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March 17, 2006

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

FILED

MAR 17 2006

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings

MAR 17 2006

Part of
Public Record

Re: Finance Docket No. 34849
Kansas City Southern, The Kansas City Southern Railway Company, and Texas Mexican Railway Company -- Exemption For Transactions Within A Corporate Family

Dear Secretary Williams:

Enclosed on behalf of Kansas City Southern ("KCS"), The Kansas City Southern Railway Company ("KCSR"), and Texas Mexican Railway Company ("Tex Mex") are an original and eleven copies of a Notice of Exemption filed under 49 CFR 1180.2(d)(3) for an exemption from the prior approval and authorization requirements of the Surface Transportation Board ("STB" or "Board") of a transaction within a corporate family. A check in the amount of \$1,100 is enclosed to cover the filing fee for the Notice.

Please acknowledge filing of this Notice by date stamping the extra copy thereof and returning that copy to the courier for return to my offices. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,


William A. Mullins

Enclosures

cc: Thomas J. Healey

FEE RECEIVED

MAR 17 2006

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34849

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY --
EXEMPTION FOR TRANSACTIONS WITHIN A CORPORATE FAMILY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)

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SURFACE
TRANSPORTATION BOARD

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Attorneys For Kansas City Southern, The
Kansas City Southern Railway Company, and
The Texas Mexican Railway Company

March 17, 2006

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SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34849

**KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY --
EXEMPTION FOR TRANSACTIONS WITHIN A CORPORATE FAMILY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)**

Kansas City Southern ("KCS"), The Kansas City Southern Railway Company ("KCSR"), and The Texas Mexican Railway Company ("Tex Mex") (collectively, "Parties") hereby submit this notice, pursuant to 49 C.F.R. §1180.2(d)(3), for an exemption from the prior approval and authorization requirements of the Surface Transportation Board ("STB" or "Board") of a transaction within a corporate family. The transaction involved in this Notice of Exemption is the assignment of, and acquisition of, all of Tex Mex's trackage and operating rights over the lines of the Union Pacific Railroad Company ("UP") between Beaumont and Houston, TX, the lines of the Houston Belt & Terminal Railway Company ("HBT") in and around Houston, TX, and the lines of UP between Houston, TX and Corpus Christi and Robstown, TX, to KCSR. In support of this Notice of Exemption and in compliance with 49 C.F.R. §1180.4(g), the Parties state the following:

49 C.F.R. §1180.6(a)(1)(i)—Description of Transaction and Parties Thereto:

a. Description of Transaction.

Kansas City Southern is a publicly traded, non-carrier holding company, with both rail and non-rail assets. KCS currently controls three common carriers subject to the jurisdiction of the

STB: The Kansas City Southern Railway Company, The Texas Mexican Railway Company, and Gateway Eastern Railway Company.¹ KCSR is a Class I common carrier railroad that owns and operates approximately 3,100 miles of rail line in ten states. GWER is a Class III common carrier railroad that owns and operates approximately 17 miles of rail lines between East Alton, Illinois and East St. Louis, Illinois, and owns the rail and related materials on many of KCSR's branch lines. Tex Mex is a Class II common carrier railroad that owns and operates over 157 miles of rail line between Laredo and Corpus Christi, TX. Tex Mex also operates via trackage rights over approximately 364 miles of rail lines owned by UP between Robstown, TX and Beaumont, TX, via Houston, and rail lines owned by HBT in and around the Houston switching district.

Pursuant to 49 C.F.R. §1180.2(d)(3), the Parties invoke the Board's class exemption from the prior approval requirements of 49 U.S.C. §11323 for a transaction within the corporate family which involves the assignment of Tex Mex's trackage and other operating rights over UP's and HBT's lines to KCSR. Tex Mex acquired those rights as part of the Union Pacific/Southern Pacific merger and its various related proceedings.² Those rights are also governed by three agreements: (1) an agreement dated June 16, 1997 between SP and Tex Mex regarding tracks between Houston and Beaumont; (2) an agreement between Missouri Pacific, SP, and Tex Mex governing tracks between Robstown, Corpus Christi, and Beaumont and various tracks in and around Houston; and (3) an agreement

¹ KCS's control of KCSR and its then existing rail carrier subsidiaries was found not to require ICC approval in Kansas City Southern Industries, Inc.—Control—Kansas City Southern Railway Company, 317 L.C.C. 1 (1962). KCS received authority to commonly control KCSR and GWER in Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company, Finance Docket No. 33311 (STB served May 1, 1997). KCS received authority to commonly control KCSR, GWER, and Tex Mex in Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company, Finance Docket No. 34342 (STB served Nov. 29, 2004).

² Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), aff'd sub nom. Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999) (UP-SP Merger); Union Pacific/Southern

between Tex Mex and HBT governing tracks in Houston. Tex Mex has been operating pursuant to the Board's decisions and these agreements since 1997. The Parties seeks to assign Tex Mex's rights and obligations under the trackage rights agreements to KCSR.³

As noted, Tex Mex seeks to assign its trackage and operating rights granted pursuant to the Board's decisions and the various agreements to KCSR. As a result, KCSR will operate its own trains over the lines, not Tex Mex trains; however, Tex Mex crews will continue to provide the labor for the operations of the KCSR trackage rights trains while those trains are on the UP and HBT lines. UP has consented to the assignment of the trackage rights agreements and has been advised of the proposed new operations.

The assignment of Tex Mex's trackage rights over the lines of the UP and HBT to KCSR and the resulting operations by KCSR will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the KCS corporate family. The nature and number of existing trains operating over the lines will not change as a result of this transaction. The transaction merely replaces the existing Tex Mex trackage rights trains with KCSR trackage rights trains, while retaining Tex Mex crews to perform the work.

Pacific Merger, STB Finance Docket No. 32760 (Sub-No. 26)(Houston/Gulf Coast Oversight), 3 S.T.B. 1030 (STB served Dec. 21, 1998).

³ In connection with Tex Mex's purchase of the Victoria-Rosenberg line from UP in 2001, Tex Mex and UP agreed to a modification of Tex Mex's trackage rights under the other three agreements to take effect after Tex Mex reconstructs the Victoria-Rosenberg line. The Board approved that modification of the rights in Texas Mexican Railway Company-Purchase Exemption-Union Pacific Railroad Company, STB Finance Docket No. 33914 (served Dec. 11, 2000), slip op. at 7. Assignment of these three trackage rights agreements will carry with it this prospective modification of the trackage rights as well.

b. Names, Addresses, and Phone Numbers of Involved Parties.

KANSAS CITY SOUTHERN	THE KANSAS CITY	THE TEXAS MEXICAN
427 West 12 th Street	SOUTHERN RAILWAY	RAILWAY COMPANY
Kansas City, MO 64105	COMPANY	1610 Woodstead Court,
Tel: (816) 983-1370	427 West 12 th Street	The Woodlands, TX
Fax: (816) 983-1227	Kansas City, MO 64105	77380
	Tel: (816) 983-1370	Tel: (281) 465-7186
	Fax: (816) 983-1227	

c. Names of Counsel to Whom Questions Can Be Addressed.

Correspondence with respect to this Verified Notice of Exemption should be addressed to:

Robert B. Terry	William A. Mullins
Thomas J. Healey	David C. Reeves
KANSAS CITY SOUTHERN	BAKER & MILLER PLLC
427 West 12 th Street	2401 Pennsylvania Ave., N.W.
Kansas City, MO 64105	Suite 300
Tel: (816) 983-1370	Washington, D.C. 20037
Fax: (816) 983-1227	Tel: (202) 663-7823
	Fax: (202) 663-7849

49 C.F.R. §1180.6 (a) (1) (ii) --Consummation Schedule.

The Parties propose to assign the trackage and other operating rights to KCSR and for KCSR to commence operations under those agreements on April 1, 2006.

