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June 23, 2003

ENTERED
Office of Proceedings

JUN 24 2003

Part of
Public Record

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

Re: *Kansas City Southern - Control - The Kansas City Southern Railway Company,
Gateway Eastern Railway Company, And The Texas Mexican Railway Company -
Finance Docket No. 34342*

Dear Secretary Williams:

I am enclosing herewith an original and twenty-seven copies of the Supplement to Application (**KCS-10/TM-10**) submitted on behalf of Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company and The Texas Mexican Railway Company in the above captioned proceeding. This is being designated as "Public" and no Confidential or Highly Confidential versions exist.

Also enclosed are an original and twenty-seven copies of the Applicant's Reply (**KCS-11/TM-11**) to the Union Pacific Railroad Company's Petition for Declaratory Order, which includes three Exhibits (Exhibit A is designated as Public; Exhibits B and C are designated as Confidential). Therefore, two versions of the Reply are being filed -- one Public and one Confidential.

A copy of each of the above filings is enclosed on separate diskettes. Copies of these filings have been served on the parties on whom the Application is required to be served, including all parties of record to this proceeding.

Please acknowledge receipt and filing of the enclosed Supplement and Reply by receipt date-stamping the twenty-sixth and twenty-seventh copies of each and returning them to the courier making the filing for return to me.

If there are any questions concerning this filing, please contact me at 202-274-2953.

Sincerely,



William A. Mullins

Enclosures

208/59

PUBLIC VERSION

KCS-11
TM-11

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -



THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY

REPLY TO UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER

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June 23, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

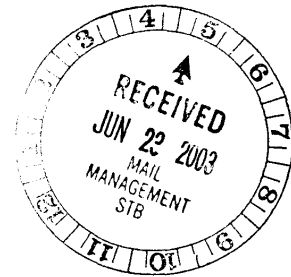
Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

**REPLY TO UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER**



Kansas City Southern ("KCS" or "Applicant"), The Kansas City Southern Railway Company ("KCSR"), Gateway Eastern Railway Company ("Gateway Eastern"), and The Texas Mexican Railway Company ("Tex Mex") hereby submit this Reply to the Union Pacific Railroad Company's ("UP") Petition for Declaratory Order Regarding Control Of Operations Over the Laredo Bridge ("Petition") filed with the Surface Transportation Board ("STB" or "Board") on June 17, 2003. Because operations over the International Bridge at Laredo (the "Bridge" or "Laredo Bridge") are governed by a series of private agreements and because UP has not established that any controversy or uncertainty exists so as to justify issuance of a declaratory order, UP's Petition should be denied.

ARGUMENT

I. UP'S ALLEGATIONS ARE UNFOUNDED.

As a preliminary matter, UP's allegations that KCS has acted to discourage public participation in the Board's consideration of KCS's Railroad Control Application filed May 14, 2003, ("Application") are false. Conjuring up images of nefarious conduct, UP's Petition uses such terms as "threats" and "intimidate" to describe alleged acts by KCS. UP Petition at 2, 4. An examination of KCS's Application, KCS's Rebuttal filed June 9, and UP's Petition, however, reveals that KCS never made any "threats," nor sought to "intimidate" UP or any other party. Indeed, UP's Petition, which asks the Board to take the extraordinary measure of issuing a declaratory order, is based solely on one footnote contained in a rebuttal filing that the Board did not consider when it issued its recent Decision No. 2 accepting KCS's Application and establishing a procedural schedule in this action. This footnote simply set forth a statement of fact and KCS's opinion that KCS could acquire, without STB authority, Mexrail and one of Mexrail's assets -- namely, the northern half of the Laredo Bridge.¹

¹ The full text of the footnote that forms the basis for UP's Petition is as follows:

Because Mexrail is a non-carrier, its acquisition by KCS could be accomplished without STB authority, as a non-carrier (KCS) would be acquiring another non-carrier (Mexrail), subject of course to the prior requirement that Mexrail place its Tex Mex shares into a voting trust. Indeed, KCS could have placed only the shares of Tex Mex into the voting trust and taken immediate ownership of Mexrail; thereby taking over the operations of the bridge. It is important to note that the only transaction in front of the Board is the common control of KCSR, Tex Mex, and Gateway Eastern. KCS does not need authority, and is not seeking authority, to acquire control of Mexrail's other asset, *i.e.* the northern half of the International Bridge. The fact that KCS has not exercised its legal right to do so was done so as to provide BNSF and UP with an opportunity to discuss any concerns with KCS before KCS acquired control of the bridge. Because those discussion have been taking place, it is unfortunate that UP and BNSF have made their concerns public. It may eventually be in KCS's interests to exercise its right

As demonstrated below, UP's allegations of threats and intimidation are unfounded. If any party has taken steps to discourage a fair and expeditious resolution of this action, it is UP. In addition, the footnote contained in KCS's rebuttal does not constitute a threat; it is simply a statement of fact.

A. UP's Rhetoric Is Not Supported By Its
Own Conduct Or The Actions Of KCS.

The accusations by UP that KCS has intimidated UP's participation in this action is belied by the facts. UP -- the dominant carrier in the U.S., which also holds a near monopoly on rail traffic to and from the U.S. and Mexico -- has engaged in very aggressive tactics to prevent or to delay the KCS/Tex Mex and the KCS/TFM transactions simply because it does not want to see a more effective competitor for U.S./Mexican trade. UP has unleashed its considerable resources and attacked KCS's proposed transactions on a multitude of fronts.

KCS's proposed transactions are subject to approval from numerous domestic and foreign parties or governmental entities including the STB, the Mexican Competition Commission, the Mexican Foreign Investment Committee, and the U.S. Department of Justice. In addition to participating in the STB process, UP is actively participating in all of these forums, and is actively campaigning to encourage other third parties to oppose the proposed transactions.

One such tactic has been to argue that KCS will not treat UP fairly at the Laredo Bridge once KCS acquires control of Tex Mex and TFM. Of course nothing could be further from the truth. UP knows that operations over the bridge are governed by a series of private agreements

to acquire control of the bridge without waiting for STB approval of its application to acquire control of Tex Mex.

Rebuttal to the Comments filed in Reply to Applicant's Petition to Establish Procedural Schedule, at 27 n.19 (hereinafter, "KCS Rebuttal").

that prohibit any owner from discriminating against UP, or any other carrier that operates over the bridge. Instead of pursuing its concerns in private or relying upon its rights and remedies contained in those private agreements, UP now wants this Board to ignore its long-standing policy encouraging parties to resolve disputes through private negotiations and start a declaratory order proceeding.² Accordingly, it is not KCS which is trying to intimidate or threaten, but UP which wants to use government regulation and public posturing to resolve what are essentially private issues. UP's request should be rejected.

In fact, contrary to UP's suggestion that KCS has discouraged the participation of third parties in this action, KCS has encouraged and assisted such participation. Since filing its Application, KCS has undertaken considerable steps to ensure a fair and full hearing of the issues in this action. KCS has produced thousands of pages of documents, established a document depository, and has fully cooperated with discovery requests, including UP's two separate requests for access to documents and other information. In addition, KCS specifically requested that the Board modify KCS's proposed procedural schedule after third parties (including UP) raised concerns that they would need additional time to file comments in this action. *See* KCS Rebuttal at 4, 32.

As demonstrated above, the facts establish that UP's rhetoric of "threats" and "intimidation" by KCS are completely unfounded. In light of UP's aggressive tactics in other forums and the active steps taken by KCS to ensure full and fair participation in the STB process, UP's Petition should be viewed simply as another effort to delay the benefits of the KCSR/Tex Mex transaction. Accordingly, the Petition should be denied.

² *See, e.g., Dakota, Minnesota & Eastern R.R. Corp., et al. - Control - Iowa, Chicago & Eastern R.R. Corp.*, STB Finance Docket No. 34178, 2003 STB LEXIS 56, *42 n.41 (served Jan. 31, 2003) (citing Board precedent encouraging private dispute resolution).

B. KCS Can Acquire Mexrail and Ownership
Of The Bridge Without the Board's Approval.

UP's allegations of "threats" and "intimidation" are further without merit because the offending footnote simply stated the fact (which is supported by legal precedent) that KCS could acquire Mexrail, but not Tex Mex, and thus ownership of the Laredo Bridge without prior approval from the Board. Ownership of the Laredo Bridge, however, may or may not allow KCS to control operations over the Laredo Bridge. That issue is resolved by the contracts governing those operations.

The Board has concluded as a factual matter in this proceeding that Mexrail is a non-carrier. *See Kansas City Southern - Control - Kansas City Southern Ry. Co., et al.*, STB Finance Docket No. 34342, slip op. at 4-5 n.5 (served June 9, 2003) (concluding that "applicants are justified in treating Mexrail as a noncarrier (and they are therefore justified in not seeking authority for KCS to control Mexrail.)").³ The Board's finding is supported by several facts: (1) Mexrail has been repeatedly treated as a non-carrier; (2) Mexrail owns the bridge only, not the railroad tracks over the bridge;⁴ and (3) Tex Mex owns the railroad tracks and controls operations over those tracks.

As long as Mexrail controls a carrier (*i.e.*, Tex Mex), KCS cannot take control of Mexrail without STB authority. However, if KCS and Mexrail agreed, Mexrail could place its shares of Tex Mex into an independent voting trust. In that event, Mexrail would no longer be in control of a carrier and would simply have the status of a non-carrier whose only asset would be

³ UP's Petition wholly ignores the Board's finding its June 9, 2003 decision. *See* Petition at 3 n.2.

⁴ *Compare* 49 U.S.C. § 10102(5) (defining a "rail carrier" as a "person providing common carrier railroad transportation for compensation.").

ownership of the Laredo Bridge (and the Trust Certificates for Tex Mex). Accordingly, at that point, KCS could dissolve the existing voting trust, take control of Mexrail, and thus take over ownership of the Laredo Bridge; all without STB authority. No STB authority would be needed at that point because one non-carrier (KCS) could take control of another non-carrier (Mexrail) without STB authority. That is the simple principle that the footnote was trying to convey. It is hard to believe that UP would want to institute a declaratory order to resolve this simple statement. UP's Petition is making a mountain out of a mole hill.

II. UP'S PETITION SHOULD BE DENIED BECAUSE OPERATIONS OVER THE LAREDO BRIDGE ARE GOVERNED BY PRIVATE AGREEMENTS.

In its core, UP is not concerned about who owns the Laredo Bridge, but rather whether or not KCS, if it did acquire Mexrail, could control operations over the Laredo Bridge without STB authority. The answer to that question is not found at the STB, but rather in the numerous contracts governing the Laredo Bridge. The operations of the Laredo Bridge and the railroad tracks located on the Laredo Bridge are governed by numerous contracts and agreements going back over a half of century. There are three main agreements between Mexrail, Tex Mex and UP governing the operations of the Laredo Bridge: Agreement dated May 23, 1951 between Guy A. Thompson, Trustee, International Great Northern Railroad Company and The Texas Mexican Railway Company, attached hereto as Exhibit A (Public); Settlement Agreement dated Feb. 27, 1998 between Union Pacific Railroad Company, The Kansas City Southern Railway Company, The Texas Mexican Railway Company, and Mexrail, Inc., attached hereto as Exhibit B (Confidential); and Memorandum of Understanding dated Nov. 11, 2002 among Union Pacific Railroad Company, Mexrail, Inc., and The Texas Mexican Railway Company, attached hereto as Exhibit C (Confidential).

It may well be, as UP itself asserts, that under these agreements, Mexrail has no authority to control operations over the Laredo Bridge and such authority rests solely with Tex Mex. If that were true, then KCS's acquisition of Mexrail, assuming Tex Mex is placed into a voting trust, would be a harmless action; merely giving KCS ownership of the Laredo Bridge but no control over the operations on the Laredo Bridge because KCS would have no control over Tex Mex. In that event, there is no point in issuing a declaratory order.

