, made and entered into by and between the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS** (formerly known before a name change as the Nueces County Navigation District No. 1), a political subdivision of the State of Texas (hereinafter sometimes called "Authority"), the **UNION PACIFIC RAILROAD COMPANY** (successor through merger to Missouri Pacific Railroad Company), a Utah corporation (hereinafter sometimes called "UP"), **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware corporation (hereinafter "SP") (UP and SP are referred to hereinafter collectively as "UP"), **THE TEXAS MEXICAN RAILWAY COMPANY**, a Texas corporation (hereinafter sometimes called "TM"), and **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter sometimes called "BNSF").

WITNESSETH:

WHEREAS, the Corpus Christi Terminal Association was created by an agreement dated January 23, 1929, between the then Nueces County Navigation District No. 1 and the railroad companies then operating into and serving the City and Port of Corpus Christi, Texas, (approved by the Interstate Commerce Commission by order in Finance Docket 7467, 154 ICC 193, decided May 7, 1929) and said agreement has been amended by supplemental agreements of various dates and, as so amended said agreement is hereinafter referred to as the "Original Agreement";

WHEREAS, at the time the Corpus Christi Terminal Association was created, the then Navigation District owned certain railroad tracks and facilities at and in the vicinity of the Port of Corpus Christi upon which it desired, in the public interest, to cause to be provided impartial, efficient, unified and economical railroad switching service and the railroad parties which then served the said Port of Corpus Christi by means of lines of railroad owned and operated by them, desired to unite in furnishing, and causing to be furnished to the public, railroad switching service of the character aforesaid and, to that end, they determined that the public interest would best be served by an association and by operation as was set forth in the said Original Agreement;

WHEREAS, the Southern Pacific Transportation Company, a Delaware corporation, subsequently acquired all the rights and properties of the system of railroads known in the Original Agreement as Southern Pacific Lines (hereinafter sometimes called "SP") of which system, the San Antonio and Arkansas Pass Railway Company, and Texas and New Orleans Railroad Company were parties to the original basic agreement of January 23, 1929, and wherever the term "Southern Pacific Lines" or "SP" is used herein it shall mean the Southern Pacific Transportation Company which has now been acquired by UP;

WHEREAS, the Missouri Pacific Railroad Company acquired all the rights and properties of the system of railroads known as Missouri Pacific Lines, of which system San Antonio, Uvalde and Gulf Railroad Company and St. Louis, Brownsville and Mexico-Railway

COPY
PERMANENT RECORD

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Company were parties to the original basic agreement of January 23, 1929, such acquisition being made pursuant to Consummation Order and Final Decree of the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, in Proceedings for the Reorganization of a Railroad, No. 6935, styled "In the Matter of Missouri Pacific Railroad Company, Debtor", dated March 1, 1956, and wherever the term "Missouri Pacific Lines" or "MoPac" is used herein it shall mean the Missouri Pacific Railroad Company which has now been merged into UP;

WHEREAS, the City of Corpus Christi, the County of Nueces, the then Nueces County Navigation District No. 1, the then Missouri Pacific Railroad Company, the Texas Mexican Railway Company, and then Southern Pacific Company did, in the public interest, enter into an agreement, dated May 27, 1960, hereinafter referred to as "Primary Agreement", providing for the removal of bascule lift bridge at the entrance to the Port of Corpus Christi, and to replace it with a new vertical lift bridge (hereinafter called the "Tule Lake Lift Bridge") over the Tule Lake Channel, approximately 1-1/2 miles above Avery Point Turning Basin, and to provide such additional facilities and rearrangement of existing facilities as may be necessary to permit the railroads to continue to provide service to the City of Corpus Christi and to facilities of the then Navigation District, together with grants of the right of use of certain existing railroad tracks and tracks to be provided;

WHEREAS, upon removal of aforesaid bascule lift bridge, it was necessary to effect modifications and changes in the operations of Corpus Christi Terminal Association and in the operations of TM, MoPac and SP to provide continued switching within Corpus Christi, including port and interchange switching, and continued SP rail service to the Corpus Christi area;

WHEREAS, the Port of Corpus Christi Authority owns and/or controls the trackage making up the Corpus Christi Terminal Association and is desirous of transferring the Original Agreement to a short line common carrier and entering into this Agreement to provide for changes in operations and to transfer the future terminal switching and railroad facility maintenance services to a short line common carrier; and

WHEREAS, the undersigned are either parties to the Original Agreement, as amended, successors in interest to the parties to the Original Agreement, as amended, or new parties to this Agreement and are now desirous of cooperating with the Port of Corpus Christi Authority and therefore concur with the Port of Corpus Christi Authority in their desire to transfer their obligations as set forth in the Original Agreement, as amended to a short line common carrier and are desirous of entering into this Agreement to provide for changes in the operations to transfer the future terminal switching and railroad facility maintenance services to a short line common carrier railroad for the mutual benefit of the undersigned (hereinafter called "Authority's Contractor"); and

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WHEREAS, the undersigned railroad parties are desirous of executing this agreement as members of the Corpus Christi Terminal Association, on the one hand, and as separate railroad companies acting independently of their affiliation with Corpus Christi Terminal Association, on the other hand, and the Authority being in accord with such desires;

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements and promises made herein, the undersigned agree that, from and after the effective date hereof, the Original Agreement, as amended, shall be assigned to Authority's Contractor under separate agreement, and the undersigned agree that they are entering into this new agreement as follows:

**ARTICLE I
NAME AND PURPOSE OF ASSOCIATION, AND
STATUS OF PARTIES TO AGREEMENT**

Section 1.01. Name.

The name under which the parties hereto shall conduct the business for which this Agreement is made shall be the Port of Corpus Christi Railroad Association (hereinafter sometimes referred to as the "Association").

Section 1.02. Purpose.