49 C.F.R. §1180.6 (a) (1) (iii) -- Purpose of the Transaction.

Ever since the common control of KCSR and Tex Mex, KCS has been reviewing ways to reduce costs, improve efficiency, and provide seamless service over the various parts of the KCS system. The assignment of Tex Mex's trackage rights over the lines of the UP and HBT to KCSR and the resulting operations by KCSR is another step toward achieving those objectives. The transaction, in conjunction with Tex Mex's grant of trackage rights to KCSR on Tex Mex's own

line,⁴ will allow KCSR to provide single-line service from Kansas City to Laredo and to market the route as a KCSR route without having to include Tex Mex in the routing or the bill of lading. Furthermore, because the transaction merely substitutes the existing Tex Mex trackage rights trains with KCSR trackage rights trains, the transaction will not cause changes in the nature and number of existing trains operating over the lines. Nor will Tex Mex labor be adversely impacted, as Tex Mex crews will operate the KCSR trackage rights trains while those trains are on the UP and HBT lines.

49 C.F.R. §1180.6 (a) (5) -- List of States in Which the Parties' Property is Located.

The states in which KCSR's rail lines are located are Illinois, Kansas, Missouri, Oklahoma, Arkansas, Texas, Louisiana, Mississippi, Tennessee, and Alabama. KCSR also conducts rail business, through haulage rights, in the states of Nebraska and Iowa. Tex Mex's lines and the lines of UP and HBT used by Tex Mex under the trackage rights being assigned are all located within the state of Texas.

49 C.F.R. §1180.6 (a) (6) -- Map - Exhibit 1.

Maps taken from the trackage rights agreements, showing the location of the lines and their relationship to KCSR and other Class I carriers and short line connections, and the principal geographic points in the region traversed, are attached as Exhibit 1.

49 C.F.R. §1180.6 (a) (7) (ii) -- Agreements - Exhibit 2.

The rights being assigned are governed by three agreements: (1) an agreement dated June 16, 1997 between SP and Tex Mex regarding tracks between Houston and Beaumont; (2) an agreement between Missouri Pacific, SP, and Tex Mex governing tracks between Robstown, Corpus Christi, and

⁴ See The Kansas City Southern Railway Company--Trackage Rights Exemption--The Texas Mexican Railway Company, STB Finance Docket No. 34848, filed concurrently herewith.

Beaumont and various tracks in and around Houston; and (3) an agreement between Tex Mex and HBT governing tracks in Houston. Tex Mex has been operating pursuant to the Board's decisions and these agreements since 1997. These agreements are attached as Exhibit 2.

49 C.F.R. §1180.4 (g) (1) (i) -- Level of Labor Protection.

As noted, the trains operating over the trackage rights lines will be KCSR trains, but the crews operating those KCSR trackage rights trains will be Tex Mex crews. As a result, KCSR does not anticipate any adverse labor impacts as a result of the transaction. Nonetheless, as a condition of this exemption, KCSR agrees to the imposition of the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

49 C.F.R. §1105.6 through 1105.8--Environmental and Historic Report.

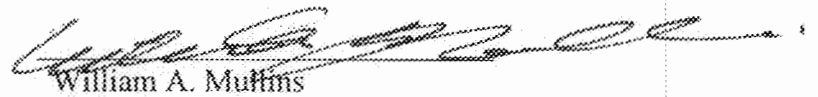
The assignment of Tex Mex's trackage rights over the lines of the UP and HBT to KCSR and the resulting operations by KCSR will not result in changes in the nature and number of existing trains operating over the lines. The transaction merely substitutes KCSR trackage rights trains for the existing Tex Mex trackage rights trains. As such, the transaction will not result in significant changes in carrier operations; i.e., changes that exceed the thresholds of 49 C.F.R. §1105.7(e)(4) or (5). The transaction is thus exempt from the requirement to provide further environmental documentation pursuant to 49 C.F.R. §1105.6(c)(2) and (4).

Because rail operations will continue, further Board approval is required for KCSR to discontinue its trackage rights operations or abandon service. Furthermore, there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

Hence, under 49 C.F.R. §1105.8(b)(2-3), the transaction is exempt from historic preservation reporting requirements.

Respectfully submitted this 17th day of March, 2006.

Robert B. Terry
Thomas J. Healey
KANSAS CITY SOUTHERN
427 West 12th Street
Kansas City, MO 64105
Tel: (816) 983-1370
Fax: (816) 983-1227



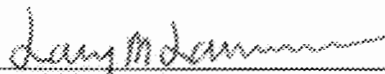
William A. Mullins
David C. Reeves
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

Attorneys For Kansas City Southern, The Kansas City
Southern Railway Company, and The Texas Mexican
Railway Company

VERIFICATION

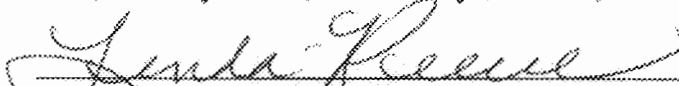
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Larry M. Lawrence, being duly sworn, deposes and says that he is the Senior Vice President & Assistant to Chairman-Strategies & Staff Studies of The Kansas City Southern Railway Company, that he has read the foregoing "Verified Notice of Exemption Pursuant to 49 C.F.R. §1180.2 (d) (3)", knows the facts therein asserted, and that the same are true as stated.



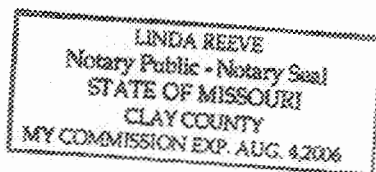
Larry M. Lawrence

Subscribed and sworn to before me, a Notary Public, this 16th day of March, 2006.



Notary Public

My Commission Expires:



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34849

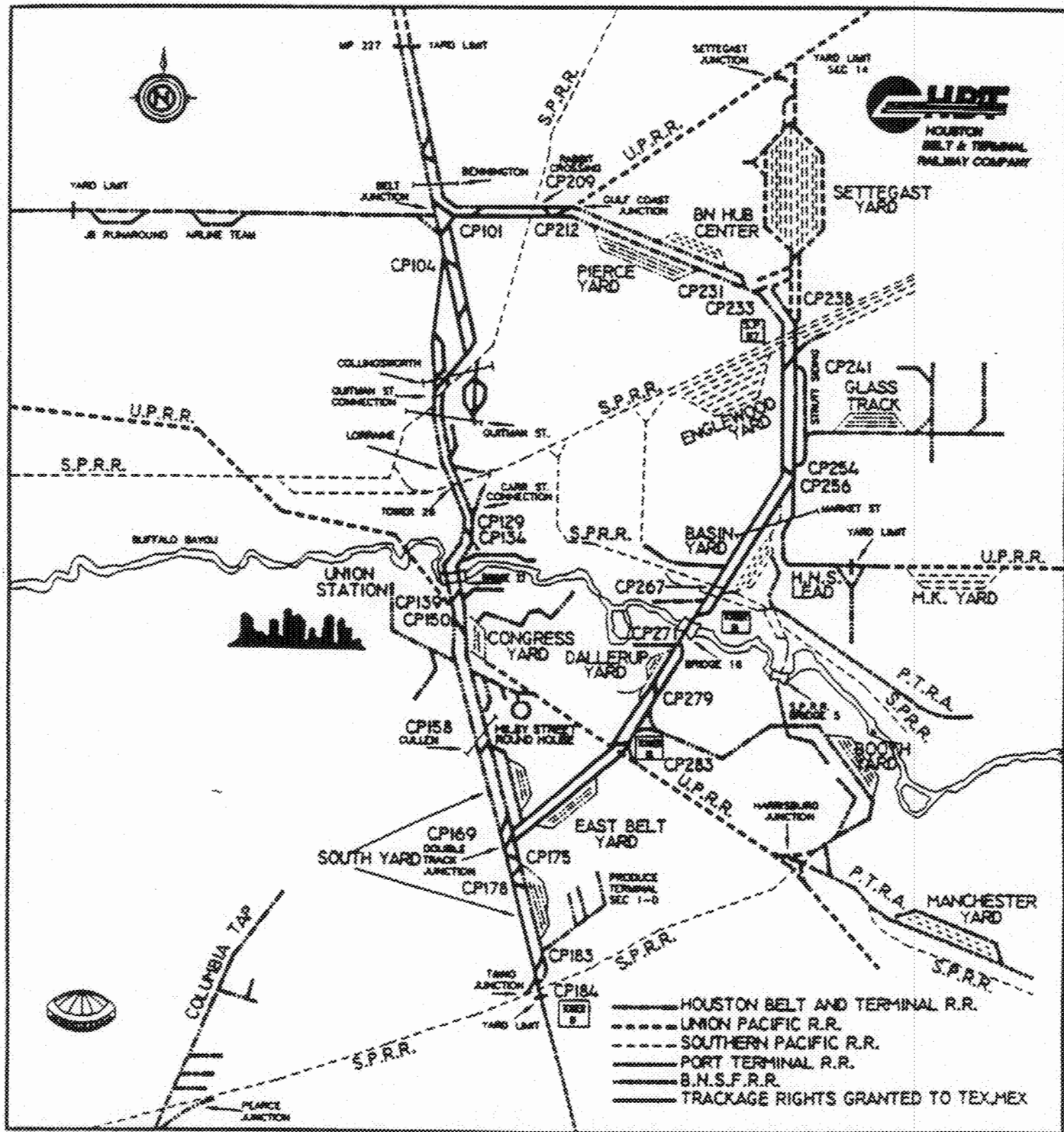
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY --
EXEMPTION FOR TRANSACTIONS WITHIN A CORPORATE FAMILY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)