On the other hand, if KCS's ownership of Mexrail would allow KCS some control over the operations on the Laredo Bridge because the contracts provide Mexrail with that authority, then UP still will not suffer any harm. Why? Because the existence of the agreements would protect UP's interests. Thus, even if KCS acquires Mexrail and Mexrail controlled operations over the Laredo Bridge, KCS could do nothing to change those operations or otherwise treat UP any differently than it does today without being in breach of the agreements. Accordingly, regardless of whether it is KCS, Mexrail or Tex Mex that controls the operations at the Laredo Bridge, UP is protected by the existing agreements.

UP's concerns are further misplaced because KCS has stated that it will honor the terms of all existing agreements and that all carriers will be treated fairly at the Laredo Bridge. *See* Rebuttal at 25-26 and KCS Application Supplement, filed June 23, 2003, V.S. Gerald K. Davies, Executive Vice President and Chief Operating Officer, KCS. Furthermore, as detailed in both the Rebuttal and the Supplement, UP's ability to switch gateways and its ownership of TFM's main competitor gives KCS a strong incentive to continue to work with UP to funnel traffic over the Laredo Bridge and not treat UP any differently than UP is treated today. KCS simply has no

plans to institute a “new chokehold” over the Laredo gateway as UP wrongly accused in its reply to the Application. UP Reply at 8.⁵

Finally, even if KCS took control of Mexrail (and not Tex Mex) and that control allowed KCS to control operations over the Laredo Bridge in accordance with the contracts, if UP believed that KCS was not living up to the terms of the existing agreements, the appropriate legal remedy is a declaratory order in court to enforce the contracts, not a proceeding at the STB. As UP implicitly acknowledged just one day before filing the Petition, the Board has no jurisdiction to enforce private contracts, such as the agreements governing operations at the Laredo Bridge. *See* Letter dated June 16, 2003 from John H. Rebensdorf, Vice-President at UP, to Kevin V. Schieffer, President and CEO of Dakota, Minnesota & Eastern, STB Finance Docket No. 34178 (filed June 6, 2003). *See also* *Dakota, Minnesota & Eastern R.R. Corp., et al. - Control - Iowa, Chicago & Eastern R.R. Corp.*, STB Finance Docket No. 34178, 2003 STB LEXIS 200, *9-10 (served Apr. 21, 2003)(Linda Morgan, commenting)(rejecting notion that the Board will routinely engage in the interpretation or enforcement of privately negotiated contracts); *The Township of Woodbridge, N.J., et al., v. Consolidated Rail Corp.*, STB Docket No. 42053, 2000 STB LEXIS 709, *11 (served Dec. 1, 2000)(“It would be inappropriate for us [the Board] to rule on the merits of the contract dispute. Such matters are best addressed by courts.”).

KCS agrees that UP has a legitimate interest in protecting its rights to access and use the bridge, but those rights are adequately protected by the private agreements that UP has negotiated and voluntarily entered into with KCS, Mexrail and Tex Mex. If KCS acquires control of the Laredo Bridge and UP believes that KCS is not complying with the terms of these

⁵ Indeed, it is UP who has the “chokehold” over KCS and Tex Mex, as UP completely controls the infrastructure used by KCSR and Tex Mex to even access the Laredo Bridge.

agreements, there is a legal remedy available to UP with the court. UP's Petition, however, is not a proper remedy and accordingly, should be denied.⁶

**III. UP'S PETITION SHOULD BE DENIED BECAUSE
THERE IS NO CONTROVERSY OR UNCERTAINTY.**

Finally, UP's Petition should be denied as a matter of law because there is no active controversy nor is there any uncertainty about the facts or applicable law. Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Board has authority to issue a declaratory order "to eliminate a controversy or remove uncertainty." *Mass. Bay Commuter R.R. Co., LLC - Petition for Declaratory Order*, STB Finance Docket No. 34332, 2003 STB LEXIS 316 (STB served June 5, 2003). UP's Petition fails to establish the requisite active controversy or uncertainty that would necessitate a declaratory order.

Glaringly absent from UP's Petition is any argument that there is an active controversy about whether KCS can acquire Mexrail and operational control of the Laredo Bridge without the Board's approval. Indeed, UP's Petition contains only speculation about possible future actions by KCS. Such speculation does not rise to the level of an "active controversy" required by the Board to issue a declaratory order. *See Delegation of Authority - Declaratory Order Proceedings*, 5 I.C.C. 2d 675, 676 (1989) (noting that the Board has "declined to institute declaratory order proceedings where it was not shown that such a proceeding was necessary to terminate an active controversy"). Unless and until KCS actually takes action to acquire Mexrail, there is no such active controversy. Even if KCS were to acquire Mexrail, the proper remedy would be a declaratory order in court, not at the STB.

⁶ UP's request is also extremely premature. If UP believes KCS's acquisition of Tex Mex would result in anticompetitive impacts that would not be resolved by the existing contracts, it should raise those issues in its comments, due August 4.

In addition, as discussed above, there is no uncertainty in this case about the facts or the law. The Board has definitively concluded that Mexrail is a non-carrier and, as such, KCS “is justified in not seeking authority . . . to control Mexrail.” *Kansas City Southern - Control - The Kansas City Southern Ry. Co., et al.*, STB Finance Docket No. 34342, slip op. at 4-5 n.5 (served June 9, 2003). Because Mexrail is a non-carrier, KCS can take control of Mexrail, even if that control gives it authority to control operations over the bridge. What KCS cannot do is take control of Tex Mex without STB authority, not Mexrail (assuming Mexrail would place Tex Mex into a voting trust). Accordingly, the uncertainty required for the Board to exercise its discretion and issue a declaratory judgment is not present. *See Mass. Bay Commuter R.R. Co., LLC - Petition for Declaratory Order*, STB Finance Docket No. 34332, 2003 STB LEXIS 316 (STB served June 5, 2003) (concluding that a declaratory order was not appropriate where there was no uncertainty because the issue was clear on the facts); *see also Union Pacific R.R. Co. - Petition for Declaratory Order*, STB Finance Docket No. 34090, STB LEXIS 853 (served Nov. 9, 2001) (concluding that there was no need for declaratory order because the issue in dispute was well-settled under the law).

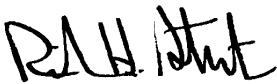
Finally, even if UP’s Petition rises to the level of an active controversy or uncertainty, the Board should exercise its statutory discretion and decline to issue a declaratory order because, as previously noted, the more appropriate action for UP is to seek a legal remedy under its private contracts and agreements with Mexrail and Tex Mex. *See Nat’l Motor Freight Traffic Ass’n, Inc. - Petition for Declaratory Order*, STB Docket No. 41940, 1997 STB LEXIS 199 (served Aug. 22, 1997) (declining to issue a declaratory order because other remedies to resolve the dispute were preferable), *citing Intercity Transp. Co. v. United States*, 737 F.2d 103, 108-09 (D.C. Cir. 1984).

Having failed to establish the existence of an active controversy or uncertainty, UP's Petition should be denied as a matter of law.

CONCLUSION

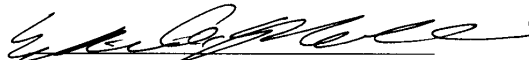
WHEREFORE, for all the foregoing reasons, KCS and Tex Mex respectfully requests that the Board deny UP's Petition.

Respectfully submitted,



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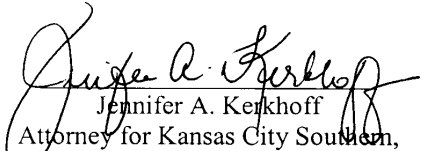
Attorneys for Kansas City Southern,
The Kansas City Southern Railway
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June 23, 2003

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply upon all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid or by other expeditious means.

Dated: June 23, 2003


Jennifer A. Kerkhoff
Attorney for Kansas City Southern,
The Kansas City Southern Railway Company,
and the Gateway Eastern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

**REPLY TO UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER**

EXHIBIT A - AGREEMENT

DATED MAY 23, 1951

**BETWEEN GUY A. THOMPSON, TRUSTEE,
INTERNATIONAL GREAT NORTHERN RAILROAD COMPANY
AND THE TEXAS MEXICAN RAILWAY COMPANY**

DESIGNATED AS PUBLIC

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**Attorneys for Kansas City Southern,
The Kansas City Southern Railway
Company, and Gateway Eastern
Railway Company**

AGREEMENT

between

GUY A. THOMPSON, Trustee,
INTERNATIONAL GREAT NORTHERN
RAILROAD COMPANY, DEBTOR,
(Herein Called International Trustee)

and

THE TEXAS MEXICAN RAILWAY COMPANY
(Herein Called Tex-Mex Company)

Covering, among other things, the use of certain tracks, improvements and motive power of each International Trustee and Tex-Mex Company, and the performance by certain employees of International Trustee and Tex-Mex Company of certain switching, terminal and other services, incident to the interchange of passenger train cars, and any passengers, baggage, mail and express contained therein, and of freight train cars, and any freight contained therein, between the National Railways of Mexico and each the International Trustee and the Tex-Mex Company at the U. S.-Mexican Boundary Line.

Laredo, Texas.

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THIS AGREEMENT, entered into in duplicate May 23, 1931, by and between GUY A. THOMPSON, TRUSTEE, INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY, DEBTOR, as Trustee and not individually, herein referred to as "International Trustee," to be addressed at St. Louis, Missouri, and THE TEXAS MEXICAN RAILWAY COMPANY, a Texas corporation, herein referred to as "Tex-Mex Company", to be addressed at Laredo, Texas. WITNESSETH:

RECITALS:

The parties hereto have given consideration to the report of the Interstate Commerce Commission in Finance Docket No. 15947, dated September 9th, 1949, 275 I. C. C. 27, and desire to set forth an Agreement reached between them with respect to the delivery or receipt of export and import traffic of the parties hereto to or from the National Railways of Mexico, at Laredo, Texas:

Section 1. **Exhibit A**—Defined; Tracks and Improvements Shown on Exhibit A which will be used for Sole or Common Benefit Under This Agreement; "Tex-Mex Green Tracks"—Defined; "IGN Freight Forwarding Tracks"—Defined; "IGN Freight Receiving Tracks"—Defined; "South Section of IGN Fumigation Tracks"—Defined; "North Section of IGN Fumigation Tracks"—Defined; "IGN Passenger Tracks"—Defined.

There is attached hereto, as part hereof, International Trustee's white print, File 3-15-4, prepared in Office of Chief Engineer of International Trustee, Houston, Texas, March 22, 1950, marked Exhibit A, on which there are shown the following improvements and facilities located in

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Laredo, Texas, which are a part of the subject matter of this agreement or related thereto:

(A) Four certain Tex-Mex Company tracks, designated on Exhibit A "Tex-Mex Tracks Numbers 1 to 4", and certain cross-over tracks and connecting tracks appurtenant thereto and required to be used in connection with service to be performed pursuant to this agreement, said tracks being intermediate, on the south, a point on and near the middle of the International Bridge which is the U. S.-Mexican Boundary Line and, on the north, the south line of Farragut Street, their approximate locations being indicated by solid green lines between points "I" and "M" on Exhibit A, and sometimes hereinafter referred to as "Tex-Mex Green Tracks".

(B) (1st) That section of International Trustee's so-called Depot Track No. 3 extending northerly from its connection with East House Track No. 2 near the south line of Hidalgo Street to the south line of Washington Street, and the International Trustee's East House Track No. 2 extending southerly from its connection (near Hidalgo Street) with International Trustee's Depot Track No. 3 to a connection (near and just southerly of the north line of Ventura Street and near and just westerly of the west line of Santa Isabel Street) with IGN Lower Yard Track No. 3, referred to in (C) next below; the approximate location of said section of Depot Track No. 3 and of East House Track No. 2 being indicated by solid red lines on Exhibit A and said section of track and said track being sometimes hereinafter referred to as "IGN Freight Forwarding Tracks"; and (2nd) the International Trustee's so-called Depot Tracks Nos. 1 and 2, that section of so-called Depot Track No. 3 between connection with said East House Track No. 2 (near Hidalgo Street) and connection with Tex-Mex Green Tracks (near and just south of Iturbide Street, and just west of the west line of Santa Isabel Street), and that

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section of International Trustee's Track No. 23 (I. C. C. No. 144) south of the south line of Victoria Street; the approximate location of the tracks and sections of tracks described in this Section (B) (2nd) also being indicated by solid red lines on Exhibit A, and said tracks and sections of tracks being sometimes hereinafter referred to as "IGN Passenger Tracks."