The purpose of this Association is:

- a. On equal terms and conditions to provide impartial, efficient, unified and economical common carrier switching service, through a third-party contractor selected by the Authority, for the benefit of all the parties hereto, to serve publicly owned warehouses, wharves, docks, elevators or other terminal facilities and publicly owned railroad facilities, now existing or hereafter constructed on any properties of the Authority, so as to thereby afford every railroad currently serving Corpus Christi or who may enter in the future the City of Corpus Christi and the Port of Corpus Christi, access thereto without discrimination.
- b. To provide the same character of switching service for all privately owned warehouses and other industries on any property of the said Authority.
- c. To provide the same character of switching service for all privately owned industries located on property other than that of Authority on the north side of and near the ship channel.

APPENDIX ONE -- Page 4 of 23Section 1.03. Parties.

The UP, SP, TM and BNSF hereby acknowledge that, as signatories to this agreement, they are:

- a. On the one hand, jointly and severally, railroad company members of the Association (sometimes hereinafter also called "Association Railroad Member" or "Association Railroad Members") and as such assume the rights, privileges, obligations and liabilities attendant upon such membership, including the rights of participation in the management and control of the affairs of the Association; and,
- b. On the other hand, separate and independent railroad companies and as such are accorded only such rights, privileges, obligations and liabilities as are specifically set forth in this Agreement.

**ARTICLE II
CONTROL AND MANAGEMENT**

Section 2.01. Executive Committee.

The control and management of the affairs of the Association shall be vested in a Executive Committee consisting of one designated representative of each of the Association Railroad Members and the Chairman of the Authority or his designated representative, each of whom shall have one vote, and shall serve without compensation.

Section 2.02. Changes in Association Membership.

Any railroad entering the City of Corpus Christi which may hereafter desire to become an Association Railroad Member may do so on the same terms and conditions, and thereupon shall be entitled to one vote and if any Association Railroad Member, withdraws from the Association as provided in **Article XIX** hereof, the total number of votes shall be correspondingly reduced.

Section 2.03. Votes.

In the event that through stock ownership, lease, consolidation or otherwise, any Association Railroad Member has been, is, or shall be acquired, controlled or operated, directly or indirectly, by any other railroad company or system that is a member of the Association, or by any other railroad company or system owning or controlling in any way any other railroad company or system that is a member of the Association, the system aforesaid shall have but one representative and but one vote, and there shall be no separate representative or vote by any such acquired, controlled or operated company or

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companies. The representation and vote to which the railroad companies, members of the Association, are now entitled is hereby declared to be:

- | | | |
|----|---|-----------------------------|
| a. | The Port Of Corpus Christi Authority | 1 representative and 1 vote |
| b. | Union Pacific Railroad Company
(Southern Pacific Transportation Company) | 1 representative and 1 vote |
| c. | The Texas Mexican Railroad Company | 1 representative and 1 vote |
| d. | The Burlington Northern and
Santa Fe Railway Company | 1 representative and 1 vote |

Section 2.04. Breaking of Tie Votes.

In event of a tie vote and an agreement cannot be reached, the disagreement shall be submitted for settlement under the terms of **Article XV** hereof.

Section 2.05. Executive Committee Management Oversight.

The Executive Committee shall exercise management oversight over all affairs of the Association in accordance with the terms of this agreement.

Section 2.06. Chairman.

The representative of the Authority shall be the Chairman of the Executive Committee and shall preside at all meetings thereof.

Section 2.07. Meetings.

Meetings of the Executive Committee shall be held at Corpus Christi, Texas, and members thereof may be present in person or by proxy. Meetings shall be held annually or when called by the Chairman. The Chairman may call meetings on his own motion and shall call meetings when requested in writing by any Association Railroad Member. The Chairman shall give due notice in writing to all members of the time and place of all meetings. Such notice shall be sufficient if given not less than five days prior to the date of such meetings, but such requirement of notice may be waived in writing by any representative or representatives. The Association Railroad Members shall keep the said Chairman of the Executive Committee advised as to the names and addresses of their representatives to receive notice of meetings.

APPENDIX ONE -- Page 6 of 23Section 2.08. Quorum.

A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business at all meetings.

Section 2.09. Minutes.

An accurate written record shall be kept of all proceedings thereof by a secretary appointed by the Board. The minutes of each meeting shall be read and submitted for approval at the next meeting.

**ARTICLE III
RAILROAD FACILITIES TO BE INCLUDED**

Section 3.01. Railroad Properties.

The Railroad Properties either owned or controlled by the Authority as of August 3, 1997, and subsequent additions, deletions and changes thereto which have been assigned to the Authority's terminal rail switching and facility maintenance contractor are shown by appropriate symbols on Exhibit "A", attached and made a part hereof. At reasonable intervals, to reflect changes, additions or eliminations to or from the Railroad Properties, Exhibit "A" will be revised by the Authority, and will be attached to and made a part hereof.

Section 3.02.

Authority agrees that Association Railroad Members and Authority's Contractor shall be permitted to operate unit trains (defined below) to or from Authority's facilities for the handling of bulk or TOFC/COFC business that may be built on or adjacent to Authority's trackage after commencement of Railroad Property lease with Authority's Contractor. The Authority shall be entitled to receive a charge, using methodology common in trackage rights agreements, reflecting Association Railroad Members' proportionate share of the maintenance expense on that portion of Authority's trackage subject to shared operation and this charge shall be negotiated prior to commencement of unit train operations.

A unit train shall be defined as any freight train of 67 cars or more of a single commodity (except for intermodal shipments, unless of a single commodity) operated by a crew of the Association Railroad Members or Authority's Contractor to/from any future bulk handling or TOFC/COFC facility, when such train does not require the use of Authority's sidings or yard tracks outside the facility for breaking the train into smaller groups of cars for placement, or for assembling a train from smaller groups of cars after release. Association Railroad Members shall be permitted to let stand a portion of a train on the Authority's trackage preceding the facility switch, on a temporary basis, as part of a continuous switch movement by an Association Railroad Member's crew.