49 C.F.R. §1180.6 (a) (6) -- Map Exhibit 1

EXHIBIT A

PRINT DATE 09-11-96



NO21-0047

NOTION

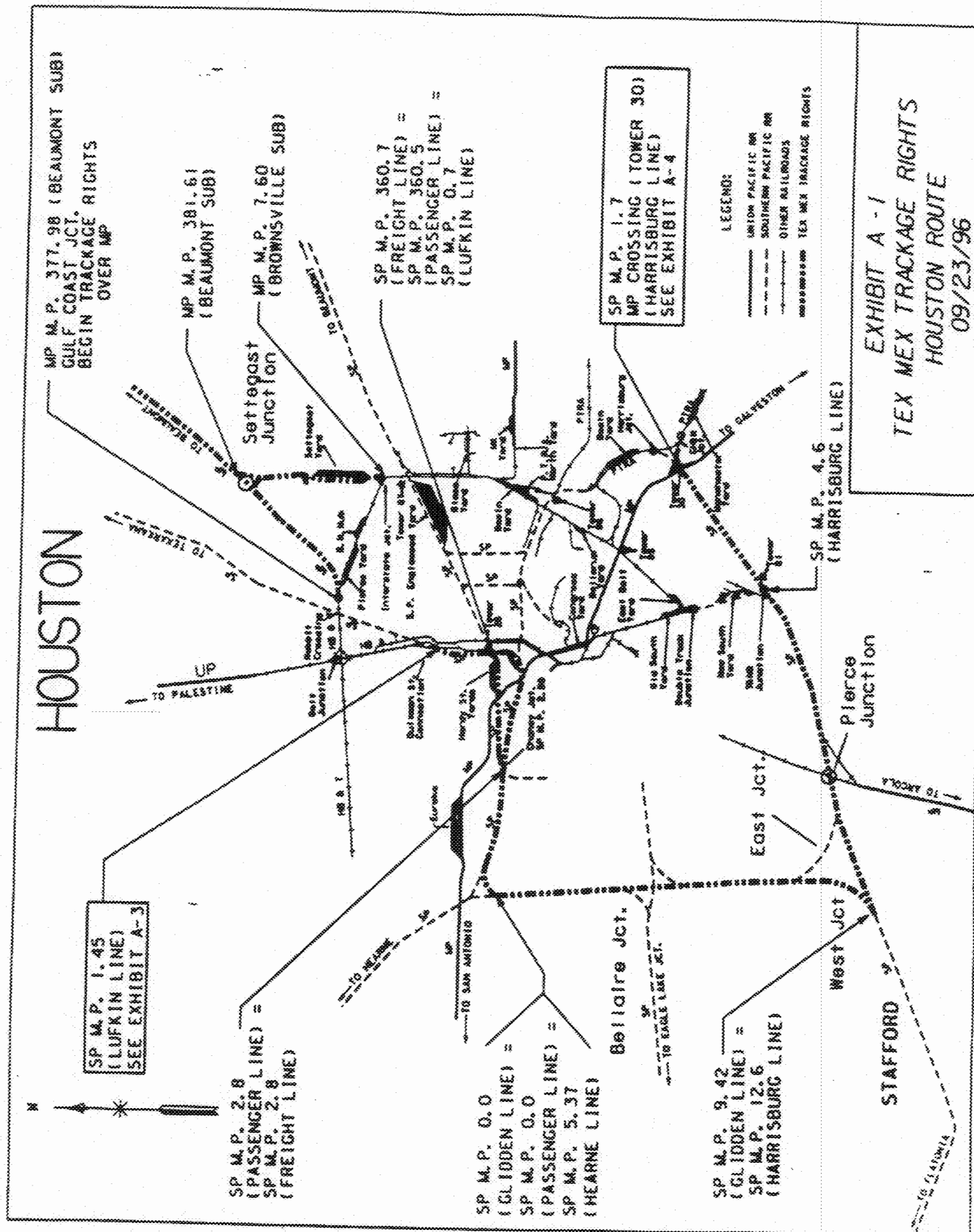
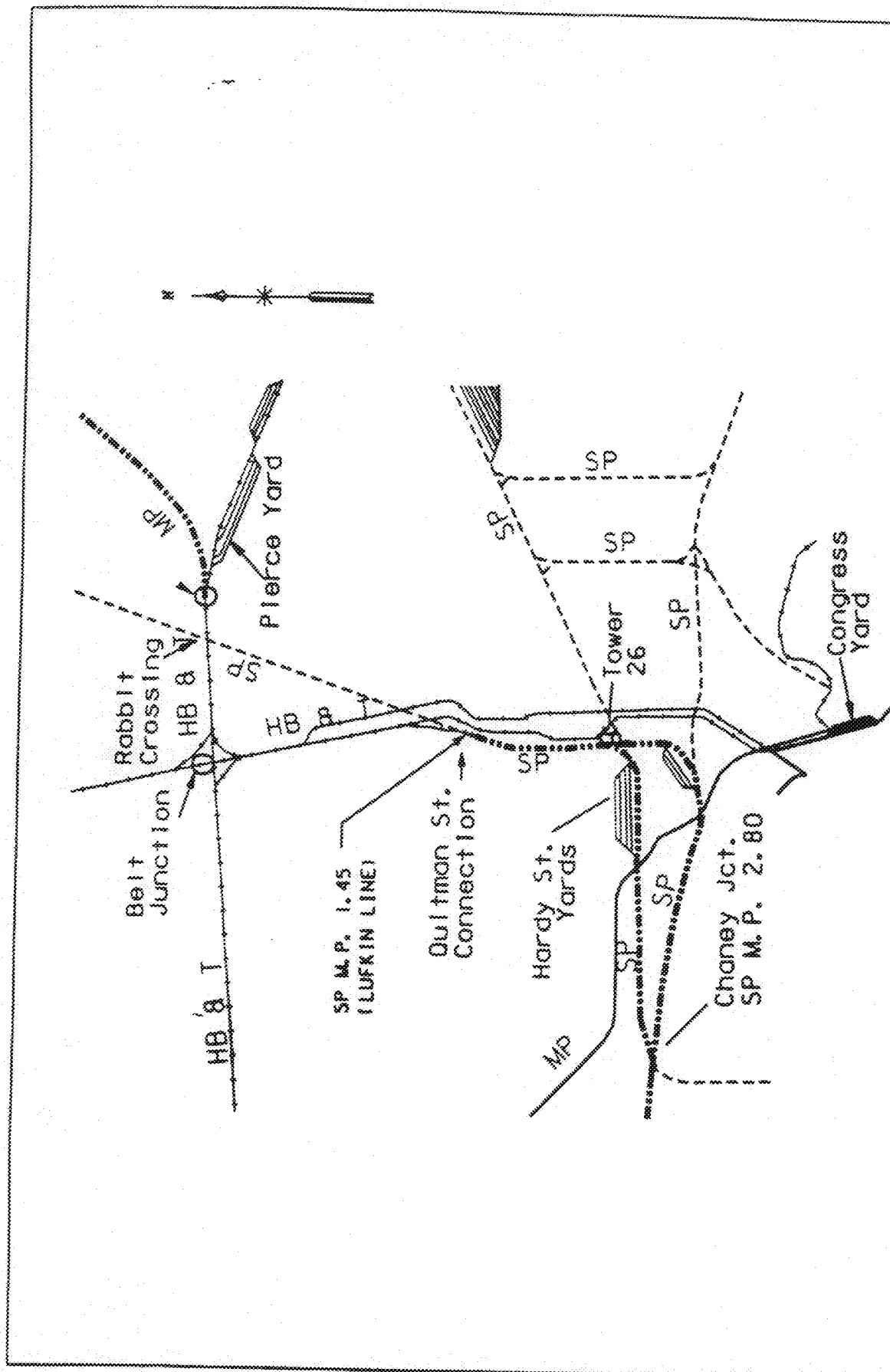