(C) (1st) That section of International Trustee's Lower Yard Track No. 5, herein referred to as "IGN Lower Yard Track No. 5", extending in a general northerly direction from place of connection of southerly end of said Track No. 5 with northerly end of Tex-Mex Company's turnout to said Track No. 5 (between Ventura and Pedregal Streets) at approximately point "H" on Exhibit A, to point in said Track No. 5, one hundred (100) feet south of the south line of Washington Street, at approximately point "I" on Exhibit A, and (2nd) that section of International Trustee's Lower Yard Track No. 6, herein referred to as "IGN Lower Yard Track No. 6", extending in a general northerly direction from point of switch of said Track No. 6 in IGN Lower Yard Track No. 5 (near south line of Lincoln Street) to the south line of Washington Street; the approximate location of said section of IGN Lower Yard Track No. 5 and of said section of IGN Lower Yard Track No. 6 also being indicated by solid red lines on Exhibit A, and said sections of track being hereinafter referred to as "IGN Freight Receiving Tracks".

(D) Four parallel tracks of International Trustee, designated on Exhibit A Numbers 1 to 4, located just southwesterly of and parallel to IGN Lower Yard Track No. 5, which four tracks serve the U. S. Fumigation Plant and are located between Zaragoza Street on the north, Ventura Street on the south, Santa Isabel Street on the east, and Eagle Pass Street on the west, and access to said four tracks by locomotives and cars (1st) from the southeast,

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being by means of a connection of the most northerly of said four tracks (designated track No. 1) with IGN Lower Yard Track No. 5 in Santa Isabel Street near and just southerly of Ventura Street and (2nd) from the north, being by means of a connection of said track No. 1 with IGN Lower Yard Track No. 5 in Eagle Pass Street near and just north of Grant Street; the approximate location of said four tracks also being indicated by solid red lines on Exhibit A.

Those sections of said four tracks, intermediate (a) connection of south end of said track No. 1 with IGN Lower Yard Track No. 5 and (b) the northwesterly end of the U. S. Fumigation Plant at point "J" on Exhibit A, are sometimes hereinafter referred to as "South Section of IGN Fumigation Tracks", and those sections of said four tracks, intermediate (a) the northwesterly end of the U. S. Fumigation Plant at said point "J" and (b) the connection of the northerly end of track No. 1 of said four tracks with IGN Lower Yard Track No. 5, are sometimes hereinafter referred to as "North Section of IGN Fumigation Tracks".

(E) A certain building of Tex-Mex Company, designated as yard office and located near north end of International Bridge, used in connection with performing services relating to cars of both parties hereto moving over International Bridge in interchange.

(F) A certain building of Tex-Mex Company, designated as car inspectors' office and located at Ventura Street, used in connection with performing services relating to cars of both parties hereto moving over International Bridge in interchange.

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Section 2. Inventory of Tracks, Improvements and Appurtenances Thereto, and Agreed Value Thereof for Rental Purposes.

Attached hereto as part hereof, marked Exhibit B, is a detailed list of the tracks, improvements and appurtenances thereto deemed to be used for the common benefit of the parties hereto hereunder and the value thereof for rental purposes as of the effective date of this agreement, which shall be the original value thereof allowed by the Interstate Commerce Commission plus value of subsequent additions and betterments, said Exhibit B consisting of one page, dated Laredo, Texas, February 12, 1951, and signed by the Engineers of the parties hereto.

The tracks, improvements and appurtenances thereto, shown in said Exhibit B, shall be separated into the following groups, each group to be separately valued, viz.:

Group One Facilities.

That part of the International Bridge north of the U. S.-Mexican Boundary Line, that portion of the approach thereto to point "H" on Exhibit A, and Tex-Mex Green Tracks thereon, together with appurtenant yard office and car inspector buildings and facilities or portions thereof used for the common benefit of the parties hereto under this agreement.

Group Two Facilities.

That part of Tex-Mex Green Tracks not included in Group One Facilities, and right of way therefor.

Group Three Facilities.

The South Section of IGN Fumigation Tracks and right of way therefor.

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Section 3. Joint Switch Engines and Crews:

The parties hereto shall provide in the manner herein-after stated such switch engine or switch engines, of adequate tractive effort, together with the necessary equipment, fuel, water, lubricants and other supplies therefor, and also such engine and switch crews, as may be necessary for the prompt, efficient and economical performance of the Joint Switching Service referred to in Section 4 hereof, at and during such time or times as said Joint Switching Service shall be required to be performed under the provisions of this agreement.

Tex-Mex Company shall provide the Joint Switch Engines and Crews and perform the Joint Switching Service between 12:00 midnight and the following 2:00 P. M., and International Trustee shall provide the Joint Switch Engines and Crews and perform the Joint Switching Service between 2:00 P. M. and the following 12:00 midnight, at and during such time or times as said Joint Switching Service shall be required to be performed under the provisions of this agreement; and the parties hereto agree that with respect thereto they will abide by the terms, conditions and provisions, to the extent applicable, of written memorandums of agreement signed at Laredo, Texas, December 8, 1950, entered into between the International Great Northern Railroad Company, The Texas Mexican Railway Company, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen, copy of said agreement, marked Exhibit C, being attached hereto as part hereof.

Section 4. Joint Switching Services; Sole Switching Service; "National Railways Tracks" and "National Railways"—Defined.

(I) The following services shall be deemed to be Joint Switching Services which the Joint Switch Engines shall

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be available for and perform at and during such time or times and from time to time as may be necessary, viz.:

(A) The transportation by Joint Switch Engine over the Tex-Mex Green Tracks to tracks of National Railways of Mexico (hereinafter referred to as "National Railways Tracks") located on the International Bridge at and south of the U. S.-Mexican Boundary Line of all cars brought to and placed on Tex-Mex Green Tracks by Tex-Mex Company's exclusive engine for interchange from Tex-Mex Company to said National Railways of Mexico (hereinafter referred to as "National Railways").

(B) The transportation by Joint Switch Engine from IGN Freight Forwarding Tracks and thence over the Tex-Mex Green Tracks of freight cars to National Railways Tracks for interchange from International Trustee to National Railways.

(C) The transportation by Joint Switch Engine from National Railways Tracks onto the Tex-Mex Green Tracks of freight train cars for interchange from National Railways (1) to Tex-Mex Company and (2) to International Trustee, and the switching and separation of said cars on Tex-Mex Green Tracks by the Joint Switch Engine into the following separate groups or cuts, viz.:

- (a) cars for delivery to International Trustee on IGN Freight Receiving Tracks,
- (b) cars for delivery to Tex-Mex Company at some suitable location on Tex-Mex Green Tracks,
- (c) cars of both International Trustee and Tex-Mex Company for delivery to South Section of IGN Fumigation Tracks, and
- (d) cars where the party to whom delivery is to be made is unknown, which shall be placed at

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a suitable location on Tex-Mex Green Tracks until party to whom delivery is to be made is determined.

(D) The transportation by Joint Switch Engine of the cars referred to in (C) next above, following their separation as in said (C) provided, shall be as follows:

- (1) cars for delivery to International Trustee shall be placed on IGN Freight Receiving Tracks,
- (2) cars for delivery to Tex-Mex Company shall be placed on Tex-Mex Green Tracks,
- (3) cars for delivery to U. S. Fumigation Plant shall be placed on South Section of IGN Fumigation Tracks, and when fumigation is completed and cars released shall be transported by the Joint Switch Engine to the tracks, referred to in (1) or (2) of this (D), of the party to whose line the car or cars is or are destined at Laredo, Texas, within one and one-half hours, except said delivery be prevented by causes beyond the control of the party performing the Joint Switching Service, and
- (4) when it shall have been determined to what party any car or cars referred to in (d) of (C) of this Section 4 is or are to be delivered, said car or cars shall be transported by the Joint Switch Engine to the tracks, referred to in (1) or (2) of this (D), of the party to whose line the car or cars is or are destined at Laredo, Texas.

The Joint Switch Engine and Crew shall complete the delivery of cars not requiring fumigation to the party for whom intended on the tracks referred to in

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(1) or (2) of this (D) within one and one-half hours after the cars are placed on National Railways Tracks by National Railways for interchange and have been released by Customs for movement to yards of the parties hereto, except said delivery be prevented by causes beyond the control of the party performing the Joint Switching Service.

If either party performing the Joint Switching Service is unable to complete delivery of any car or cars within either of the periods of one and one-half hours hereinbefore in this (D) referred to because of the performance of the Joint Switching Service being taken over by the other party hereto in accordance with the provisions of Section 3 hereof, then such other party shall have one and one-half hours from the time it takes over the performance of the Joint Switching Service in which to complete the delivery of any such car or cars.

(E) The transportation by Joint Switch Engine over Tex-Mex Green Tracks and/or any tracks of International Trustee covered by this agreement of passenger train cars in a movement between any of said tracks and National Railways Tracks.

(II) In the event southern access to the South Section of IGN Fumigation Tracks is obstructed, the Joint Switch Engine shall have the right temporarily to operate to and from the South Section of IGN Fumigation Tracks via IGN Lower Yard Track No. 5 (comprising part of IGN Freight Receiving Tracks) and via the North Section of IGN Fumigation Tracks until such obstruction is removed, without any charges for interest rental, taxes, maintenance and operating expenses applicable to the trackage so temporarily used being assessed for assumption and distribution between the parties hereto; it being the intention hereof that said charges shall be assumed by International Trustee.

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(III) Joint Switching Service shall be performed impartially for the account of the parties hereto; and no preference shall be given to movement of cars of one of the parties hereto over cars of the other party hereto.

(IV) Movement of International Trustee's passenger train cars shall have precedence over the movement of freight train cars over Tex-Mex Green Tracks at all times. Subject to foregoing, Joint Switching Service shall have preference over all other movements on Tex-Mex Green Tracks except that Tex-Mex Company shall have preference in the use of Tex-Mex Green Tracks by Tex-Mex Company's sole engine and crew performing sole switching service for Tex-Mex Company on Tex-Mex Company's tracks now or hereafter located near and just easterly of Tex-Mex Green Track No. 1 and intermediate Ventura Street and Lincoln Street, the Tex-Mex Company hereby agreeing to so perform its sole switching service as to not unnecessarily or unreasonably interfere with the movement over Tex-Mex Green Tracks in Joint Switching Service of freight train cars.

Section 5. Persons Employed In Performing Services Hereunder.

(A) Each party shall have the right, at such party's sole expense and with such party's sole employees, to handle all papers required by the United States and Mexican governmental authorities for the movement of export and import cars of such party; and shall cause such party's said sole employees to cooperate with the supervisory officer and yard clerks hereinafter referred to in expediting the movement of said export and import cars. Not more than one such sole employe of each party shall be stationed at the Yard Office at the International Bridge at any one time for the purpose aforesaid; and said sole employe may examine only records pertaining to his employer's business.

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Each party shall cause to be promptly furnished to said supervisory officer or, in his absence, to said yard clerks at the Joint Yard Office such information as shall be required for the efficient and expeditious handling of such party's export and import cars including, but not limited to, car number and initials, contents of car, and name of forwarding agent or customs house broker in Laredo, Texas, having supervision of the export or import of any such car.

(B) One supervisory officer, satisfactory to International Trustee and Tex-Mex Company, shall be employed and shall have exclusive jurisdiction over the Joint Yard Office, with full authority to direct and supervise persons employed in performing any work or services contemplated by this agreement, including, but not limited to, Yard Clerks, Messenger-Janitor, Bridge Watchman, Car Inspectors, Engine Crews and Switch Crews. With the consent of the employing party and in the sole discretion of the supervisory officer any Joint Switch Engine, together with engine crew and switch crew assigned thereto, and any other of the said persons employed in performing work or services contemplated by this agreement, may be released, for any period which will not impair the services required by this agreement, to the party hereto furnishing the Joint Switch Engine or employing the said persons, as the case may be. Any Joint Switch Engine, crews or persons released as aforesaid shall be promptly returned to service under this agreement upon the request of the supervisory officer.