APPENDIX ONE -- Page 7 of 23Section 3.03. Use of Railroad Properties.

Use of the Railroad Properties by the Association Railroad Members, except in emergencies, shall be confined to (1) handling traffic in interchange movement into or out of the Common Interchange Yard as defined in Section 7.01 below and other Authority trackage with prior written approval, (2) handling of unit train movements by Association Railroad Members as defined in 3.02 above; provided, however, that the Authority reserves to itself the right to use, all Railroad Property trackage for movement of its engines and cars to and from and between its tracks, and the Authority also reserves the right to use, all of such said trackage for movement of its engines, locomotive cranes, and other self-propelled equipment with related tool, supply and other work cars from place to place as needed, including the performance of special work, such as, ship or car loading or unloading, maintenance work and extensions and improvements to tracks and roadways.

Section 3.04. Use of UP Tracks.

UP hereby grants to (1) the Authority and (2) the Association Railroad Members for unit trains only (as defined in Section 3.02 above), the right to use in common with UP, on bridge rights basis only, the UP owned portion of the Interchange Connection and those portions of the UP main track and other trackage extending eastwardly from east point of the switch of the Interchange Connection to a connection near Port Avenue with Track No. 110, and to a connection with Track No. 855 as shown on Exhibit "A" under the following conditions:

- a. UP shall have exclusive management and control of the operation and maintenance of such tracks and shall promulgate all rules and regulations and orders pertaining to the use thereof, which rules, regulations and orders shall be reasonable, just and fair to the Association. The Authority, and the Association Railroad Members while occupying such tracks, agrees to abide by the rules, regulations and orders promulgated by UP and to conduct its operations on such tracks with due regard to and without unreasonably interfering with the operations of UP. UP will exercise reasonable care, skill and diligence in the maintenance of such tracks and appurtenances; provided, however, UP shall not be responsible to the Authority or the Association Railroad Members for any defect in said tracks and appurtenances or neglect in performing such management, maintenance or control and the Authority and Association Railroad Members agree that they shall not make against UP any claim or demand for any loss, damage, injury or death whatsoever arising from operations pursuant to this agreement for such defect or neglect, anything to the contrary hereinafter contained in Article XII notwithstanding.
- b. UP shall have the right at any time to request the removal from service on such tracks of any employee, not including officers of the Authority or the

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Association Railroad Members, engaged in operations upon making written request and showing reasonable cause therefor, and the Authority agrees to exercise its best efforts to effect such removal with all reasonable dispatch. Anything herein to the contrary notwithstanding, the Authority shall not be required to remove any person from service if prevented from doing so by any law or regulation of a public authority having jurisdiction.

c. The cost of clearing wrecks of the Authority or the Association Railroad Members engines or cars on such tracks and the expense thereof shall be assumed and borne by the Authority or the Association Railroad Members in accordance with the provisions of **Article XII** hereof.

d. UP shall have the right to admit at any time any other railroad company to the use of all or any part of such tracks on such terms as it may desire.

e. The use of the rights and privileges herein granted with respect to such tracks shall inure to the benefit of and be binding upon the Authority and the Association Railroad Members, and its respective successors and assigns, provided however that UP must agree in writing to any assignment of such rights and privileges.

f. The use of and operation over such tracks by the Authority and the Association Railroad Members shall, except as otherwise provided in **Section 3.04a**, be subject to the provisions of **Article XII** with respect to liability for loss and damage.

g. A charge of \$0.35 per loaded car in each direction will be made by UP and paid by Authority's Contractor for use of UP's tracks when accessing Authority's Tracks 110 and 855 referred to herein; and also paid by Association Railroad Members for unit train movements as referred to herein.

Section 3.05. Use of the Savage Lane Line.

The Authority hereby grants to Association Railroad Members the equal right and privilege of joint use and operation of that portion of the Railroad Property known as the Savage Lane Line extending from the south end of switch ties of the turnout therein of the UP New Connection southwardly to a connection with TM track near TM Mile Post 158, said line of railroad crossing the UP main track near UP Mile Post 146, together with connecting track in southeast quadrant of the intersection of said line of railroad and UP main track known as the MoPac Connection.

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Use of the aforesaid rights and privileges in the performance of any of the purposes of this agreement shall be in accordance with and subject to the terms of the Corpus Christi Joint Track Agreement, dated July 6, 1970, as supplemented.

**ARTICLE IV
OPERATIONS**

Section 4.01. Rules and Regulations

Such rules and regulations shall, from time to time, be adopted and promulgated by a majority vote of the Executive Committee as shall be appropriate and necessary for (1) the impartial, efficient, and economical performance of the switching service herein contemplated by the Authority's Contractor and to properly facilitate the conduct of its affairs, and (2) the operations by independent railroad companies provided for herein, and the parties hereto agree to be governed by such rules and regulations.

All rules, regulations and orders issued by the Executive Committee shall be reasonable, just and fair to all parties hereto; the management and conduct of the operations under this agreement shall be at all times without discrimination or preference.

Section 4.02. Service Cooperation

Each of the Association Railroad Members shall furnish the necessary cars to handle its business. The Authority's Contractor shall have the cooperation of the other Association Railroad Member parties hereto, to the end that prompt, efficient and economical service may be provided for the public and the said contractor shall cooperate in like manner to the same end.

Section 4.03. Delivery and Receipt of Cars

It will be the obligation of each Association Railroad Member to deliver its cars destined to points on the Railroad Property trackage in the Common Interchange Yard, as hereinafter defined, or on such other tracks as may be agreed to, and to receive its cars originating on the Railroad Property trackage in the Common Interchange Yard or on such other tracks as may be agreed upon, all at its own expense and assuming such liability in connection therewith as is specified in **Article XII** hereinafter.