EXHIBIT A - I
ITEX MEX TRACKAGE RIGHTS
HOUSTON ROUTE
09/23/96



LEGEND:

- UNION PACIFIC RR
- - - SOUTHERN PACIFIC RR
- - - OTHER RAILROADS
- ===== TEX MEX TRACKAGE RIGHTS

EXHIBIT A - 3
 TEX MEX TRACKAGE RIGHTS
 QULTMAN ST. CONNECTION (HOUSTON)
 9/23/96

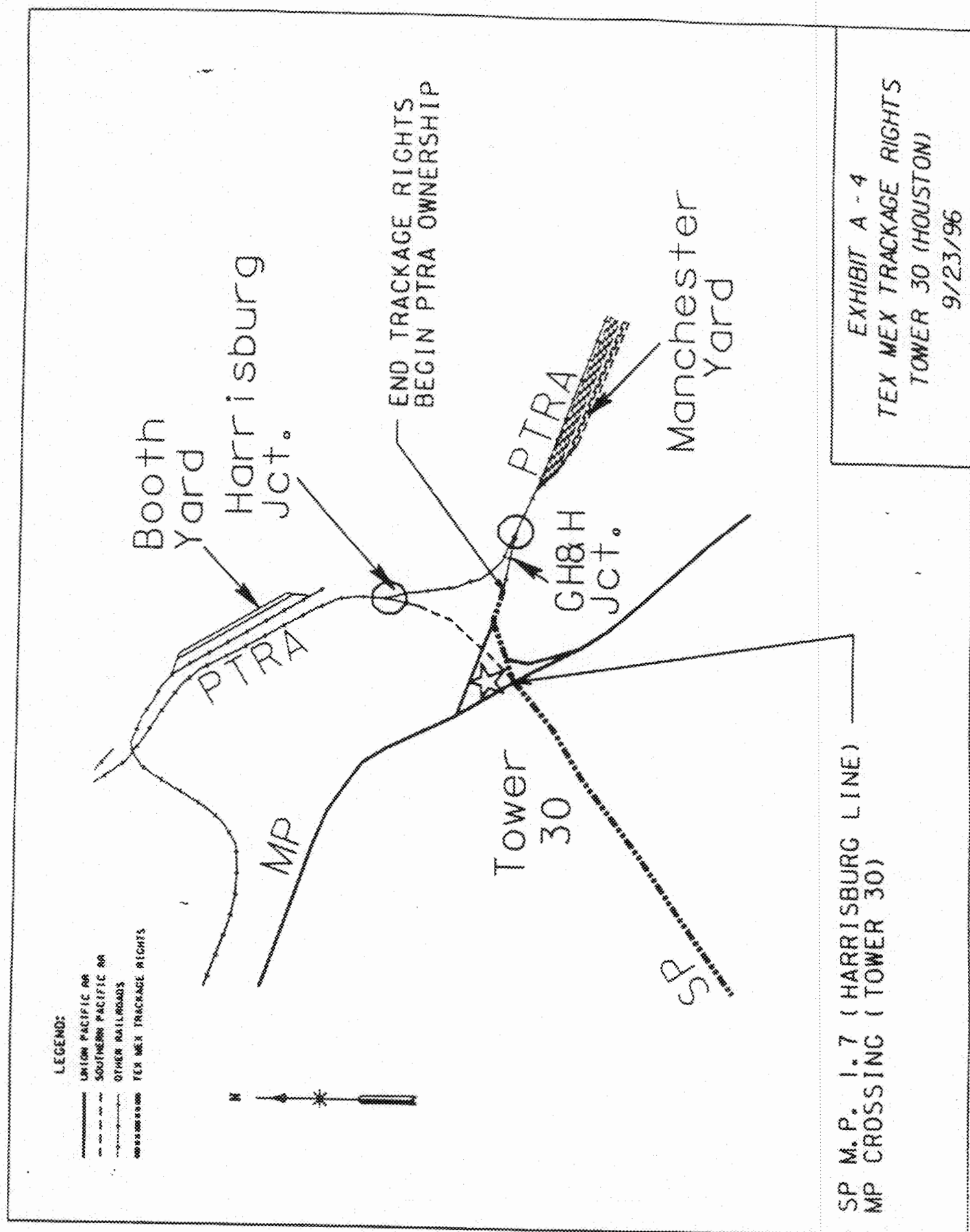
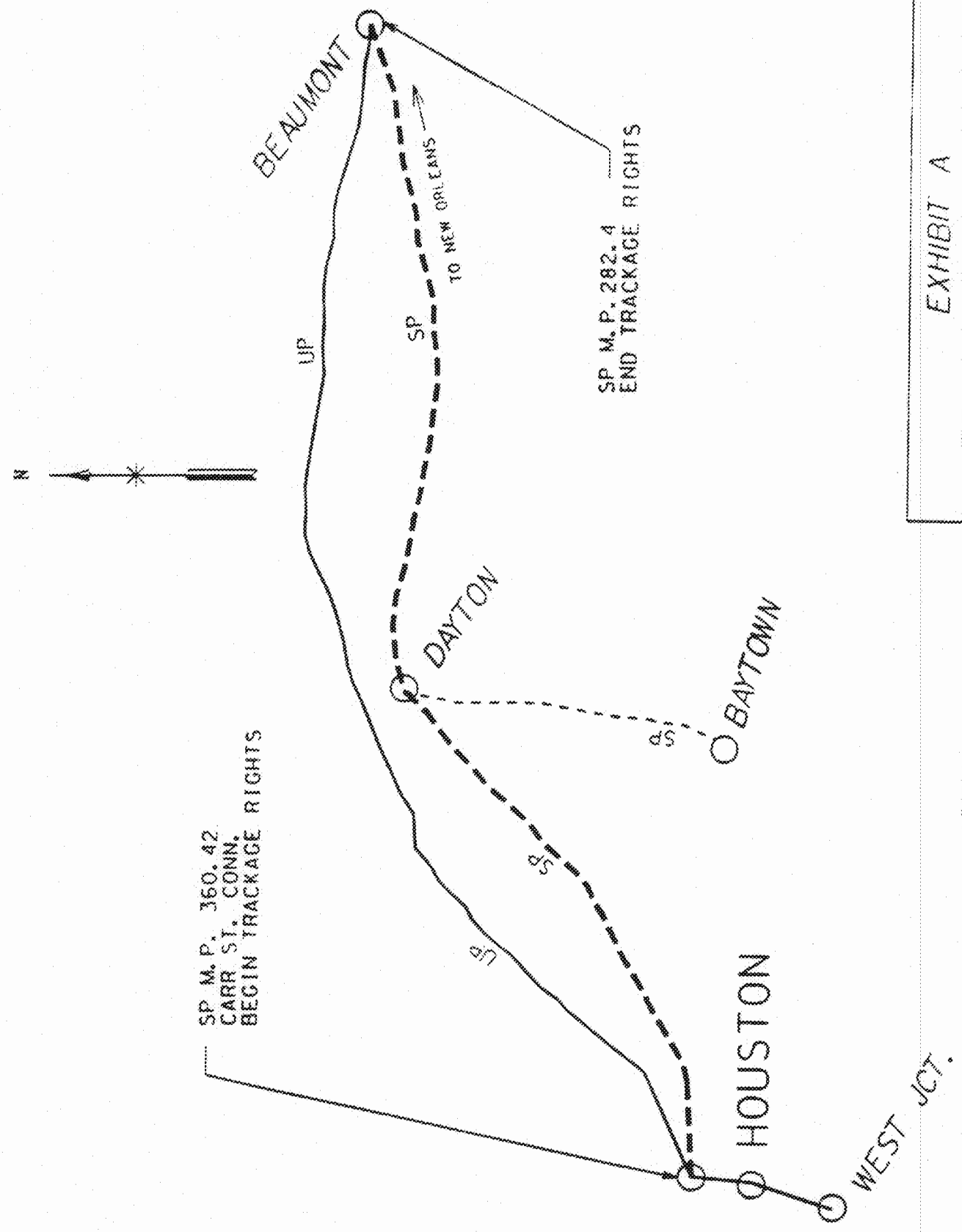