(C) Yard Clerks and Messenger-Janitor presently employed in performing work connected with interchange service referred to herein shall continue to perform the services and functions being performed thereby on the effective date of this agreement and such other and additional services and functions from time to time as the

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parties hereto may mutually agree upon, subject, however, to the terms, conditions and provisions contained in Memorandum of Agreement signed at Laredo, Texas, December 14, 1950, between the International-Great Northern Railroad Company, The Texas Mexican Railway Company and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, copy of said agreement, marked Exhibit D, being attached hereto as part hereof.

(D) Car Inspectors presently employed in performing work connected with interchange service referred to herein shall continue to perform the services and functions being performed thereby on the effective date of this agreement and such other and additional services and functions from time to time as the parties hereto may mutually agree upon, subject, however, to the terms, conditions and provisions contained in Memorandum of Agreement, signed at Laredo, Texas, December 15, 1950, between the International-Great Northern Railroad Company, The Texas Mexican Railway Company and System Federation No. 14 Railway Employees' Department, A. F. L., copy of said agreement, marked Exhibit E, being attached hereto as part hereof.

Nothing herein contained shall prohibit or prevent the parties hereto from abolishing any of the positions covered by this Section 5.

Section 6. Passenger Train Services and Supplies.

Except for services performed by yard clerks and car inspectors in inspecting and in keeping records of passenger equipment handled, and except for transportation of passenger train cars by Joint Switch Engine, which services are considered as a part of the joint interchange service performed pursuant to this agreement, each party,

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at such party's expense, shall perform and/or furnish all services and supplies required for and in connection with the interchange of such party's passenger train cars, passengers, mail and express with National Railways.

Section 7. Employees of Parties Hereto Who Perform Services for Both Parties to be Neutral; Removal Thereof for Cause.

Persons in the employ of Tex-Mex Company and the International Trustee who perform services for both parties shall be neutral in the performance of their duties as between said parties, transacting the business of both parties impartially, and neither showing nor giving preference to one party as against the other party; and such persons shall, with respect to business transacted for or on account of either party hereto, be subject to the rules, regulations, control and requirements of such party in the same manner and to the same extent as if solely employed by such party, and each party hereto assumes sole responsibility for any and all acts of omission or commission done or contributed by such persons with respect to or in connection with the transaction of such party's own business the same as though they were engaged exclusively in such party's employment.

For just and sufficient cause, after full compliance with requirements of the individual employee's agreements with the employing party, an employee of either party hereto engaged in joint service shall be removed from the performance of any such joint service upon written request made by either party hereto to the party employing said person whose services are claimed to be unsatisfactory.

If, as a result of action of any Court or Governmental body having jurisdiction, any person thus removed from service recovers damages based on such removal, or is reinstated with allowance for time lost, the amount of such

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damages, and/or payments for time lost, shall be borne by the party or parties hereto at whose request the employe was removed from service.

Anything herein to the contrary notwithstanding, neither party hereto shall be required to effect any such removal if such action would be in violation of any law or of any regulation prescribed by competent Governmental authority.

Section 8. Papers Required by U. S. and Mexican Governmental Authorities; Satisfaction of Fines, Penalties and Assessments Levied by Governmental Authorities; Execution of Manifests and Carrier's Release; Payments to U. S. Government for Services Performed by Its Employees.

Unless delivery thereof shall be made direct to governmental authorities by a sole employe provided for in (A) of Section 5, papers required for clearance of southbound traffic for export to Mexico upon receipt thereof from customs house broker or forwarding agent by the agent of the party on whose tracks the car containing said traffic for export is located, shall be promptly delivered to the Supervisory Officer, or in his absence to a yard clerk, at the Joint Yard Office at the International Bridge, for delivery thereby to governmental authorities.

Separate outward manifests and list of Mexican inward manifests shall be prepared for each party's southbound traffic for export to Mexico, said manifest to be prepared by such party's sole employe if such employe shall deliver customs papers to customs authorities, otherwise to be prepared by the yard clerk or yard clerks at the said Joint Yard Office.

U. S. Inward Manifests and the Carrier's Release required by the U. S. Customs with respect to import to the

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United States of northbound traffic of each party shall be executed by a duly authorized representative of such party, or the parties may from time to time agree upon a representative who may execute said Manifests and Releases for each of the parties, the Supervisory Officer at the Joint Yard Office to furnish each party hereto a copy of each U. S. Inward Manifest.

The Supervisory Officer shall be instructed to, and shall, furnish to either party hereto desiring same from time to time, the following information from the Joint Yard Office records with respect to southbound traffic for export to Mexico, viz: initial and number of cars and dead locomotives, contents of cars, and the name of the customs house broker or forwarding agent in Laredo, Texas, supervising export of any such car or dead locomotive.

Fines, penalties and claims (exclusive of claims for reimbursement for services of U. S. Government employees) imposed by any Governmental Authority in connection with any export or import traffic interchanged between any party hereto and the National Railways, at Laredo, Texas, shall be assumed and paid or defended against by the party hereto on the tracks of which such traffic originates or terminates at Laredo, or is transported thereto or therefrom if origin or destination is beyond switching limits of Laredo. If any such fine, penalty or claim shall be imposed upon any party hereto for which the other party shall be responsible hereunder, such party shall give due notice thereof to the responsible party.

In the event the party hereto performing the joint interchange service pursuant to the provisions of this agreement shall be required to pay any such fine, penalty or claim for the assumption and payment of which the other party is obligated as aforesaid, then such performing party shall use every reasonable effort to defend the action, and, if pay-

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ment has been made, to try to recoup or obtain refund of the amount paid, providing such other party furnishes and delivers evidence necessary to form a reasonable basis for a defense or recovery of any amount paid; both parties shall co-operate toward this end. All fees and expenses incurred in defending payment of any such penalty, fine or claim or in trying to recoup or recover any portion of any such penalty, fine or claim paid, shall be reimbursed promptly by other party.

Claims for reimbursement of U. S. Government for services of its employees because of passenger train movements of either party shall be paid by such party; and claims for reimbursement of U. S. Government for services performed by its employees because of freight movements of either party shall be paid by the party hereto at the time performing the Joint Switching Service, subject to adjustment between the parties in accordance with User Basis Three referred to in Section 9 hereof.

Section 9. User Bases Established; Specific Cars and Equipment and Unit Value Thereof Used in Establishing User Bases.

(A) For use in apportioning between the parties hereto as elsewhere in this agreement provided various expenses and charges applicable to each calendar year or fraction thereof of the term hereof there shall be established the User Bases specified in paragraph (C), using therefor the unit values provided in (B) as applied to the specific cars and units of equipment specified in connection with each of said User Bases which were handled during the preceding calendar year.

(B) For the purpose of (C) next below each loaded freight train car shall be counted as one unit, each passenger train car shall be counted as one and one-half units

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and each locomotive handled other than under its own power (hereinafter referred to as "dead locomotive") shall be counted as two units; locomotives operated under their own power and units of work equipment used in performing work on Group One Facilities, Group Two Facilities and Group Three Facilities shall not be counted.

(C) (1) "User Basis One" shall mean the proportion which the units comprised in the passenger train cars, loaded freight cars and dead locomotives delivered by each party hereto to National Railways and received by each party hereto from National Railways in interchange on National Railways Tracks during the preceding calendar year referred to in (A) of this Section 9, shall be of the number of units comprised in the total number of such passenger train cars, loaded freight cars and dead locomotives so delivered to and received from the National Railways in interchange during said preceding calendar year.

(2) "User Basis Two" shall mean the proportion which the units comprised in the passenger train cars, loaded freight cars, and dead locomotives delivered by each party hereto to National Railways and received by each party hereto from National Railways in interchange on National Railways Tracks plus, as to solely Tex-Mex Company, the number of loaded freight cars (exclusive of cars interchanged as aforesaid) consigned to and from Tex-Mex Company's exclusive tracks located east of Tex-Mex Green Track No. 1 and between Ventura and Lincoln Streets, during the preceding calendar year referred to in (A) of this Section 9, shall be of the total number of units comprised in the total number of said cars and dead locomotives so interchanged or handled by or for the account of both parties during said preceding calendar year.

(3) "User Basis Three" shall mean the proportion which the units comprised in the loaded freight cars and dead locomotives delivered by each party hereto to National

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Railways and received by each party hereto from National Railways in interchange on National Railways Tracks during the preceding calendar year referred to in (A) of this Section 9, shall be of the total number of units comprised in the total number of said loaded freight cars and dead locomotives so delivered to and received from the National Railways in interchange during said preceding calendar year.

(D) At the close of each calendar year there shall be established New User Bases determined by the use of the specific cars and dead locomotives and unit values applicable thereto in (B) of this Section 9 which New User Bases shall be used in adjusting as between the parties hereto as of the close of said calendar year the expenses and charges apportioned during said calendar year on the User Bases in effect prior to the establishment of said New User Bases.

Section 10. Interest Rental and Taxes. Guarantee Against Duplicate Payments of Interest Rental and Taxes on International Bridge.

(A) International Trustee shall pay to Tex-Mex Company, subject to the provisions of sub-paragraph (C) of this Section 10,

- (a) monthly, in arrears, promptly following receipt of bill therefor, International Trustee's proportion, determined in accordance with User Basis One referred to in Section 9, of rental computed at the rate of six per cent (6%) per annum (1) on the agreed value of Group One Facilities as referred to in, and as the consist and agreed value thereof shall be determined in accordance with the provisions of, Section 2; (2) on the cost of additions and betterments made from time to time to said

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Group One Facilities, less retirements for property replaced, which is chargeable to Capital Account of Tex-Mex Company; and (3) on taxes and assessments paid on said Group One Facilities which are chargeable to Tex-Mex Company's Capital Account;

- (b) monthly, in arrears, promptly following receipt of bill therefor, International Trustee's proportion, determined in accordance with User Basis Two referred to in Section 9, of rental computed at the rate of six per cent (6%) per annum (1) on the agreed value of Group Two Facilities as referred to in, and as the consist and agreed value thereof shall be determined in accordance with the provisions of, Section 2; (2) on the cost of additions and betterments made from time to time to said Group Two Facilities, less retirements for property replaced, which is chargeable to Capital Account of Tex-Mex Company; and (3) on taxes and assessments paid on said Group Two Facilities which are chargeable to Tex-Mex Company's Capital Account;
- (c) promptly following receipt of bill therefor (1) International Trustee's proportion, determined on said User Basis One, of ad valorem taxes accrued but not paid, and ad valorem taxes and assessments paid, by Tex-Mex Company upon said Group One Facilities, and (2) International Trustee's proportion, determined on said User Basis Two, of ad valorem taxes accrued but not paid, and ad valorem taxes and assessments paid, by Tex-Mex Company upon said Group Two Facilities, but excluding any taxes and assessments properly chargeable to Tex-Mex Company's Capital Account.

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(B) Tex-Mex Company shall pay to International Trustee.

- (a) monthly, in arrears, promptly following receipt of bill therefor, Tex-Mex Company's proportion, determined in accordance with User Basis Three referred to in Section 9, of rental computed at the rate of six per cent (6%) per annum (1) on the agreed value of Group Three Facilities as referred to in, and as the consist and agreed value thereof shall be determined in accordance with the provisions of, Section 2; (2) on the cost of additions and betterments made from time to time to said Group Three Facilities, less retirements for property replaced, which is chargeable to Capital Account of International Trustee; and (3) on taxes and assessments paid on said Group Three Facilities which are chargeable to International Trustee's Capital Account;
- (b) promptly following receipt of bill therefor Tex-Mex Company's proportion, determined on said User Basis Three, of taxes and assessments lawfully levied upon said Group Three Facilities and paid by International Trustee, but not including taxes and assessments properly chargeable to International Trustee's Capital Account.