Section 4.04. Clearing of Wrecks and Repairs to Railroad Properties

The Authority shall promptly clear all wrecks and repair the Railroad Properties caused by its operations. The cost and expense of clearing wrecks and damage to the Railroad Properties caused by the Association Railroad Members shall be assumed and borne by that Association Railroad Member in accordance with the provisions of **Article XII** hereof.

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Each Association Railroad Member shall have the right to salvage lading in cars in its account.

**ARTICLE V
MAINTENANCE AND BETTERMENTS**

Section 5.01. Performance of Maintenance

The Authority shall, except as otherwise provided herein, maintain or cause to be maintained in a safe and efficient operating condition, the Railroad Properties assigned to the Authority's Contractor for maintenance and operation, as indicated by legend on Exhibit "A". The maintenance standards shall be Class-II for all interchange and running tracks (Track Nos. 800 through 804 on Exhibit A), and Class-I for all other tracks.

The Authority shall exercise reasonable care, skill and diligence in its maintenance of trackage, and the Association Railroad Members shall not be responsible to any party hereto for any defect in said trackage or neglect in performing such maintenance, and, anything to the contrary hereinafter contained in **Article XII** notwithstanding, no railroad party hereto shall have or make against the Association any claim or demand for any loss, damage, injury or death whatsoever arising from such defect or neglect.

The Authority shall maintain road and street crossings, remove crossings retired and not replaced and restore roadway surface. The Association Railroad Members shall bear the cost of replacing rail and fastenings, ties and ballast or removal of track structure through crossings retired and not replaced. The Authority shall bear the cost of providing and installing road crossing surface material, timber, pavement or any other type of material applied in the maintenance of crossings and bear the cost of restoring the road surface on crossings retired and not replaced.

Said maintenance of Authority trackage, however, shall not include maintenance of Authority trackage assigned for operation only, or of City-owned trackage on the Tule Lake Lift Bridge. Maintenance and renewal of drainage structures, substructures under aprons, wharves or warehouses, wharf approaches and aprons, and coverings of wharves, even though the same may be occupied by tracks, shall be performed by Authority. Authority shall be liable only for the exercise of reasonable care, skill and diligence in performance of such maintenance and renewal, and shall not be responsible to any party hereto for any defect or neglect in performing such maintenance or renewal, and no party hereto shall have or make against Authority any claim or demand for any loss, damage, injury or death whatsoever arising from such defect or neglect. The Authority shall not be required to operate over any track which in its judgment is not safe for such operation due to condition of drainage structures or substructures under aprons, wharves or warehouses, wharf approaches and aprons, or coverings of wharves, until such conditions have been

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corrected and the Association Railroad Committee shall promptly give notice to Authority of the conditions.

Section 5.02. Performance of Betterments

In the event that all Association Railroad Members desire additional trackage and/or betterments, each Association Railroad Member shall pay a prorata share of the cost of such additional trackage and/or betterments based upon each Association Railroad Member's pro-rata share of usage of Authority's facilities for the preceding 12-month period. The Authority will contract for the additional trackage and/or betterments which debt will be retired by the following method unless otherwise mutually agreed to:

- a. The Authority will be reimbursed for the cost of construction plus reasonable fees for planning, design, contract administration and contract management.

In the event such additional tracks and/or betterments are constructed at the cost and expense of less than all the parties hereto and a party that has not participated in the original cost of construction of additional tracks and/or betterments shall elect at a later date to use such additional tracks and/or betterments, such right shall be granted to non-participating party by participating parties upon payment of fifty-percent (50%) of participating parties' initial cost plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by non-participating party commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion of the additional tracks or betterments and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U. S. Treasury Notes for the period year compared to their average yield in the first year of completion of the additional tracks and/or betterments. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate). Should a non-participating party decline to participate in the cost required for such additional tracks or betterments, the non-participating party shall be denied access to such additional tracks and/or betterments.

Section 5.04.

In the event the Authority shall find any additional construction work on, under or adjacent to any part of its Railroad Property is required to facilitate drainage, all such work thus required for said purpose in the mutual judgment of the Association Railroad Members and of the Authority shall be promptly done by the Authority at its own cost.

APPENDIX ONE -- Page 12 of 23**ARTICLE VI
COMMON INTERCHANGE YARD**Section 6.01. Use of Common Interchange Yard

a. The Authority hereby grants to the Association Railroad Members, equal rights and privileges to deliver to and receive from a multi-track freight car yard (hereinafter sometimes called Common Interchange Yard) located adjacent to, parallel with and connected to Track No. 800, located north of the Tule Lake Lift Bridge. The Common Interchange Yard has been provided only for the purposes of interchanging between individual Association Railroad Members (which interchange movements, when made on Railroad Property trackage, are, in this agreement, considered operations by independent railroad companies), and between the individual Association Railroad Members and the Authority's Contractor. The aforesaid equal rights and privileges for interchange purposes only shall also extend to cover such portions of said running Track No. 800 and/or other tracks, as may be mutually agreed between Authority's Contractor and Association Railroad Members from time-to-time and, as are necessary to facilitate interchanges into and out of the Common Interchange Yard. Such rights and privileges are granted without payment of any rental, maintenance, or other fee to the Authority for so long as the individual Association Railroad Members may desire to continue such joint use of the Common Interchange Yard.

b. The Authority's Contractor is not obligated to switch any cars in the Common Interchange Yard not destined for delivery or pickup of cargos to or from the Authority or one of its tenants, unless otherwise agreed to in a separate agreement between Authority's Contractor and one or more of the Association Railroad Members, provided however, that any such separate agreement shall not interfere with Authority's Contractor's ability to comply with the service standards set forth in **Exhibit B**. The parties also agree that any individual Association Railroad Member may use the equipment and facilities of Authority's Contractor (if agreed to by Authority's Contractor) if such use does not affect Authority's Contractor's ability to comply with the service standards in **Exhibit B**.