EXHIBIT A - 4
TEX MEX TRACKAGE RIGHTS
TOWER 30 (HOUSTON)
9/23/96

EXHIBIT A
 TEX MEX TRACKAGE RIGHTS
 HOUSTON TO BEAUMONT
 06/04/97

LEGEND:

- UNION PACIFIC RR
- - - SOUTHERN PACIFIC RR
- SP TEX MEX TRACKAGE RIGHTS OVER SP



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34849

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY --
EXEMPTION FOR TRANSACTIONS WITHIN A CORPORATE FAMILY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2(d)(3)

49 C.F.R. §1180.6 (a) (7) (ii) -- Agreements Exhibit 2

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

The following terms (hereinafter referred to as the "Terms") shall govern rights provided by HOUSTON BELT & TERMINAL RAILWAY COMPANY, a Texas corporation, referred to as "HB&T" or "Owner," on the one hand, to THE TEXAS MEXICAN RAILWAY COMPANY ("Tex Mex" or "User"), on the other hand, with HB&T and Tex Mex sometimes referred to collectively as "Parties," pursuant to the decisions of the Surface Transportation Board ("STB") in Finance Docket No. 32760 (Sub-No. 14) served August 12, 1996 ("Decision No. 44") and September 10, 1996 ("Decision No. 47").

RECITALS

A. HB&T owns lines of railroad consisting of track structure extending in and through Houston, Texas, identified as follows:

HB&T line from Quitman Street in the vicinity of HB&T Milepost 4.7 (West Belt Subdivision) to the HB&T's connection with UP at Gulf Coast Junction in the vicinity of HB&T Milepost 4.6 (East Belt Subdivision), a distance of 3.6 miles;

HB&T line from its connection with the SP line at T. & N.O. Junction, TX (Tower 81) in the vicinity of HB&T Milepost 11.0 (West Belt Subdivision) to HB&T's connection with UP at Interstate Junction in the vicinity of HB&T Milepost 7.5 (East Belt Subdivision), a distance of 8.2 miles;

as shown by bold line on the attached print dated September 11, 1996 (and identified as Exhibit "A") and further described in Section 1.7 of Exhibit "B," which shall be referred to herein as the "Joint Trackage."

B. The STB in Finance Docket No. 32760 (Sub-No. 14) approved the common control and merger of the rail carriers controlled by Union Pacific Corporation ("UPC"), including Missouri Pacific Railroad Company ("MP") and Union Pacific Railroad Company ("UPRR") (UPC, UPRR and MP are referred to collectively as "UP"), and the rail carriers controlled by Southern Pacific Rail Corporation ("SPR"), including Southern Pacific Transportation Company ("SP"), conditioned on, among other things, partial grant of the Tex Mex's Terminal Trackage Rights Application, dated March 29, 1996, including trackage rights over the HB&T as specified therein.

C. Tex Mex desires to receive said trackage rights and to conduct operations pursuant thereto. Tex Mex and HB&T now wish to define the terms and conditions under which said rights shall be exercised.

- (vi) Establish any transload facilities on the Joint Trackage or build into or out from any facility from/to the Joint Trackage.

(b) The rights granted in Section 2 shall be only for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) User shall have the right to establish crew change points at points on the Joint Trackage as from time to time may be mutually agreed to in writing by Owner and User. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Crew Change Facilities") in the vicinity of such location as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such Crew Change Facilities are necessary, the Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such Crew Change Facilities are constructed at the cost and expense of User, and Owner shall choose to use such Crew Change Facilities, Owner shall pay User fifty percent (50%) of the cost of constructing such Crew Change Facilities. Should Owner decline to participate, Owner shall be denied access to such Crew Change Facilities. However, should Owner elect at a later date to use such Crew Change Facilities, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User, by separate written agreement at reasonable and customary charges, existing facilities for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

(d) User agrees that when entering or exiting the Joint Trackage or using the Joint Trackage to set out or pick up ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required, in the reasonable judgment of Owner,

D. It is the position of Tex Mex and HB&T that these Terms do not constitute the acquiescence by either of them in the Decision and shall not preclude either of them from seeking any reopening, reconsideration or judicial review of Decision No. 44 or Decision No. 47.

TERMS

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of these Terms. All capitalized Terms used and not otherwise defined in these Terms shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and these Terms shall arise, the provisions of these Terms shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, HB&T shall grant to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in Tex Mex's account over the Joint Trackage in common with HB&T and such other railroad company or companies as HB&T has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in these Terms), such other railroad company or companies to be considered HB&T for the purposes of these Terms, it being understood and agreed that Tex Mex shall not have the right to:

- (i) Switch industries upon the Joint Trackage;
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.11, 2.12 and 2.13 of Exhibit B;
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage;
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under these terms;
- (v) Connect with or interchange with any other railroad, except as otherwise provided in Section 4; or

the cost and expense of which shall be borne solely by User. If User does not agree that such additional trackage is necessary, the Owner may nevertheless insist that it be constructed, with the question of its necessity, and the User's obligation to bear its cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2(c) above.

3. GTM Rate:

(a) In addition to other payments to be made under these Terms, User shall remit to Owner monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, the distance between the designated points of the Joint Trackage shall be determined by reference to HB&T's then current timetable.

(c) The GTM Rate set forth in Section 3(a) of these Terms shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of these Terms to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

4. Interchange:

In exercising the rights granted by these Terms, Tex Mex shall have the right, pursuant to separate agreements entered into between the parties or terms imposed by the STB, to interchange traffic with (a) HB&T at Houston, Texas, (b) The Atchison, Topeka & Santa Fe Railway Company ("ATSF") and Burlington Northern Railroad Company ("BN") (ATSF and BN are referred to collectively as "BNSF") at New South Yard and at any new interchange point that HB&T may hereafter establish with BNSF on the Joint Trackage, and (c) PTRC at Basin Yard and at any new interchange point that HB&T may hereafter establish with PTRC on the Joint Trackage.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary in the reasonable judgment of Owner to implement the rights granted under Section 2 of these Terms. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. If User does not agree that such Connections and Sidings are necessary, Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In that event that the User bears the sole cost and expense of any such Connections and Sidings, no other railroad shall have the right to use them except upon terms agreed to by User and such other railroad. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2(c) above, and, having made such payment, Owner may also admit other railroads to the use of such Connections and Sidings. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others.