(C) The Tex-Mex Company makes no claim to title in and to that portion of the International Bridge on which Tex-Mex Company's tracks are located, although it will receive payments of interest rental and taxes thereon under the provisions of this agreement. It is therefore agreed that any such payments made to Tex-Mex Company are on the express condition, which the Tex-Mex Company hereby accepts and agrees to comply with, that in the event any person or party shall establish by proper legal proceedings that such person or party is the owner of said portion of the International Bridge and entitled to be paid in-

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interest rental and taxes thereon by the International Trustee and that Tex-Mex Company has not paid to such person or party any of the interest rental or taxes on said portion of the International Bridge paid to it by International Trustee to which such person or party may be lawfully entitled, then Tex-Mex Company shall reimburse International Trustee such interest rental and taxes as International Trustee shall be compelled to pay to such party, but not in excess of the amount of interest rental or taxes paid to Tex-Mex Company by International Trustee for the period to which said interest rental or taxes paid such person or party shall be applicable.

(D) The taxes and assessments hereinbefore referred to applicable to Tex-Mex Company owned facilities shall be allocated to each Group One Facilities and Group Two Facilities in the proportion which the value of each Group One Facilities and Group Two Facilities shall be to the total value of Tex-Mex Company's real property in Laredo, Texas, as said values shall be jointly determined by an engineer of each party hereto; the taxes and assessments hereinbefore referred to applicable to that portion of the International Bridge north of the U. S.-Mexican Boundary Line shall be allocated to Group One Facilities in the proportion which the value of said portion of said Bridge shall be to the total value of all real property of the owner of said portion of said Bridge which shall be located in Laredo, Texas, as said values shall be jointly determined by an engineer of each party hereto, and the taxes and assessments hereinbefore referred to shall be allocated to Group Three Facilities in the proportion which the value of said Group Three Facilities shall be of the International Trustee's real property in Laredo, Texas, as said values shall be jointly determined by an engineer of each party hereto.

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Section 11. Maintenance, Operation, Repair and Renewal of Certain Tracks and Improvements of Parties Hereto; Also Maintenance of Portion of International Bridge.

(A) Tex-Mex Company shall maintain, operate, repair and renew at its expense but to be partially reimbursed as in Section 12 hereof provided, (1st) the Group One Facilities, and (2nd) the Group Two Facilities, as the consist of said Group One Facilities and said Group Two Facilities shall be determined in accordance with the provisions of Section 2 hereof, except that the obligation of Tex-Mex Company under this paragraph (A) as to the portion of the International Bridge located in the United States shall be limited to ordinary maintenance and repair, and shall not include renewal or rebuilding occasioned by fire, flood or other unusual occurrence.

(B) International Trustee shall maintain, operate, repair and renew at International Trustee's expense, but to be partially reimbursed as in Section 12 hereof provided, the Group Three Facilities, referred to in Section 2 hereof, as the consist of said Group Three Facilities shall be determined in accordance with the provisions of said Section 2.

(C) International Trustee shall maintain, operate, repair and renew IGN Freight Forwarding Tracks, IGN Freight Receiving Tracks, IGN Passenger Tracks and the North Section of IGN Fumigation Tracks without expense to Tex-Mex Company except insofar as Tex-Mex Company may be obligated to participate therein pursuant to the liability provisions (Section 19) hereof in connection with the operation of the Joint Switch Engine on a portion of the IGN Freight Receiving Tracks and the North Section of IGN Fumigation Tracks.

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Section 12. Maintenance, Operation, Repair and Renewal Expense to Be Assumed Jointly.

(A) International Trustee shall pay to Tex-Mex Company, promptly following receipt of bill therefor, (1st) International Trustee's proportion of the expense incurred by Tex-Mex Company during the preceding calendar month in maintaining, operating, repairing and renewing the Group One Facilities as and to the extent provided in (A) of Section 11 hereof on the User Basis One provided in (C) (1) of Section 9, and (2nd) International Trustee's proportion of the expense incurred by Tex-Mex Company during the preceding calendar month in maintaining, operating, repairing and renewing the Group Two Facilities as provided in (A) of Section 11 hereof on the User Basis Two provided in (C) (2) of Section 9 hereof.

(B) Tex-Mex Company shall pay to International Trustee, monthly, promptly following receipt of bill therefor, Tex-Mex Company's proportion of the expense incurred by International Trustee during the preceding calendar month in maintaining, operating, repairing and renewing the Group Three Facilities as provided in (B) of Section 11 hereof on the User Basis Three provided in (C) (3) of Section 9 hereof.

Section 13. Expense of Joint Switching and Interchange Service—How Determined and Apportioned.

(A) In determining the expense of performing the joint interchange service at Laredo, Texas, for apportionment between the parties hereto as in this agreement provided (exclusive of interest rental and taxes the apportionment of which is provided for in Section 10 hereof) there shall be included solely the following:

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(1) **Operation of Joint Switch Engine:**

- Wages of yardmaster (Portion allocated to joint work)
- Wages of yard conductors and brakemen
- Wages of yard switch and signal tenders
- Wages of yard motormen and firemen
- Fuel, water, lubricants and other locomotive supplies
- Engine house expenses
- Yard supplies and expenses
- Repairs to locomotives
- Interest rental, depreciation and taxes on locomotives
- Use of mechanical facilities
- Use of tracks and portion of street crossing protection for movement of Joint Switch Engine to and from mechanical facilities.

Based on the elements of expense included in item (1) of paragraph (A) of this Section 13 the parties agree (1st) that as of the effective date of this agreement the cost per Joint Switch Engine Hour of performing the Joint Switching Service is \$19.00 and (2nd) that the cost of operating the Joint Switch Engine for each calendar month of the term of this agreement shall be an amount determined by multiplying the then currently effective Joint Switch Engine Hour Rate by the number of said engine hours chargeable during such month to Joint Switching Service as defined in Section 4 hereof, plus the arbitrary allowances hereinafter provided for to compensate for time consumed in moving Joint Switch Engine from and to the tracks used in Joint Switching Service. When the elapsed time between the starting and the completion of the Joint Switching Service performed by either party on any day is eight hours or less, such party shall be entitled to an arbitrary allowance of forty-five minutes, and when said elapsed time is more than eight hours, such party shall be entitled to an arbitrary allowance of one hour and thirty minutes.

The cost per Joint Switch Engine Hour of \$19.00 shall be adjusted from time to time upon request of either party

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hereto to reflect changes in wages of employees and in costs of fuel and lubricants solely when there shall be a variation in the aggregate of said wages and costs of fuel and lubricants amounting to ninety-five (95) cents or more per engine hour as compared to said wages and costs for the calendar year 1949, each such adjustment to be effective as of the date of each such aggregate variation and to be in the percentage proportion that the amount of variation is of \$19.00.

(2) Supervisory Officer:

Salary and expenses of Supervisory Officer to be employed pursuant to (B) of Section 5, one-half of whose salary shall be carried on the payroll of each party.

(3) Car Inspection Service:

(a) Wages of car inspectors assigned to joint interchange service, but excluding wages allocable to time while performing sole service of either party.

(b) Materials and supplies used by car inspectors in joint interchange service.

(4) Yard Clerks and Messenger-Janitor:

(a) Wages of yard clerks and messenger-janitor assigned to joint interchange service, but excluding wages allocable to time while performing sole service of either party.

(b) Materials and supplies used by yard clerks and messenger-janitor in joint interchange service.

(5) Maintenance of Physical Properties:

Maintenance Expense (including Bridge Watchman) of properties in Group One Facilities, Group Two Facilities and Group Three Facilities, as referred to in Section 11, shall be the actual cost of labor and materials allocable to each Group.

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NOW, THEREFORE, in consideration of the premises, the parties hereto agree that, effective retroactively with the effective date of the Basis Agreement, item (7) of (A) of Section 13 of the Basis Agreement shall be and read:

"(7). EXPENSES OF SUPERVISION, ADD UTILITY, TRANSPORTATION OF MATERIAL AND SUPPLIES, USE OF TOOLS, AND EXPENSES OF SIMILAR NATURE:

"To compensate for expenses not otherwise specifically covered by this Agreement:

"Twenty (20) percent shall be added to costs covered by the foregoing items (1) to (5), both inclusive, to compensate for expenses not otherwise specifically covered by this Agreement; except, that, as to any work of maintaining, repairing or renewing the Group One Facilities, the Group Two Facilities and the Group Three Facilities caused by the respective parties to be performed by an independent contractor or by a person or persons not carried on the payroll of the party hereto undertaking to have said work so performed, one (1) percent shall be added to the contract price or the actual cost, as the case may be, to cover supervision and accounting.

"In the event it shall be necessary for either party hereto undertaking to have said maintenance, repair or renewal work on the Group One, Group Two or Group Three Facilities so performed by an independent contractor or by a person or persons not carried on such party's payroll to assign an employee or employees of such party to supervise the performance of such work, then the additive of twenty (20) percent and payroll taxes and vacation allowance provided by Item (6) hereof shall apply to the compensation paid such supervisory employee while engaged in the supervision of the performance of any such work."

The terms, conditions and provisions of the Basic Agreement, as and to the extent hereby supplemented and amended, shall continue in force and effect as therein provided.

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on the same User Basis as the costs to which they are added are apportioned.

Section 14. Employee Dismissal or Displacement Claims.

Any and all amounts paid by Tex-Mex Company on account of any dismissal or displacement claims of Tex-Mex Company employees on account of change in the method of switching and other operations involved in the interchange of traffic between National Railways and each the Tex-Mex Company and International Trustee as a result of the parties entering into this agreement and conducting their operations pursuant thereto, whether any such claims are made pursuant to conditions imposed by the Interstate Commerce Commission or by provisions in memorandum agreements, Exhibits C, D and E, attached hereto, as well as amounts of any claims (other than the claims hereinbefore referred to) which Tex-Mex Company shall pay to engine and switch crews from time to time during the four (4) year period prescribed in Section 3 of the Memorandum Agreement Exhibit C above referred to, in the event Tex-Mex Company shall dispense with the third engine and switch crews required to be maintained under said Section 3, shall be reimbursed Tex-Mex Company by International Trustee promptly following receipt of bills from time to time for the amount of any claims paid; provided, however, Tex-Mex Company shall not bill International Trustee for any claims paid because of the third engine and switch crews being dispensed with which shall be applicable to any period of three or more successive days during the term of this agreement where on each of the days during any such period the other two engine and switch crews are paid overtime in excess of an aggregate of four hours.

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Section 15. Wrecker Service.

Except as may be otherwise arranged from time to time between the Chief Operating Officers of the parties hereto, equipment damaged or derailed on Tex-Mex Green Tracks and South Section of IGN Fumigation Tracks requiring the use of wrecking equipment for rerailing or removal shall be rerailed or removed by and with wrecking equipment provided by the party performing the Joint Switching Service at the time of the damage or derailment, and the cost thereof shall be charged against the party or parties liable therefor under the liability provisions (Section 19) hereof.

Section 16. Charge for Equipment Engaged in Wrecker Service.

Charge for use of equipment while engaged in wrecker service under this agreement shall be at rates fixed from time to time by the General Managers' Association of Chicago, Illinois, or any successor agency, but if no rate is fixed by such Association or successor agency for any equipment so used, then the party rendering the bill may charge for use of such equipment such party's rental rates therefor.

Section 17. Rendition and Payment of Bills; Inspection of Records.

(A) Bills of each of the parties hereto shall be rendered monthly and paid within thirty (30) days after receipt thereof.

Errors or disputed items in any bills shall not be deemed a valid excuse for delaying payment but shall be subject to subsequent adjustment, provided, no exception to any bill shall be honored, recognized or considered if filed after

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the expiration of two years from the last day of the calendar month during which the bill is rendered, and that no bill shall be rendered later than two years after the last day of the calendar month in which the expense covered thereby is incurred.

(B) So much of the books, accounts and records of each of the parties hereto as are pertinent to this agreement and the performance thereof shall be open for inspection at all reasonable times by the officers or agents of the other party hereto, who may make copies thereof.

Section 18. Parties to Use Reasonable Care and Diligence in Maintaining, Repairing and Renewing Tracks, Improvements and Appurtenances.

Each of the parties hereto with respect to the tracks, improvements and appurtenances which such party (herein called "Maintaining Party") is obligated to maintain, repair and renew as provided in Section 11 hereof, shall be bound to use only reasonable and customary care, skill and diligence in performing said obligation, and the other party shall not, by reason of any defect in said tracks, improvements and appurtenances, have or make against the Maintaining Party any claim or demand for loss, damage, or injury arising from such defect.