Section 6.02. Access to the Tule Lake Lift Bridge

The Authority hereby grants to the individual Association Railroad Members equal rights and privileges, on a bridge-rights basis only, of joint use and operation of that line of railroad extending from south end of the Tule Lake Lift Bridge southwardly to the south end of switch ties of turnout to the UP connection with Savage Lane Line and to that portion of the Interchange Connection owned by the Authority without payment of any rental or other fee to the Authority for such rights and privileges.

APPENDIX ONE -- Page 13 of 23Section 6.03. Access Across the Tule Lake Lift Bridge

The Authority hereby grants equal rights and privileges to the Association Railroad Members, on a bridge-rights basis only, of joint use and operations over the Tule Lake Lift Bridge and railroad trackage located thereon without payment of any rental or fee. It is expressly understood and agreed that construction, maintenance, and operation of the Tule Lake Lift Bridge, and additions and betterments thereto, including roadway paving, walkways, hand railing, and signaling and interlocking necessary for proper bridge and railroad operations, will be provided by Nueces County. The Authority will provide the maintenance for the railroad trackage located on said bridge at no cost to Association Railroad Member.

ARTICLE VII OTHER SERVICES

Section 7.01.

Pursuant to the Lease Agreement between Authority and Authority's Contractor, Authority's Contractor has the exclusive right to perform all switching operations (except unit trains as defined in Section 3.02) on Authority's trackage and Authority's Contractor is required to perform such switching operations in accordance with the standards set forth in **Exhibit B**.

ARTICLE VIII COUNT OF CARS

Section 8.01.

Authority shall require its Contractor to maintain a count of cars in a manner sufficient to provide billing of charges to Association Railroad Members and apportionment of future additional trackage and/or betterments, and all such supporting details as required for audit purposes.

ARTICLE IX PER DIEM AND DEMURRAGE

Section 9.01.

- a. While performing switching services, Authority's Contractor shall not be a connecting or intermediate carrier and shall not be entitled to any division of revenue for tariff, contract, or switching rates or like charges other than as herein provided. Rail cars being so moved by Authority's Contractor shall remain in Associations Railroad Members' car hire accounts as applicable

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b. Each railroad shall bill and collect all rail car demurrage charges payable by customers served by Authority's Contractor on cars provided by such Association Railroad Members for loading or unloading that accrues on or after the Commencement Date. Authority's Contractor will provide Association Railroad Members with placement and release data in a form that satisfies the reporting requirements for collection of rail car demurrage charges.

**ARTICLE X
TAXES, PUBLIC ASSESSMENT AND ADDITIONS AND BETTERMENTS**

Neither the Authority nor the Association Railroad Members shall be required to pay any taxes of any kind or character on tracks or facilities owned by Authority. Public Assessments for paving, sewers, etc. and levies of every character, on, and additions and betterments to, tracks owned by Authority are to be paid for by Authority. Additions and betterments to tracks owned by Authority shall be made only to the extent that the same are necessary for the use of said trackage, provided no such additions and betterments shall be made without first securing permission in writing of Authority's Board of Commissioners.

**ARTICLE XI
PAYMENTS TO AUTHORITY'S CONTRACTOR**

Each Association Railroad Member shall pay to Authority's Contractor monthly the fees set forth in Exhibit C for switching, maintenance and weighing services performed by Authority's Contractor for its account and for its pro rata share of all other costs as provided for herein.

**ARTICLE XII
LIABILITY**

Section 12.01.

Authority shall assume all responsibility and liability for its action or actions of Authority's Contractor which result in Damages as defined in Section 12.04.

Section 12.02.

Claims for loss and damage to freight and reimbursement of penalties for violations of safety appliance acts shall be paid by the railroad company for whose account the car containing same was handled by the Authority's Contractor.

APPENDIX ONE -- Page 15 of 23Section 12.03.

The railroad parties hereto, in addition to their use of the facilities as Association Railroad Members, use certain segments of trackage as independent railroad parties. These uses are as follows:

- a. UP uses the Interchange Connection for movements to and from the Common Interchange Yard;
- b. SP, UP, TM and BNSF use the Authority's trackage from the west point of switch of New Connection to a point a sufficient distance east of the east end of the Common Interchange Yard to accommodate the number of cars in each instance in movements to and from the Common Interchange Yard;
- c. TM, BNSF, SP and UP use the Common Interchange Yard for the interchange of cars between them, respectively, as independent railroad parties;
- d. UP uses and maintains its track between the east point of switch of the Interchange Connection and connection with Authority's trackage near Port Avenue.

Section 12.04.

For the purposes of this Article, the following definitions shall apply. Singular terms herein defined shall comprehend the plural form of such terms.

"Damages" shall mean all loss of or damage to any and all property and all injuries to or deaths of any and all persons, including but not limited to, any property or employees of the parties hereto, and all liability therefor including amounts paid under any State or Federal law, and also embraces all costs and expenses incident thereto.

"Joint Employee" means any officer, employee, servant, contractor, tenant or agent of the Authority while engaged in or incident to the conduct of the Association; provided, however, that any employee of UP or SP engaged in the maintenance or operation of UP track and SP track as described in Section 12.05 shall be understood to be a "Joint Employee."

"Sole Employee" means any officer, employee, servant, or agent of any of the parties of groupings of parties hereto while engaged otherwise than in or incident to the conduct of the affairs of the Association; provided however, the maintenance of the SP track shall, for these purposes, be understood to be an affair of the Association; and provided further that maintenance of UP track as described in Section 12.05, shall be understood to be an affair of the Association.

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"Joint Property" means any facility of City of Corpus Christi or Authority and any other facilities or equipment of any railroad while used in the conduct of the affairs of the Association.