(b) Except as provided in Section 5(a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by HB&T and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to HB&T for purposes of computing respective GTM's for purposes of this Section 5(b).

(c) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest calculated pursuant to Section 2(c).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to these Terms shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by

registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for HB&T:

General Manager
Houston Belt & Terminal
Railway Company
501 Crawford Street
Houston, Texas 77002

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Term:

These Terms shall be effective upon consummation of the control authority granted in the Decision for a term of ninety-nine (99) years; provided, however, that the User shall have the right to terminate these Terms upon twelve (12) months' prior written notice to Owner. These Terms shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SPC has been denied or has been approved on terms unacceptable to the applicants or has been granted on terms that do not require the rights provided herein, provided, however, that if these Terms become effective and are later terminated, any liabilities arising from the exercise of rights under Sections 1 through 5 during the period of its effectiveness shall survive such termination. For purposes of this Section 7, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

Approved: _____

For HB&T:

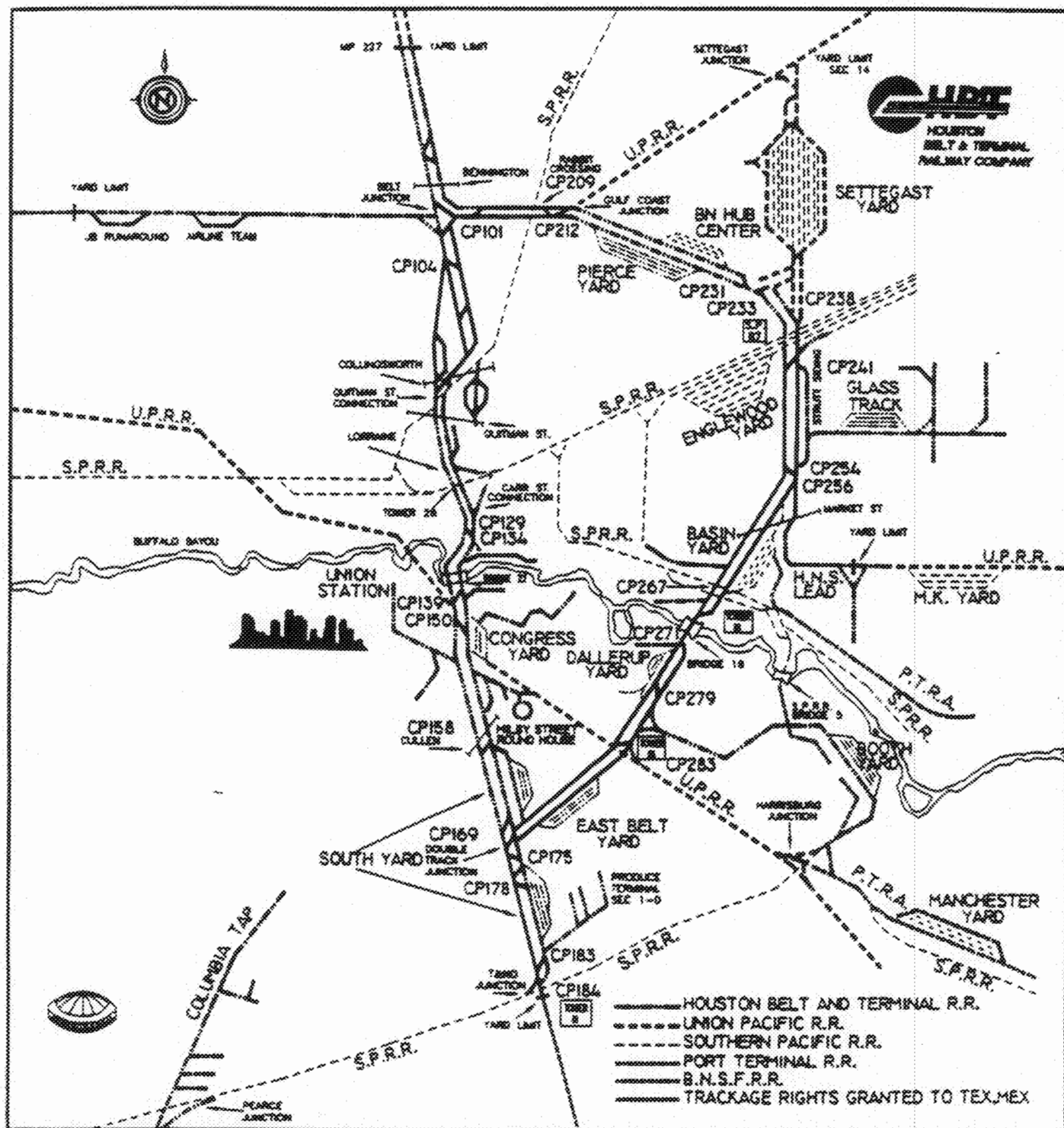
By: [Signature]
Position: General Manager
Date: 1-10-97

For Tex Mex:

By: [Signature]
Position: President
Date: 1-28-97

EXHIBIT A

PRINT DATE 09-11-96



N021-0047

EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

- 1.1 "Annual" shall mean a calendar year.
- 1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.
- 1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Terms.
- 1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.
- 1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.
- 1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.
- 1.7 "Joint Trackage" shall mean the track structure of Owner as described in the Terms including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.
- 1.8 "Mill" shall mean one-tenth of a cent (\$0.001 US).
- 1.9 "Owner" shall have the meaning given to it in the Terms.
- 1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.
- 1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Terms.

Section 2. MAINTENANCE, ADDITIONS, OPERATION AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms, including special instructions for the Joint Trackage as of the date of the Terms, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Terms (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Terms, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner, User and any other users of the Joint Trackage shall be treated in a

non-discriminatory manner. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Terms for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Terms shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.7 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.8 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Terms, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 Except as otherwise may be provided in the Terms, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall

furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to

make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be railed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.15 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Terms, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Terms User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of the Terms shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Terms, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Terms; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Terms.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees

incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer, PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby

shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Terms as a result of the other party's failure to perform or observe any other obligation or duty created by the Terms. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified:

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties:

(c) "Joint Employees" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties:

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service:

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment:

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit:

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4, shall be deemed the Sole Employees of the employing party and the Sole Property of the using party:

(h) Any railroad not a party to the Terms heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Terms for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage:

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Terms be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Terms, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to the Terms;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name

of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident:

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailling Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be

deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Terms, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Terms, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own

Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5, (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Terms upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in

Trackage. The Terms shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM: TERMINATION

Upon termination of the Terms, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Terms, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Terms, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Terms and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Terms may be assigned by Owner without restriction. In the event of an authorized assignment, the Terms and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Terms (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Terms claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Terms under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Terms, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Terms.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to affect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Terms and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Terms not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Terms be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Terms.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Terms, the provisions of the Terms shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Terms.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

TERMS FOR TEXAS MEXICAN RAILWAY COMPANY TRACKAGE RIGHTS

The following terms (hereinafter referred to as the "Terms") shall govern rights provided by MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MP"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SP"), with MP and SP jointly and severally referred to as "MP/SP" or "Owner," on the one hand, to THE TEXAS MEXICAN RAILWAY COMPANY ("Tex Mex" or "User"), on the other hand, with MP/SP and Tex Mex sometimes referred to collectively as "Parties," pursuant to the decision of the Surface Transportation Board ("STB") in Finance Docket No. 32760 served August 12, 1996 (the "Decision").