Section 19. Liability.

(1st) Locomotives, Cars and Trains, Equipment, Facilities and Personnel of Parties Hereto—How Classified:

(1) Locomotives, cars and trains operated on Tex-Mex Green Tracks, South Section of IGN Fumigation Tracks, IGN Freight Forwarding Tracks, IGN Freight Receiving Tracks and North Section of IGN Fumigation Tracks and IGN Passenger Tracks shall be regarded as the loco-

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tives, cars and trains of the party hereto whose trainmen and enginemen are operating the same, **except that:**

- (a) any locomotive and the members of the crews assigned to the performance of the Joint Switching Service
 - (a-1) while handling on any of the tracks hereinbefore in this Section 19 specifically mentioned solely cars of one of the parties, or while performing on any of said tracks owned by either party (other than Tex-Mex Green Tracks and the South Section of IGX Fumigation Tracks) switching service for solely such owning party, including related movements without cars, shall be deemed the sole equipment and sole employees of the party hereto for which said cars are being handled or said switching service is being performed; and the fact that in performing switching service for solely one of the parties the cars of the other party also are being handled by said locomotive and crews as a matter of efficient operation and not for the purpose of performing any service for such other party shall not change the status of said locomotive and members of the crew while performing such services from that of sole equipment and sole employees as by this subdivision (a-1) established;
 - (a-2) while handling on any of said specified tracks cars of both of the parties hereto, including movement of locomotive without cars incident to handling cars of both parties, other than while handling said cars in performing switching service for solely one

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of the parties hereto as referred to in subdivision (a-1) next above, shall be deemed the joint equipment and joint employees of the parties hereto;

- (a-3) while operating without cars on Tex-Mex Green Tracks in or incident to performing switching service necessary for the classification of cars as provided in (C) of Section 4 hereof, or while operating without cars on Tex-Mex Green Tracks, South Section of IGN Fumigation Tracks, North Section of IGN Fumigation Tracks and IGN Lower Yard Track No. 5 for the purpose of taking from or placing on said South Section of Fumigation Tracks cars which have been fumigated or which require fumigation shall be deemed the joint equipment and joint employees of the parties hereto;
- (b) any locomotive and work equipment and the engine crew, train crew and work crew comprising any wrecking outfit assigned to the performance of any wrecking service on the tracks hereinbefore in this Section specifically mentioned shall be deemed to be the sole equipment and sole employees of the party hereto solely liable, or the joint equipment and joint employees of the parties hereto jointly liable, for the Loss and Damage requiring the use of said wrecking outfit, while said equipment and employees are on said specified tracks, but shall be deemed to be the sole equipment and sole employees of the party hereto furnishing the same at all other times;
- (c) any locomotive and equipment and the engine crew, train crew and work crew comprising any work train assigned to the performance of any

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addition and betterment and improvement work to the Tex-Mex Green Tracks or the South Section of IGN Fumigation Tracks shall be deemed to be the joint equipment and joint employees of the parties hereto jointly liable for the cost of such addition and betterment and improvement work while said locomotive, equipment and crews are on said last mentioned tracks, but shall be the sole equipment and sole employees of the party hereto furnishing same at all other times.

(2) Persons engaged in the maintenance, repair and renewal of the Tex-Mex Green Tracks and South Section of IGN Fumigation Tracks and in the making of additions, improvements or betterments thereto, shall while so engaged be deemed to be the joint employees of the parties hereto.

(3) Any employee of either of the parties hereto, whose salary or compensation is assumed by and apportioned between the parties,

(a) shall be deemed to be the joint employee of the parties hereto while performing services for the common benefit of the parties in connection with the performance of Joint Switching Service under this agreement,

(b) shall be deemed to be the sole employee of either party hereto while performing services for solely such party in connection with the performance of said switching service, and

(c) shall be deemed to be the sole employee of the party hereto employing him at all other times.

(4) Any equipment or employees of the parties hereto which cannot be classified under any of the foregoing provisions of this Section 19, while assigned to the perform-

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ance of any services under this agreement, the cost whereof is to be assumed by and apportioned between the parties hereto as a part of expense applicable to this agreement, shall be deemed the joint equipment and joint employes of said parties; but shall be deemed the sole equipment and sole employes of the party hereto furnishing the same at all other times.

(5) When it shall be impossible to definitely determine that any locomotive, equipment or employe of any of the parties hereto while on any of the tracks hereinbefore in this Section 19 specified and involved in any accident or casualty suffered or incurred in connection with any of the work, service or operations referred to in paragraph (4th) of this Section 19 occupies a status established by the foregoing provisions of this Section 19, the same shall be deemed to be the joint equipment and the joint employe of the parties hereto.

(2nd) Status of Railroads Not Parties Hereto Using Tracks of Parties Hereto:

Any railroad hereafter admitted to the use of tracks of either of the parties hereto and operating on any of the tracks specifically enumerated in Section 1 hereof, shall, as between the parties hereto, be regarded in the same light as any third person; however, neither party hereto assumes any responsibility under the provisions of this agreement for any Loss and Damage occasioned by the acts or omissions of the employees of any such railroad so admitted which such railroad shall be obligated to assume in whole or in part pursuant to law or to any agreement relating to its use of said tracks.

(3rd) "Loss and Damage"—Defined:

"Loss and Damage", as used herein, shall mean all loss or damage to property and all injuries to or deaths of per-

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sons, and all liability therefor, and shall embrace all payments made on account thereof, including amounts paid under any State or Federal compensation law, and also shall embrace all costs and expenses incidental to any such losses or damages.

(4th) Liability—Fixing of:

Except as may be elsewhere in this agreement otherwise provided, Loss and Damage suffered or occasioned in connection with the maintenance, repair and renewal of the tracks of the parties hereto specifically enumerated in Section 1 hereof and/or out of the construction of additions, improvements or betterments thereto, except such Loss and Damage as is properly includible in the cost of any of such maintenance or improvement work, and/or out of the operation of the locomotives, cars and trains of the parties hereto on any of said tracks in and incident to the sole operations of either of said parties and the performance of Joint Switching Service, as referred to in Section 4 hereof, and or services incidental or related thereto as contemplated by the provisions of this agreement, shall be fixed as between the parties hereto as follows:

Such Loss and Damage when due to

- (a) the acts or omissions, negligent or otherwise, of a sole employe or sole employes of one of the parties;
- (b) the concurring acts or omissions, negligent or otherwise, of a joint employe or joint employes of the parties and of a sole employe or sole employes of one of the parties; or
- (c) the failure of or defect in the exclusive equipment or appliances of one of the parties;

shall be borne by that one of the parties whose sole employe or sole employes or whose exclusive equipment or appliances so caused such Loss and Damage.

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Such Loss and Damage when due to

- (d) the concurring acts or omissions, negligent or otherwise, of a sole employe or sole employes of one of the parties and of a sole employe or sole employes of the other party; or
- (e) the concurring acts or omissions, negligent or otherwise, of a joint employe or joint employes of said parties and of a sole employe or sole employes of both of said parties;

shall be borne equally by said parties, except that each party shall bear all such Loss and Damage in respect of such party's exclusive property or property in such party's custody and control, and as to such party's exclusive employes, passengers and patrons, and all others on such party's locomotives, trains or cars or on or about the tracks of said party in the transaction of business in connection with such party's line of railroad.

Such Loss and Damage when due to

- (f) the acts or omissions, negligent or otherwise, of any joint employe or joint employes; or
- (g) the defective condition of any joint equipment; or
- (h) any other cause whatsoever not hereinbefore in this paragraph (4th) provided for;

shall be borne by each party as to its own exclusive property or property in such party's custody or upon such party's cars, and as to such party's sole employes and patrons, and persons upon such party's locomotives, cars or trains, while as to other persons and their property and as to joint employes and the Joint Switch Engine, and as to work trains and work equipment while performing work upon or in respect of the Tex-Mex Green Tracks and the South Section of IGN Fumigation Tracks and any additions and betterments thereto, each party hereto shall bear such

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party's proportion thereof, determined on User Basis One as defined in (C) (1) of Section 9, except that in case of accidents from any of the causes expressed in (f), (g) and (h) above in which the locomotive, train, car or sole employes of only one of the parties is concerned, then the liability for such Loss and Damage shall be borne by such party whose sole locomotive, train, car or sole employe is concerned.

If it shall be impossible to determine whether any person is an exclusive passenger, patron or employe of either party, then the liability for injury to or death of such person or loss of or damage to the property of such person shall, except as may be herein otherwise provided, be apportioned on said User Basis One.

As to any Loss and Damage the apportionment of which is not herein otherwise specifically provided for, each party hereto shall assume and bear such party's proportion thereof as determined on said User Basis One.

Anything herein to the contrary notwithstanding, neither party hereto shall have any claim against the other party hereto for any loss or damage which may occur to such party's rolling stock equipment or to the rolling stock equipment in such party's possession or to the contents thereof while on tracks of the other party arising by reason of fire, whether such fire be the result of the negligence of the other party, or otherwise.

Each party hereto against which a claim is made involving joint liability shall give prompt notice thereof to the other party hereto jointly liable, and the other party if not so notified shall not be bound for a proportionate share of any settlement of such claim or expenses incident thereto, but such party's share shall be borne by the party failing to give the required notice. If a claim is made against either party hereto which under the provisions hereof is not chargeable in whole or in part with the lia-

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bility involved in such claim, such party shall promptly notify in writing the responsible party.

In the event both parties hereto shall be liable hereunder for any claim, demand, suit or cause of action arising under this Section 19, and the same shall be compromised or settled by a voluntary payment of money or other valuable consideration by the other party hereto, release from liability shall be taken to and in the names of both parties. Neither party, however, shall make any such compromise or settlement in excess of the sum of \$500.00 without the authority of the other party; but any settlement made by either party in consideration of said sum, or a lesser sum, shall be binding upon the other party.

(5th) Liability—Suits and Judgments—Apportionment of Expenses:

If a judgment should be recovered against and satisfied by one of the parties hereto involving a liability which under the provisions hereof should be borne entirely or participated in by the other party, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit on which it was based, shall be settled by the parties in strict accordance with the provisions hereof, and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other party to the same extent to which the latter is indebted.

Neither party shall, however, be concluded by any judgment or decree at law or in equity against the other party unless it has had reasonable notice from such other party requiring it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other party and the party receiving the same shall have failed to appear and make such defense, it shall be concluded by the judgment or decree in such suit.

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(6th) Liability—Indemnity by Railroad Charged:

Each of the parties hereto covenants and agrees that it will indemnify and save harmless the other party, and successors and assigns thereof, from and against all Loss and Damage properly chargeable to such party hereunder.

Section 20. Compliance with Laws and Ordinances.

In the maintenance and use of tracks, improvements and appurtenances included in Group One Facilities, Group Two Facilities and Group Three Facilities, referred to in Section 2 hereof, the parties hereto severally agree, as their respective duties may require, to comply with all laws, ordinances, or regulations prescribed by competent Governmental authority relating thereto.

Section 21. Serving Notices.

All notices, written or otherwise, herein provided to be given under this agreement, may be given by serving the same upon the person occupying the position of Chief Operating Officer or Vice President in charge of operation, or officer of similar or higher rank, of such other party whose jurisdiction includes Laredo, Texas.

Section 22. Section Headings.

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

Section 23. Agreement to be Construed Liberally; not for Benefit of Third Parties.

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

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This agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

Section 24. International Trustee's Obligations.

This agreement is executed by Guy A. Thompson as Trustee of International-Great Northern Railroad Company, Debtor, under authority of an Order of the United States District Court for the Eastern District of Missouri, Eastern Division, in proceedings under Section 77 of the Bankruptcy Act entitled "In the Matter of Missouri Pacific Railroad Company, Debtor, In Proceedings for the Reorganization of a Railroad, No. 6935," and all his duties and obligations herein provided for are as such Trustee and not individually; and said agreement shall bind and inure to the benefit of any successor trustee or trustees of the railways and properties of the International-Great Northern Railroad Company, Debtor, hereafter appointed in the aforesaid Reorganization Proceedings, and, upon termination of said trusteeship, the person or corporation acquiring the Debtor's railways and properties, whether by purchase, dismissal of the Reorganization Proceedings, or pursuant to a plan of reorganization, or otherwise, shall be and become bound by all the terms and provisions of this agreement.