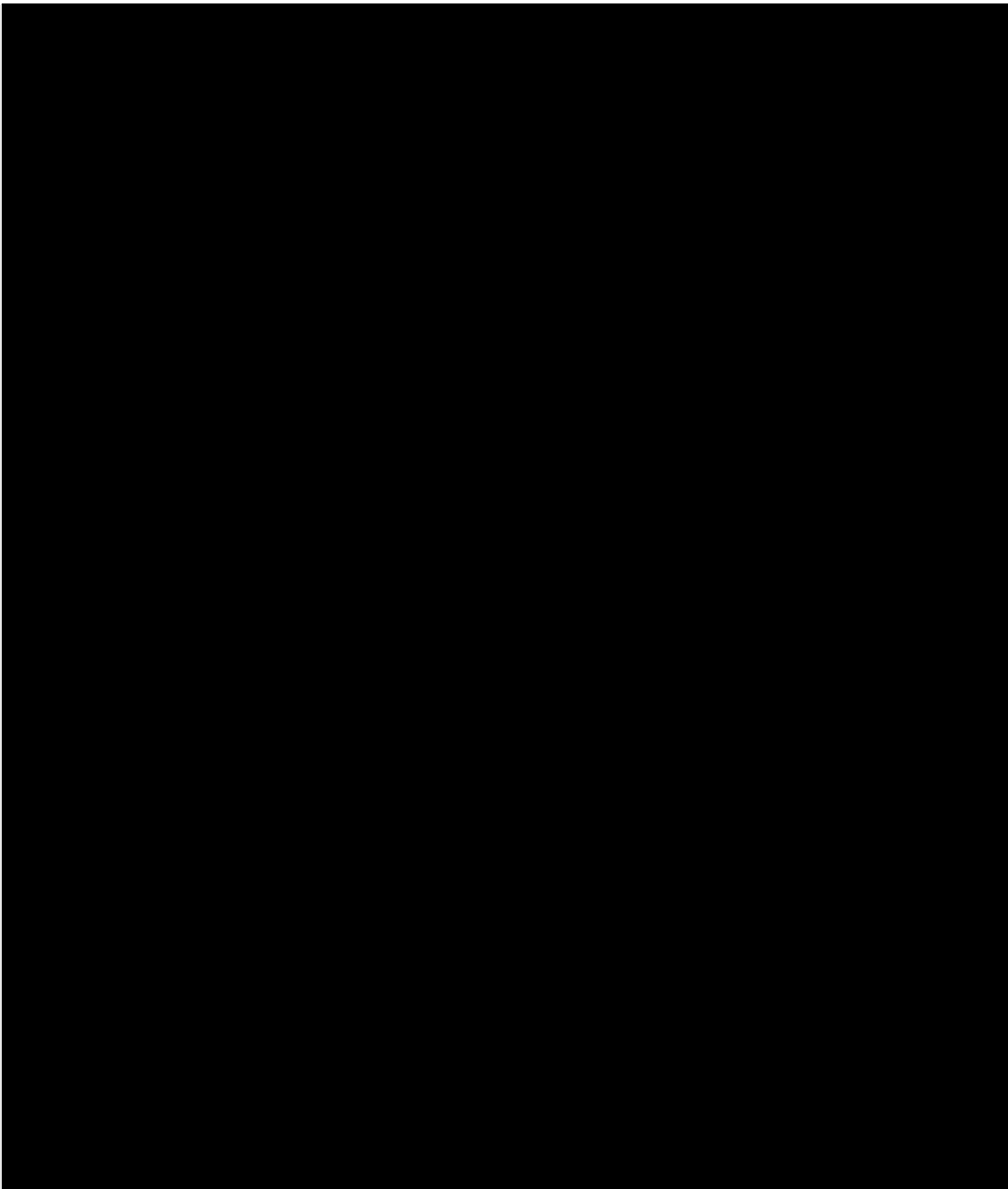
"Sole Property" means any facilities, including, but not limited to, engines, work trains, or other equipment of any of the parties or groupings of parties when not occupying the status of Joint Property.

Subject to the provisions of Sections 1 and 2 of this Article XII 12.01 and 12.02, and of Section 3.04 of Article III, hereof, Damages when caused:

- a. by the act or omission of a Sole Employee,
- b. by a failure of or defect in Sole Property,
- c. by the acts or omissions of Sole Employee concurring with acts or omissions of a Joint Employee or a defect in Joint Property, or
- d. by the failure of or defects in Sole Property concurring with defect or failure of Joint Property or an act or omission of a Joint Employee,

shall be borne solely by the party or group of parties whose Sole Employee or Sole Property caused or contributed to any such Damages;

- e. By the act or omission of a Sole Employee or one party or group of parties concurring with the act or omission of a Sole Employee or another party,



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**ARTICLE XIII
GENERAL PROVISIONS**Section 13.01.

The Railroad Properties shall be jointly inspected annually by a representative of each of the parties hereto, and a record of the condition of said Railroad Properties shall then be made including any and all necessary repairs. The Authority's Contractor and Executive Committee will develop and agree to a schedule for the completion of the recommended repairs.

Section 13.02.

In the event that any of the provisions of this agreement shall be found, in practice, to operate unjustly with respect to or to be unduly burdensome upon any party or parties hereto, it is agreed that the party or parties so aggrieved may demand a modification of this agreement so that such injustice shall be remedied and all the parties hereto agree to meet such a demand in a spirit of fairness and justice and to modify this agreement accordingly.

Section 13.03. Bills

Bills for amounts payable under this agreement shall be rendered currently, if possible, and shall be paid within thirty (30) days after rendition thereof. Errors or disputed items in any bills for Damages, or the making of additions and betterments or retirements shall not be deemed a valid excuse for delaying payment, but shall be subject to subsequent adjustment; provided no exception of to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered, and except for expenses incurred prior to execution of this agreement, no bill shall be rendered later than three (3) years after the last day of a calendar month during which final expenditures are made under a particular bill or, in case of claims of third parties, disputed as to amounts or liability, after the amount is determined or after the liability is established.