RECITALS

A. MP/SP owns lines of railroad consisting of track structure extending between Robstown, Texas and Odem, Texas, and between Corpus Christi, Texas, and Beaumont, Texas, by way of Odem, Texas, identified as follows:

MP's line between Robstown, Texas, in the vicinity of MP Milepost 141.48 and Placedo, Texas, in the vicinity of MP Milepost 224.2;

MP's line between Corpus Christi, Texas, in the vicinity of MP Milepost 145.59, and Odem, Texas, in the vicinity of MP Milepost 132.2, via Savage Lane to MP's Viola Yard;

SP's line between Placedo, Texas, in the vicinity of SP Milepost 14.2, and West Junction, Texas, in the vicinity of SP Milepost 12.6, via Victoria, Texas, and Flatonia, Texas;

SP's line between West Junction, Texas, in the vicinity of SP Milepost 12.6, and T&NO Junction, Texas, in the vicinity of SP Milepost 4.6;

SP's line from West Junction through Bellaire Junction to Chaney Junction, in the vicinity of SP Milepost 2.8;

SP's line from Chaney Junction, in the vicinity of SP Milepost 2.8, to Tower 26, in the vicinity of SP Milepost 360.7, via the Houston Passenger station;

SP's line from Chaney Junction, in the vicinity of SP Milepost 2.8, to Tower 26, in the vicinity of SP Milepost 360.7, via the Hardy Street yard;

MP's line from Settegast Junction, in the vicinity of MP Milepost 381.61, to the connection with HB&T at Interstate Junction, in the vicinity of MP Milepost 7.60;

SP's line from T&NO Junction, in the vicinity of SP Milepost 4.6, to the connection with PTRR, in the vicinity of Katy Neck (GH&H Junction), in the vicinity of SP Milepost 1.3;

SP's line from SP Milepost 360.7 near Tower 26 to the connection with HB&T at Quitman Street, in the vicinity of SP Milepost 1.45;

MP's line between Gulf Coast Junction, Texas, in the vicinity of MP Milepost 377.98, and Amelia, Texas, in the vicinity of MP Milepost 451.4;

MP's line between Amelia, Texas, in the vicinity of MP Milepost 451.4, and the connection with SP at Langham Road, Texas, in the vicinity of MP Milepost 456.7;

SP's line between Langham Road, Texas, in the vicinity of MP Milepost 456.7, and Tower 74, in the vicinity of MP Milepost 458.8;

MP's line between Tower 74, in the vicinity of MP Milepost 458.8, and (1) the connection with The Kansas City Southern Railway Company ("KCS") at GLC Jct., Texas, in the vicinity of MP Milepost 460.36 (KCS Milepost 766.7), and (2) the connection with KCS at the Neches River Draw Bridge in Beaumont, Texas, in the vicinity of KCS Milepost 766.0;

as shown by bold line on the attached prints dated September 23, 1996 (and identified as Exhibit "A") and further described in Section 1.7 of Exhibit "B," which shall be referred to herein as the "Joint Trackage."

B. The STB in Finance Docket No. 32760 approved the common control and merger of the rail carriers controlled by Union Pacific Corporation ("UPC"), including MP and Union Pacific Railroad Company ("UPRR") (UPC, UPRR and MP are referred to collectively as "UP"), and the rail carriers controlled by Southern Pacific Rail Corporation ("SPR"), including SP, conditioned on, among other things, partial grant of the Responsive Application of Tex Mex, dated March 29, 1996.

C. In order to exercise its authority to acquire control of SPR as granted by the STB in Finance Docket No. 32760, MP/SP is willing to provide Tex Mex with the rights specified in the Decision.

D. Tex Mex desires to receive said rights and desires to conduct operations over said rights. Tex Mex and MP/SP now wish to assist the STB in specifically defining the terms and conditions under which said rights shall be exercised.

E. It is the position of Tex Mex and MP/SP that these Terms do not constitute the acquiescence by either of them in the Decision and shall not preclude either of them from seeking any reopening, reconsideration or judicial review of the Decision.

TERMS

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of these Terms. All capitalized Terms used and not otherwise defined in these Terms shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and these Terms shall arise, the provisions of these Terms shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, MP/SP shall grant to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in Tex Mex's account over the Joint Trackage in common with MP/SP and such other railroad company or companies as MP/SP has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in these Terms), such other railroad company or companies to be considered MP/SP for the purposes of these Terms, it being understood and agreed that Tex Mex shall not have the right to:

- (i) Switch industries upon the Joint Trackage, except as otherwise provided in Section 2(g);
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.11, 2.12 and 2.13 of Exhibit B;
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in Section 2(g);

- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under these terms;
- (v) Connect with or interchange with any other railroad, except as otherwise provided in Section 4; or
- (vi) Establish any transload facilities on the Joint Trackage or build into or out from any facility from/to the Joint Trackage.

(b) The rights granted in Section 2 shall be only for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) User shall have the right to establish crew change points at points on the Joint Trackage as from time to time may be mutually agreed to in writing by Owner and User. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Owner may require User to construct additional trackage ("Crew Change Facilities") in the vicinity of such location as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such Crew Change Facilities are necessary, the Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such Crew Change Facilities are constructed at the cost and expense of User, and Owner shall choose to use such Crew Change Facilities, Owner shall pay User fifty percent (50%) of the cost of constructing such Crew Change Facilities. Should Owner decline to participate, Owner shall be denied access to such Crew Change Facilities. However, should Owner elect at a later date to use such Crew Change Facilities, such right shall be granted to Owner by User upon payment of fifty percent (50%) of User's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by User commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Improvements. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's

interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

In addition, Owner shall lease to User, by separate written agreement at reasonable and customary charges, existing facilities for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property of Owner as reasonably available for User to establish its own facilities.

(d) User agrees that when entering or exiting the Joint Trackage or using the Joint Trackage to set out or pick up ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required, in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. If User does not agree that such additional trackage is necessary, the Owner may nevertheless insist that it be constructed, with the question of its necessity, and the User's obligation to bear its cost and expense, to be determined by arbitration pursuant to Section 6 of the General Conditions. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus interest as calculated pursuant to Section 2(c) above.

(e) User shall have the right to such use of SP's Glidden Yard at Glidden, Texas, as is reasonably necessary to effectuate the rights granted by these Terms and on such terms and conditions (including reasonable compensation terms) as may be agreed to in writing by the parties or determined by arbitration pursuant to Section 6 of the General Conditions if the parties fail to agree; provided, however, that such use by User shall not unreasonably interfere with Owner's operations. Any dispute between User and Owner regarding the reasonableness of User's use of Glidden Yard shall be submitted to arbitration pursuant to Section 6 of the General Conditions.

(f) If Owner implements a directional flow of operations between Houston, Texas, and Beaumont, Texas, Owner will assure that User's operations are not adversely affected thereby.

(g) User shall have the right to serve all shippers that, as of September 10, 1996, were capable of receiving service from both MP and SP and no other railroad, directly or through reciprocal switching.

3. GTM Rate:

(a) In addition to other payments to be made under these Terms, User shall remit to Owner monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint

Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, the distance between the designated points of the Joint Trackage shall be determined by reference to MPRR's EPMS Engineering Mileage Master or SP's Station Pair Master File, whichever is applicable, both of which shall be subject to verification by User.