Section 25. Covenants and Agreements are Several.

It is expressly understood and agreed that all of the covenants and agreements to be performed by the parties hereto under this agreement are several and not joint nor joint and several, and in no event shall either party hereto be liable for any default of the other party hereto.

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Section 26. Successors and Assigns.

The several covenants and stipulations herein contained shall be mutually binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns.

Section 27. Term of Agreement—Effective Date.

This agreement shall become effective on the first day of the second calendar month next succeeding the effective date specified in the Order issued by the Interstate Commerce Commission approving the operations covered by this agreement, and shall continue in force and effect for a period of ten (10) years subject to termination at the end of said ten (10) year period or thereafter on one year's notice given by either party to the other within three hundred and seventy-five (375) days prior to any such termination date.

Section 28. Default and Waiver Thereof.

If either party hereto shall fail to pay any sum payable by such party hereunder on or before the date when the same shall become due, and such default shall continue for a period of sixty (60) days after written notice of such default, or if either party shall wilfully and intentionally breach any other covenant or condition of this agreement, then at the written election of the other party with reasonable notice given thereby to the defaulting party, this agreement, subject to the exceptions hereinafter expressed, shall be deemed terminated and of no further effect on and after the first day of the second month following notice of such default, but without prejudice to any liability which may have accrued prior to such termination, provided, however, that in case of default other than with respect to payments due under this agreement, at least two successive

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breaches within a period of twelve months shall be required to entitle either party to terminate for such defaults.

Notwithstanding anything hereinbefore in this Section 28 contained, it is understood and agreed that in the case of default as aforesaid by the International Trustee, other than default with respect to any payments to be made under this agreement, then the Joint Switching Service provided for in Section 4 hereof shall, if the International Trustee elects and notifies Tex-Mex Company in writing of such election, be performed by the Tex-Mex Company with Tex-Mex Company's locomotives and crews, in lieu of Tex-Mex Company terminating this agreement as above provided, without in anyway affecting the rights of the parties with respect to any of the other operations covered by this agreement; otherwise said agreement shall be deemed terminated as hereinbefore in this Section 28 provided.

Either party may waive any default or failure at any time of the other party, but no action by such party in waiving the same shall extend to or be taken to affect any subsequent defaults or failures or impair the rights of the other party resulting therefrom.

Termination of this agreement shall be without prejudice to the right of International Trustee to have determined by any Governmental body having jurisdiction, the Secretary of Army and the Courts, any claim which the International Trustee may assert to the use of Tex-Mex Company's main track from point "H" on Exhibit A to the U. S.-Mexican Boundary.

Section 29. Prior Agreements Terminated.

That certain now effective written agreement dated February 11, 1929, originally entered into between International-Great Northern Railroad Company and Tex-Mex

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Company, supplements thereto and amendments thereof, covering among other things the performance at Laredo, Texas, by Tex-Mex Company for the account of the parties hereto of certain switching and other services shall be deemed terminated and of no further effect ipso facto with the effective date of this agreement, but without prejudice to any liability which may have accrued under said agreement, supplements and amendments prior to the date of termination thereof as herein provided.

In Witness Whereof, the parties hereto have duly executed or caused duly to be executed this agreement as of the day and year first herein written.

GUY A. THOMPSON, TRUSTEE, INTER-
NATIONAL-GREAT NORTHERN RAIL-
ROAD COMPANY, DEBTOR.

By (s) P. J. NEFF,
Chief Executive Officer.

Witnesses:

(s) GEO. W. COLLINS.
(s) JAMES O. COONEY.

THE TEXAS MEXICAN RAILWAY
COMPANY.

By (s) J. D. DODSON,
President.

Attest:

By (s) H. M. LACOUR,
Secretary.

EXHIBIT B

To

Agreement dated May 23, 1951, between Guy A. Thompson, Trustee, International-Great Northern Railroad Company, Debtor, and The Texas Mexican Railway Company, Relating to Joint Switching and Interchange Service at Laredo, Texas, as Provided for in Section 2 of said Agreement.

Group One Facilities:

<u>Consist</u>	<u>Agreed Value</u>
Tracks - Exhibit "A" from Point "I" to point "H"	
Track No. 2 - Main line track 1037'	\$ 7,737.42
" " 1 - 100 Track 135 255'	563.41
" " None - " 138 95'	377.32
North 1/2 International Bridge (Track and bridge ties included in Track No. 2 above)	152,333.17
Yard office, platform and furniture	599.34
Car Inspector's building and tools	401.00
Total value Group One Facilities	\$162,773.26

Group Two Facilities:

<u>Consist</u>		<u>Agreed Value</u>
Tracks - Exhibit "A" from Point "H" to point "C"		
Track No. 2 - Main line track 1652.5'		\$ 7,045.42
" " 1 - 100 Track 135 847'		1,291.28
" " 1 - " " 6 599'		1,735.40
" " 3 - 100 " 134 1096'		1,905.91
" " 3 - " " 133 228'		575.05
" " 4 - " " 137 697'		1,183.20
Total value Group Two Facilities		\$13,739.26

Group Three Facilities:

<u>Consist</u>		<u>Agreed Value</u>
Tracks Exhibit "A" from Point "H" to point "C"		
Track No. 1 - 100 Track 153a 570'		\$ 863.41
" " 2 - " " 153b 420'		717.41
" " 3 - " " 153c 510'		1,051.50
" " 4 - " " 154d 430'		1,024.47
Land 0.46 acre		736.00
Total value Group Three Facilities		\$4,392.70

GUY A. THOMPSON, TRUSTEE, INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY, DEBTOR

By C. S. Kirkpatrick, Engineer

Dated Laredo, Texas,
February 12, 1951

THE TEXAS MEXICAN RAILWAY COMPANY

By S. K. Mason, Engineer

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EXHIBIT C

To

Agreement dated May 23, 1951, between Guy A. Thompson, Trustee, International-Great Northern Railroad Company, Debtor, and The Texas Mexican Railway Company, Relating to Joint Switching and Interchange Service at Laredo, Texas.

**Memorandum of Agreement
Between The
International-Great Northern Railroad Company
The Texas Mexican Railway Company
and the
Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Brotherhood of Railroad Trainmen.**

RECITALS:

(1) The carriers contemplate entering into an agreement with respect to the delivery or receipt of export and import traffic of the carriers to and from the National Railways of Mexico at Laredo, Texas.

(2) Designation of tracks of the Tex-Mex and the I-GN which will be used to accommodate said carriers in effecting the delivery or receipt of export and import traffic of the carriers with the National Railways of Mexico, are described as follows:

(A) Four certain Tex-Mex tracks, Nos. 1 to 4, and certain crossover tracks and connecting tracks appurtenant thereto and required to be used in connection with service to be performed pursuant to this Agreement, said tracks being intermediate, on the south, a point on and near the middle of the International Bridge which is the U. S.-

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Mexican boundary line and, on the north, the south line of Farragut Street.

(B) (1st) That section of International-Great Northern Railroad's so-called Depot Track No. 3 extending northerly from its connection with East House Track No. 2 near the south line of Hidalgo Street to the south line of Washington Street, and the International-Great Northern Railroad's East House Track No. 2 extending southerly from its connection (near Hidalgo Street) with International-Great Northern Railroad's Depot Track No. 3 to a connection (near and just northerly of the north line of Ventura Street and near and just westerly of the west line of Santa Isabel Street) with I-GN Lower Yard Track No. 5, hereinafter referred to as "I-GN FREIGHT FORWARDING TRACKS"; and (2nd) also I-GN so-called Depot Tracks Nos. 1 and 2, that section of so-called Depot Track No. 3 between connection with said East House Track No. 2 (near Hidalgo Street) and connection with Tex-Mex Tracks (near and just south of Iturbide Street, and just west of the west line of Santa Isabel Street), and that section of I-GN Track No. 23 south of the south line of Victoria Street, referred to as "I-GN PASSENGER TRACKS."

(C) (1st) That section of I-GN lower yard track No. 5 extending in a general northerly direction from place of connection of southerly end of said Track No. 5 with northerly end of Tex-Mex Company's turnout to said Track No. 5 (between Ventura and Pedregal Streets) to a point in said Track No. 5, one hundred feet south of the south line of Washington Street; and (2nd) that section of I-GN lower yard track No. 6, extending in a general northerly direction from point of switch of said track No. 6 in I-GN lower Yard Track No. 5 (near south line of Lincoln Street) to the south line of Washington Street, these tracks hereinafter being referred to as I-GN FREIGHT RECEIVING TRACKS.

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(D) Four parallel tracks of the I-GN, Nos. 1 to 4, located just southwesterly of and parallel to I-GN lower yard track No. 5, which four tracks serve the U. S. Fumigation Plant and are located between Zaragoza Street, on the north, Ventura Street, on the south, Santa Isabel Street, on the east, and Eagle Pass Street, on the west, and access to said four tracks by locomotives and cars (1st) from the southeast, being by means of a connection of the most northerly of said four tracks (designated Track No. 1) with I-GN lower yard Track No. 5 in Santa Isabel Street near and just southerly of Ventura Street and (2nd) from the north, being by means of a connection of said Track No. 1 with I-GN Lower Yard Track No. 5 in Eagle Pass Street near and just north of Grant Street.

IT IS AGREED:

Section 1. Tex-Mex yard crews will perform the service as hereinafter described between the hours of 12:00 midnight and 2:00 P. M.; I-GN yard crews will perform the service as hereinafter described between the hours of 2:00 P. M. and 12:00 midnight.

(A) The transportation over the Tex-Mex Tracks, described in 2(A) of Recitals, to tracks of the National Railways of Mexico, located on the International Bridge at and south of the U. S. Mexican Boundary Line of all cars brought to and placed on Tex-Mex Tracks, described in 2(A) of Recitals, for interchange from Tex-Mex Company to said National Railways of Mexico.

(B) The transportation from I-GN Freight Forwarding Tracks and thence over the Tex-Mex Tracks, described in 2(A) of Recitals, of freight cars to National Railways Tracks for interchange from I-GN to National Railways.

(C) The transportation from National Railways Tracks onto the Tex-Mex Tracks, described in 2(A) of Recitals,

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of freight train cars for interchange from National Railways (1) to Tex-Mex Company and (2) to I-GN, and the switching and separation of said cars on Tex-Mex Tracks, described in 2(A) of Recitals, into the following separate groups or cuts: namely:

- (a) cars for delivery to I-GN on I-GN Freight Receiving Tracks.
- (b) cars for delivery to Tex-Mex Company at some suitable location on Tex-Mex Tracks, described in 2(A) of Recitals.
- (c) cars of both I-GN Company and Tex-Mex Company for delivery to South Section of I-GN Fumigation Tracks, and
- (d) cars where the party to whom delivery is to be made is unknown, which shall be placed at a suitable location on Tex-Mex Tracks, described in 2(A) of Recitals, until party to whom delivery is to be made is determined.

(D) The transportation of the cars referred to in (C) next above, following their separation as in said (C) provided shall be as follows:

- (1) cars for delivery to I-GN shall be placed on I-GN Freight Receiving Tracks.
- (2) cars for delivery to Tex-Mex Company shall be placed on Tex-Mex Tracks, described in 2(A) of Recitals.
- (3) cars for delivery to U. S. Fumigation Plant shall be placed on South Section of I-GN Fumigation Tracks, and when fumigation is completed and cars released shall be transported to the tracks, referred to in (1) or (2) of this (D), of the party to whose line the car or cars is or are destined at Laredo, Texas.

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In the event southern access to the South Section of I-GN Fumigation Tracks is obstructed, yard crews shall have the right temporarily to operate to and from the South Section of I-GN Fumigation Plant via I-GN Lower Yard Track No. 5 (comprising part of I-GN Freight Receiving Tracks) and via the North Section of I-GN Fumigation Tracks until such obstruction is removed.