Section 13.04. Inspection of Records

So much of the books and accounts of any party hereto as relate to the subject matter of this agreement shall at all reasonable times, be open to inspection by the proper officers and agents of the other parties, who shall, if they so desire, be permitted to make copies from said books or accounts of any matter therein contained relating to such subject matter.

APPENDIX ONE -- Page 19 of 23

**ARTICLE XIV
UNFORESEEN DESTRUCTION OF PHYSICAL PROPERTY**

Partial or whole destruction of the Railroad Property by wars, floods, acts of God, or any other cause beyond the foresight or control of the Authority's Contractor shall be reconstructed or restored by Authority at its expense; provided, however, that the Authority shall be the sole party with authority to determine whether or not any wharf, wharf approach, apron, or warehouse shall be continued in service, though the same may be occupied by tracks, and the obligation of Authority to reconstruct or restore as provided in this **Article**, or in any other provision of this agreement shall not obligate Authority to maintain, renew, restore or reconstruct any such wharf, wharf approach, apron, or warehouse if Authority determines that it does not desire to make further use of the same.

**ARTICLE XV
ARBITRATION OF DISPUTES**

In the event any disagreement shall arise between any two or more of the parties hereto as to the meaning of any provision hereof, or as to any matter arising under this agreement (including the proper maintenance by the Authority's Contractor of the Railroad Property), or in the event any such disagreement shall arise between any of the parties hereto on the one hand and the Association (acting through the Executive Committee) on the other hand, then, upon the written request of any party involved on either side of such disagreement, the matter in controversy shall be submitted to three disinterested arbitrators experienced in matters of the character in dispute, to be appointed as hereinafter provided.

The party or parties (if there be two or more on one side of the disagreement) desiring arbitration shall select one arbitrator and shall notify the other party or parties of such selection and of the issue to be arbitrated, whereupon the other party or parties (if there be two or more on the other side of the disagreement) shall, within thirty (30) days after receipt of notice from the moving side, select its arbitrator and give notice to movant of such selection. If, after said thirty (30) days, the notified party or parties shall have failed or refused to select its or their arbitrator, then such arbitrator may, upon application by movant after not less than five (5) days' notice to the other party or parties, be appointed by the senior Judge of the United States District Court in the District in which the City of Corpus Christi is located who is willing to act. The third arbitrator shall be appointed by the first two appointed, but, upon their failure to appoint the third arbitrator within twenty (20) days, he may be appointed by the said Judge. In the event of any such failure, the arbitrator or arbitrators appointed shall certify the failure aforesaid to said Judge, and the recitals of the certificate with respect to such failure shall be binding upon all parties involved.

In lieu of a board consisting of three arbitrators chosen in the manner herein above provided, any dispute or disagreement may be submitted to a single arbitrator selected by

APPENDIX ONE -- Page 20 of 23

the parties involved in the dispute, and the written decision of such arbitrator shall be final and binding. Should there be more than two sides to any disagreement of which any party shall request arbitration, the procedure to be followed shall be determined by the parties involved, and the submission shall then be subject to other provisions of this **Article**.

Each person appointed as an arbitrator hereunder shall have reasonable knowledge of railroad operations.

The decision in writing of such arbitrator or arbitrators, or a majority of them, given after a hearing of which the parties shall have been duly notified and at which they shall have been given the opportunity to be heard shall be final and binding upon the parties as to the matter or matters submitted for arbitration, and each of the parties agrees that forthwith upon the rendering of such decision or award it will conform to and comply with the requirements thereof.

Each party or group of parties shall pay for the services of the arbitrator chosen by or for it, and of the witnesses appearing for it; and the respective sides shall jointly and equally pay for the services of the remaining arbitrator (or for the sole arbitrator, if such be the case), and for any other and different expenses of the arbitration.

Any controversy as to the construction or validity of any covenant or agreement herein contained shall not delay the performance of any other covenant or agreement hereof.

**ARTICLE XVI
SERVICE OF NOTICES**

Any notice to be given hereunder to any party hereto shall be in writing and deemed to be properly served after deposited in the Post Office, postage prepaid, addressed to the Chief Operating Officer of the party or parties involved at his or their usual place(s) of business.

**ARTICLE XVII
SECTION HEADINGS**

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

**ARTICLE XVIII
AGREEMENT TO BE CONSTRUED LIBERALLY:
NOT FOR THE BENEFIT OF THIRD PARTIES**

This agreement shall be construed liberally so as to secure to each party hereto all of the rights, privileges and benefits herein provided or manifestly intended. This agreement and

APPENDIX ONE -- Page 21 of 23

each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party, except Authority's Contractor.

**ARTICLE XIX
TERM OF CONTRACT**

Section 19.01.

This agreement, shall be effective as of August 1, 1997, and shall continue in effect thereafter unless terminated in the manner hereinafter prescribed.

Section 19.02.

In event any Association Railroad Member should desire to withdraw from the Association, it may at any time give notice in writing to all parties hereto of such intention; and such withdrawal shall be permitted and shall become effective at the end of a period of one (1) year from the date of such written notice, provided, however, that such withdrawal shall be without prejudice to existing liabilities and provided further that no such withdrawal shall revoke or cancel any grant of usage of tracks or facilities contained herein. Upon the receipt of such written notice of withdrawal, any Association Railroad Member not desiring to withdraw from the Association, shall, within sixty (60) days from the receipt of such notice of purpose to withdraw by an Association Railroad Member or Association Railroad Members, give notice in writing to the other parties of the Association of its desire to carry on and continue the business of the Association; and should this be done, this agreement shall remain in full force and effect between the remaining parties, subject to the right of any Association Railroad Member so remaining to give notice in writing of its or their desire to withdraw from the Association, by giving the written notice herein provided for, effective at expiration of one (1) year from the date of such notice.