- (4) When it shall have been determined to what party any car or cars referred to in (d) of (C) of this Section is or are to be delivered, said car or cars shall be transported to the tracks, referred to in (1) or (2) of this (D), of the party to whose line the car or cars is or are destined at Laredo, Texas.

(E) The transportation of passenger train cars from or to National Railways Tracks over Tex-Mex Tracks described in 2(A) of Recitals and or any tracks of International-Great Northern Railroad Company covered by this agreement.

Section 2. Yard and engine men of the respective carriers deprived of service in violation of this agreement shall be paid for time lost.

Section 3. It is agreed that the Tex-Mex and the I-GN will each maintain three yard crews in each 24-hour period, six days per week, for a period of four years from the effective date of this agreement.

Section 4. The employees of the Tex-Mex covered by this agreement will be afforded the protection as set forth in conditions 4 to 9, inclusive, in Oklahoma Railway Company, Trustees Abandonment, 257 I. C. C. 177 (197-201). This is without prejudice to the position of either party as to the proper application of the conditions set forth in Oklahoma Railway Company, Trustees Abandonment, 257 I. C. C. 177 (197-201).

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Section 5. This agreement is without prejudice to the position of either party as to the proper application of the rules governing starting time on the Texas Mexican Railway.

Section 6. This agreement shall become effective on the date the joint operations as referred to in the opening section of this agreement are commenced and will remain in effect until changed or cancelled in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Laredo, Texas, this 8th day of December, 1950.

For

THE TEXAS MEXICAN RAILWAY COMPANY.

(Signed) R. E. JOHNSON.

General Manager.

For

INTERNATIONAL-GREAT NORTHERN RAIL-
ROAD COMPANY.

(Signed) T. SHORT.

Chief Personnel Officer.

For

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS.

(Signed) J. J. SCRIBNER,

General Chairman, Texas Mexican.

(Signed) W. GEORGE,

General Chairman, I-GN Ry. Co.

Approved:

(Signed) H. C. HOBART,

Asst. Grand Chief Engineer.

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For

BROTHERHOOD OF LOCOMOTIVE
FIREMEN AND ENGINEMEN,

(Signed) A. G. SCRIBNER,
General Chairman, Texas Mexican.

For

BROTHERHOOD OF LOCOMOTIVE
FIREMEN AND ENGINEMEN,

(Signed) J. P. COCKRELL,
General Chairman, I-GN Ry. Co.

Approved:

(Signed) B. M. ALVORD,
Vice-President.

For

BROTHERHOOD OF RAILROAD TRAINMEN,

(Signed) J. R. EVERETT,
Local Chairman, Texas Mexican.

(Signed) O. A. JANERT,
Local Chairman, I-GN Ry. Co.

(Signed) R. P. STEVENS,
General Chairman, Texas Mexican
and I-GN Ry. Co.

Approved:

(Signed) C. H. SMITH,
Vice-President.

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EXHIBIT D

To

Agreement, dated May 23, 1951, between Guy A. Thompson, Trustee, International-Great Northern Railroad Company, Debtor, and The Texas Mexican Railway Company, Relating to Joint Switching and Interchange Service at Laredo, Texas.

Memorandum of Agreement

Between

International-Great Northern Railroad Company

The Texas Mexican Railway Company

and

**Brotherhood of Railway and Steamship Clerks, Freight
Handlers, Express and Station Employees.**

It is mutually agreed among International-Great Northern Railroad Company, hereinafter called I-GN; The Texas Mexican Railway Company, hereinafter called Tex Mex; and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter called Brotherhood, that:

1. There are at the present time six (6) positions involved in the operations covered by Interstate Commerce Commission Finance Docket No. 15947 and three (3) of these positions will be transferred to the I-GN. These six (6) positions and the road to which they will be assigned are listed below:

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Position Number	Title	Incumbent	Rate of Pay	Road Assigned To
1	Yd. Clk.	R. L. Henry	\$229.97 Mo.	Tex Mex
2	Chief Yd. Clk.	M. A. Elizondo	13.03 Day	I-GN
3	Yd. Clk.	L. G. Rodriguez	229.97 Mo.	Tex Mex
4	Yd. Clk.	R. L. Acebo	12.13 Day	I-GN
5	Yd. Clk.	A. Laurel	229.97 Mo.	Tex Mex
6	Janitor- Messenger	H. Landin	9.30 Day	I-GN

(2) The above ratio shall be retained at all times regardless of increase or decrease in the force, except that if there be an odd number of positions the odd position will be a Tex Mex position.

(3) Employees occupying positions Nos. 2, 4 and 6 may, if they desire, transfer to the I-GN with their current seniority date and rights and their names will be placed on I-GN seniority roster of Seniority District No. 25 in the proper place and in seniority date order. If any such employees elect not to transfer to the I-GN they may exercise displacement rights on the Tex Mex under Rule 19.

(4) In the event any employees on positions Nos. 2, 4 or 6 do not transfer to the I-GN, the positions they vacate shall be bulletined once to Tex Mex employees in Seniority District No. 2 and assignment will be made in accordance with provisions of Tex Mex Clerks' Agreement. The employees so assigned will be transferred to the I-GN in accordance with Paragraph (3) hereof. Information to this effect will be shown on the bulletin.

(5) Employees transferring from the Tex Mex to the I-GN under the provisions of Paragraphs (3) and (4) hereof shall for a period of four (4) years have prior rights

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to the three positions transferred or until such time as they vacate such positions. If, and when, they leave such positions their prior rights terminate.

(6) Employees involved in or affected by this agreement will be afforded protection by I-GN as set forth in conditions (4) to (9), inclusive, in Oklahoma Railway Company, Trustees Abandonment, 257 L. C. C. 177 (197-201).

(7) The transfer of employees under the provisions of this agreement from the Tex Mex to the I-GN shall not affect accumulated vacation and sick leave rights and employees so transferring shall be given full credit for service performed for both Carriers.

(8) The positions transferred to the I-GN will be rated the same as position with like classification on the I-GN.

(9) With the consent of the employing party and in the sole discretion of the supervisory officer any of the employees assigned in the Joint Yard Office may be released to the party employing said person for any period which will not impair the bridge interchange services. Any employees released as aforesaid shall be promptly returned to the Joint Yard Office at the request of the supervisory officer.

Each Carrier shall have the right to use its sole employees to handle all lawful papers required by the United States and Mexican authorities for the movement of export and import cars of such Carrier; and shall require said sole employees to cooperate with the supervising officer and other employees in the joint office. Not more than one such sole employee of each Carrier shall be stationed at the joint office at the International Bridge at any one time for the purpose aforesaid, and said sole employee may examine only records pertaining to his employer's business.

The use of a sole employee of either Carrier under the specific conditions outlined next above shall not have the

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effect of reducing the force for a period of four years from the effective date of this agreement.

(11) The employees heretofore referred to assigned to the Joint Yard Office shall be subject to the rules governing the hours of service, rates of pay and working conditions of the Agreement between the Brotherhood and the Carrier employing said employee or employees.

(12) This Memorandum of Agreement signed at Laredo, Texas, this 14th day of December, 1950, shall become effective concurrent with the date the I-GN and the Tex Mex commence operations under contract with each other with respect to joint operations in connection with the switching of receipt and delivery of export and import traffic of the carriers to and from the National Railways of Mexico at Laredo, Texas, superseding all other rules, agreements, practices and understandings in conflict herewith and shall continue in effect until changed in accordance with the provisions of the Railway Labor Act, as amended.

For

INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY.

(Signed) T. SHORT,
Chief Personnel Officer.

For

THE TEXAS MEXICAN RAILWAY
COMPANY,

(Signed) B. E. JOHNSON,
General Manager.

For the BROTHERHOOD

(Signed) J. L. DYER,
General Chairman.

(Signed) T. R. NYE,
Committeeman.

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EXHIBIT E

To

Agreement, dated May 23, 1951, between Guy A. Thompson, Trustee, International-Great Northern Railroad Company, Debtor, and The Texas Mexican Railway Company, Relating to Joint Switching and Interchange Service at Laredo, Texas.

**Memorandum of Agreement
Between**

**International-Great Northern Railroad Company
The Texas Mexican Railway Company
and**

**System Federation No. 14
Railway Employees' Department, A. F. L.**

Pursuant to report of the Interstate Commerce Commission in Finance Docket No. 15947, dated September 9, 1949, 375 I. C. C. 27, the Carriers contemplate entering into an agreement with respect to the delivery or receipt of export and import traffic of the Carriers to and from the National Railways of Mexico, at Laredo, Texas, the parties signatory hereto agree to the following:

1. Joint Car Inspectors now used in connection with performing service of delivering cars of both carriers moving over the International Bridge in interchange will be continued in the employ of The Texas Mexican Railway Company and be carried on its payrolls and continue to perform the services and functions being performed thereby from the effective date of the agreement between the Carriers and such other and additional services and functions within the classification of work of their craft from time to time as may be mutually agreed to by the two Carriers and their compensation for the services will be paid by The Texas Mexican Railway Company.

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2. As and when any of said Joint Car Inspectors resign or are relieved from any of the positions to which he is assigned, his position shall be bulletined and the remaining Joint Car Inspectors shall have prior right to the position. The ultimate vacancy shall be filled by an employee of the International-Great Northern Railroad Company and each succeeding vacancy shall be filled in the same manner until the Joint Car Inspector's positions shall be equally filled by employees of each Railroad, which ratio shall be maintained at all times regardless of increase or decrease in force, except that if there be an odd number of positions the odd position will be a Tex Mex position.

3. With the consent of the employing party and in the sole discretion of the supervisory officer any of the employees assigned as Joint Car Inspectors may be released, for any period which will not impair the Bridge Interchange Services, to the party employing said persons and any employee released as heretofore referred to shall be promptly returned to the joint service at request of the supervisory officer.

4. The employees heretofore referred to assigned as Joint Car Inspectors shall be subject to the rules governing the terms of service, rates of pay and working conditions of the Agreement between System Federation No. 14 and the Carrier employing said employee or employees.

5. The employees of The Texas Mexican Railway Company covered by this Agreement will be afforded the protection as set forth in conditions (4) to (9), inclusive, in Oklahoma Railway Company, Trustees Abandonment, 257 I. C. C. 177 (197-201).

6. This Memorandum of Agreement signed at Laredo, Texas, this 15th day of December, 1950, shall become effective concurrent with the date the I-GN and the Tex-Mex commence operations under contract with each other with

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respect to joint operations in connection with the switching of, receipt and delivery of export and import traffic of the Carriers to and from the National Railways of Mexico at Laredo, Texas, and shall continue in effect until changed in accordance with the provisions of the Railway Labor Act, as amended.

For:

INTERNATIONAL-GREAT NORTHERN RAIL-
ROAD COMPANY,

(Signed) T. SHORT,

Chief Personnel Officer.

THE TEXAS MEXICAN RAILWAY COMPANY,

(Signed) R. E. JOHNSON,

General Manager.

For:

SYSTEM FEDERATION NO. 14 RAILWAY
EMPLOYES' DEPARTMENT, A. F. L.,

(Signed) J. H. THORNTON,

President

(Signed) O. L. KNAPP,

Sec.-Treas.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY

REPLY TO UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER

EXHIBIT B - SETTLEMENT AGREEMENT

DATED FEB. 27, 1998

BETWEEN UNION PACIFIC RAILROAD COMPANY,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
THE TEXAS MEXICAN RAILWAY COMPANY, AND MEXRAIL, INC

**DESIGNATED AS CONFIDENTIAL
REDACTED IN PUBLIC VERSION**

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June 23, 2003

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Company, and Gateway Eastern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

**REPLY TO UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER**

EXHIBIT C - MEMORANDUM OF UNDERSTANDING

DATED NOV. 11, 2002

**AMONG UNION PACIFIC RAILROAD COMPANY, MEXRAIL, INC.,
AND THE TEXAS MEXICAN RAILWAY COMPANY**

**DESIGNATED AS CONFIDENTIAL
REDACTED IN PUBLIC VERSION**

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June 23, 2003

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Railway Company**