Section 19.03.

The Authority shall have the right to terminate this agreement, should it desire to do so, by giving written notice at any time; and should such notice be given, this contract shall cease and be terminated one (1) year from the date of such written notice; provided, however, that such action shall in no way affect or diminish the rights and privilege of joint use and operation of facilities covered hereby granted BNSF, TM and UP, or any of them, including right of use and operation of Common Interchange Yard and trackage incident to such usage; in the event of such termination. Any termination of this agreement shall have no effect on liabilities which may have accrued during the term of this agreement.

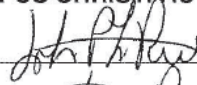
APPENDIX ONE -- Page 22 of 23Section 19.04.

In event, BNSF, TM, UP or SP or any of them, desire(s) to relinquish any of its (their) rights or privileges, as an independent railroad party or independent railroad parties under the terms of this agreement, it or they may do so at any time by giving notice in writing to all parties hereto of such intention, specifying which of said rights or privileges is the subject of its action, whereupon such relinquishment shall be permitted and shall become effective at the end of a period of one (1) year from the date of such written notice, and all future obligations and liabilities attendant thereto shall cease; provided, however, that said independent railroad party or independent railroad parties shall fulfill all obligations and discharge all liabilities which have accrued prior to, or are outstanding at, the date of such relinquishment. Such relinquishment of rights and privileges of an independent railroad party or independent railroad parties under the terms of this agreement shall not in any way cancel or diminish similar rights and privileges of the other independent railroad party or independent railroad parties nor any other rights or privileges of the relinquishing party or parties under the terms of this agreement, nor will it affect its or their right to give notice in writing of its or their desire to relinquish its, rights or privilege in the future, by giving the written notice herein provided for, effective at expiration of one (1) year from the date of such notice.

APPENDIX ONE -- Page 23 of 23

IN WITNESS HEREOF, the parties have caused this instrument to be executed as of the 25th day of July, 1997.

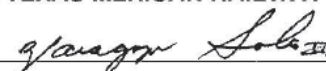
THE PORT OF CORPUS CHRISTI AUTHORITY

BY: 
 TITLE: Executive Director

 UNION PACIFIC RAILROAD COMPANY
 SOUTHERN PACIFIC TRANSPORTATION COMPANY

BY: 
 TITLE: Exec. VP-Operations

THE TEXAS MEXICAN RAILWAY COMPANY

BY: 
 TITLE: U.P. FINANCE & Controller

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

BY: 
 TITLE: Vice President Operations UP/SF Lines

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36594

**TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.**

EXHIBIT B

MAP

FD 36594 Exhibit B

PUBLIC

KEY

UNION PACIFIC
TRACKAGE RIGHTS
TCBR PROPOSED OPERATIONS



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36594

**TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.**

EXHIBIT C

CUSTOMER NOTICE

RAIL CUSTOMERS

ADM
Cimbar
CC Polymers
Excalibar Minerals
Gavilon Group LLC
Maverick Terminals
South Texas Cement
Superior Weighing
Texas Lehigh Cement
West Star Foods

May 13, 2022

Re: **FD 36594**
Texas Coastal Bend Railroad, L.L.C. — Change in
Operator Exemption — Railroad Lines in Nueces County, Tex.

To Whom It May Concern:

Texas Coastal Bend Railroad, L.L.C. (“TCBR”) has filed a Verified Notice of Exemption (the “Notice”) (a public copy of which is attached) with the Surface Transportation Board (“STB”) to assume common carrier operations over approximately miles of railroad lines (the “Lines”) owned by the Port of Corpus Christi Authority of Nueces County, Texas. The Lines currently are operated by the Corpus Christi Terminal Railroad, Inc. (“CCTR”). Upon consummation of the transaction covered by the above-referenced Notice, TCBR will provide all rail common carrier service on the Lines in place of CCTR.

TCBR is providing you with this notice strictly as information pursuant to the requirements of the STB. You are neither required nor expected to respond or to participate in the STB proceeding. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

Robert A. Wimbish
Texas Coastal Bend Railroad, L.L.C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36594

**TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.**

EXHIBIT D

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36594

TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAIL LINES IN NUECES COUNTY, TEX.

Texas Coastal Bend Railroad, L.L.C. (“TCBR”), a non-carrier, has filed a notice of exemption (the “Notice”) to operate approximately 12 miles of railroad trackage (the “Lines”) owned by the Port of Corpus Christi Authority of Nueces County, Texas (the “Port”). Incidental to the proposed operation of Port-owned Lines, TCBR will acquire overhead trackage rights over a connecting Union Pacific Railroad Company-owned line extending between UP milepost 140.5 (near the west leg of the Fulton Wye Connection) and UP milepost 149.0 in order to maintain existing service between otherwise-disconnected Port-owned Lines.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

The notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36594

**TEXAS COASTAL BEND RAILROAD, L.L.C.
— CHANGE IN OPERATOR EXEMPTION —
RAILROAD LINES IN NUECES COUNTY, TEX.**

CERTIFICATION AND VERIFICATION

VERIFICATION AND CERTIFICATION

Rick D. Baden, being duly sworn, states as follows:

1. I am the Executive Vice President and Chief Financial officer of the Texas Coastal Bend Railroad, L.L.C. ("TCBR").
2. I certify that TCBR is not now a Class I or II rail common carrier, and that the expected annual revenues of TCBR will exceed \$5 million, but will not result in TCBR becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (1-1).
3. I certify that the proposed transaction does not have an interchange commitment.
4. I am qualified and authorized to tender this Verification and Certification.
5. I have read the foregoing Notice of Exemption and know that the facts stated herein are true and correct to the best of my information and belief.


Rick D. Baden

Dated: May 12 , 2022