(c) The GTM Rate set forth in Section 3(a) of these Terms shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of these Terms to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

4. Interchange:

In exercising the rights granted by these Terms, Tex Mex shall have the right to interchange traffic (a) with carriers other than MP/SP at the existing interchange points with those carriers on the Joint Trackage, i.e., (i) at Houston, Texas, with the Port Terminal Railroad Association ("PTRA"), the Houston Belt Terminal Railway Company ("HBT"), The Atchison, Topeka & Santa Fe Railway Company ("ATSF") and Burlington Northern Railroad Company ("BN") (ATSF and BN are referred to collectively as "BNSF"), and (ii) at Beaumont, Texas, with BNSF and The Kansas City Southern Railway Company ("KCS"); (b) with BNSF at Robstown and Corpus Christi and at any new interchange point on the Joint Trackage that may hereafter be established between MP/SP and BNSF; and (c) with MP/SP at Houston, Beaumont and such other points as may mutually be agreed. Any interchange between Tex Mex and PTRA or between Tex Mex and HBT at Houston, Texas, shall be governed by agreements entered into between those parties or terms imposed by the STB.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary in the reasonable judgment of Owner to implement the rights granted under Section 2 of these Terms. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. If User does not agree that such Connections and Sidings (other than those described in subsections (i) and (ii), the necessity for which is not in dispute, and to which this sentence does not apply) are necessary, Owner may nevertheless insist that they be constructed, with the question of their necessity, and the User's obligation to bear their cost and expense, to be

determined by arbitration pursuant to Section 6 of the General Conditions. In the event that the User bears the sole cost and expense of any such Connections and Sidings, no other railroad shall have the right to use them except upon terms agreed to by User and such other railroad. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2(c) above, and, having made such payment, Owner may also admit other railroads to the use of such Connections and Sidings. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others. Such necessary Connections and Sidings shall include, but are not necessarily limited to, those described in subsections (i) and (ii) below:

- (i) User shall construct a connection to access MP at Robstown, Texas, to include track 8500 feet in length to permit Tex Mex trains to clear the MP main line (the "Robstown Connection"). The design for the Robstown Connection shall be submitted to Owner for its written approval within forty-five (45) days following the effective date of these Terms, which approval shall not be unreasonably withheld, and User's operation thereover shall be subject to Owner's prior written acceptance of the Robstown Connection. User agrees that the Robstown Connection shall be constructed within one hundred eighty (180) days of acquisition of the required property and approval by Owner of its design. Owner grants User the right to use, as daily dispatching conditions reasonably permit, the existing connection between Tex Mex and Owner at Robstown and 8500 feet of Owner's main line south of that connection, for a period of six (6) months following the date of Owner's approval of the design of the Robstown Connection, which connection and trackage shall be deemed part of the Joint Trackage during the period of Tex Mex's usage thereof, including any extensions of the period as provided below. Owner will extend the period of User's use of the existing connection for an additional six (6) months in the event (a) User is unable to complete the Robstown Connection within the time frame specified in the preceding sentence and User is making a bona fide effort to complete the construction of the new connection, and (b) User's continued operations over the existing connection will not, in Owner's judgment, unreasonably interfere with Owner's operations. If BNSF constructs the Robstown Connection, Tex Mex shall have the right to use the Robstown Connection on terms agreed to by Tex Mex and BNSF. If the Robstown Connection is not constructed by BNSF, Tex Mex shall construct the Robstown Connection as provided above.
- (ii) User shall also construct a connection to access SP at Flatonia, Texas, to include track parallel to SP's Victoria Subdivision, Port LaVaca Branch, 8500 feet in length to permit Tex Mex trains to clear the SP main line (the "Flatonia Connection"). The design for the Flatonia Connection shall be submitted to Owner for its written approval within forty-five (45) days following the effective date of these Terms, which approval shall not be unreasonably withheld, and

User's operation thereover shall be subject to Owner's prior written acceptance of the Flatonia Connection. User agrees that the Flatonia Connection shall be constructed within one hundred eighty (180) days of acquisition of the required property and approval by Owner of its design. Owner grants User the right to use the existing connection between SP's Victoria Subdivision, Port LaVaca Branch, and SP's Glidden Subdivision at Flatonia and siding south of Owner's main line West of that connection for a period of six (6) months following the date of Owner's approval of the design of the Flatonia Connection, which existing connection and trackage shall be deemed part of the Joint Trackage during the period of Tex Mex's usage thereof.

(b) Except as provided in Section 5(a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by MP/SP and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to MP/SP for purposes of computing respective GTM's for purposes of this Section 5(b).

(c) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest calculated pursuant to Section 2(c).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to these Terms shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for MP/SP:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Term:

These Terms shall be effective upon consummation of the control authority granted in the Decision for a term of ninety-nine (99) years. These Terms shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SPC has been denied or has been approved on terms unacceptable to the applicants or has been granted on terms that do not require the rights provided herein, provided, however, that if these Terms become effective and are later terminated, any liabilities arising from the exercise of rights under Sections 1 through 5 during the period of its effectiveness shall survive such termination. For purposes of this Section 7, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

Approved:

For MP/SP:

James V. D. Lan
Position: Vice President - Law

Date: DEC 12 1996

For Tex Mex:

Henry H. Fields
Position: President

Date: Nov 20, 1996

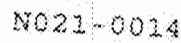
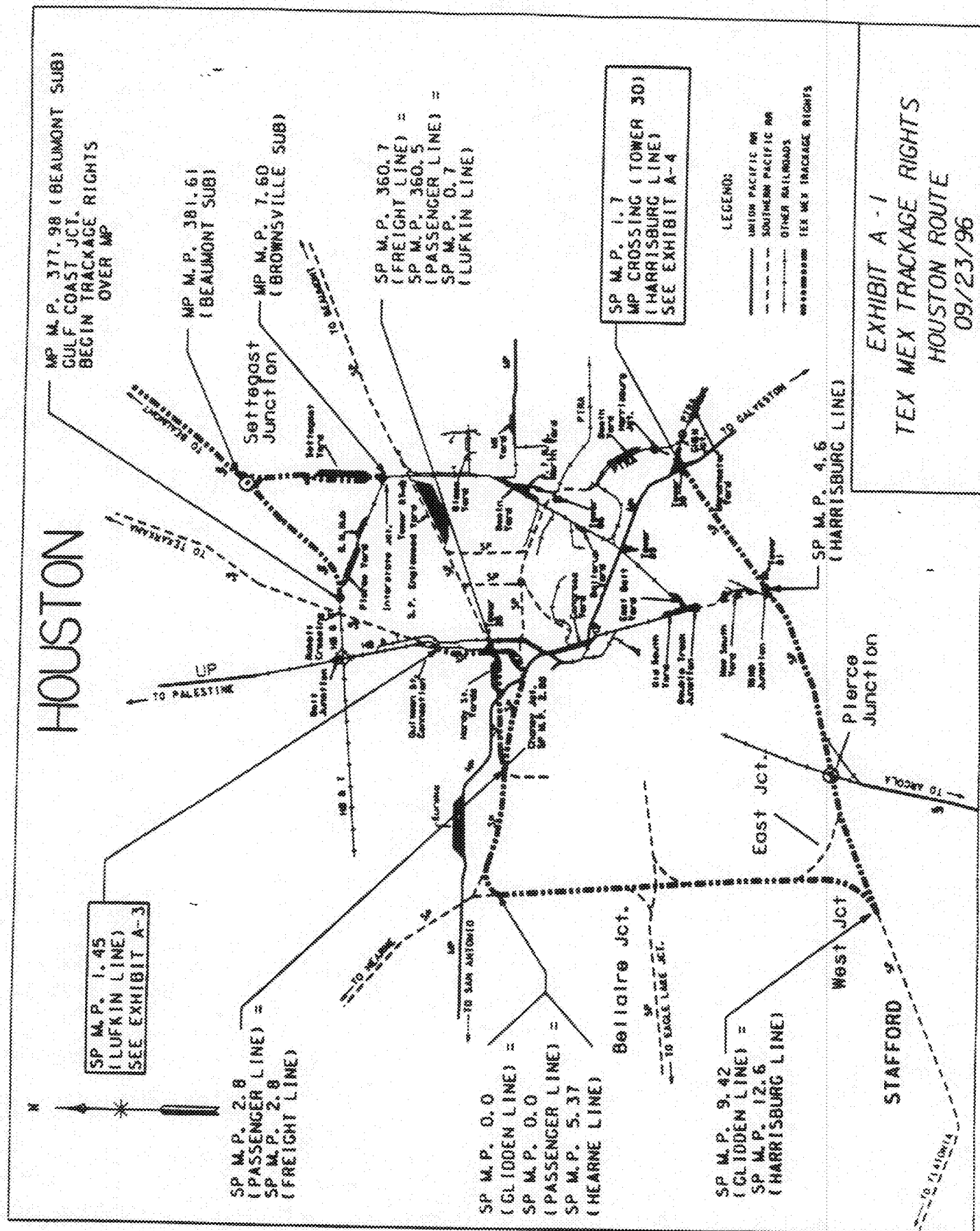
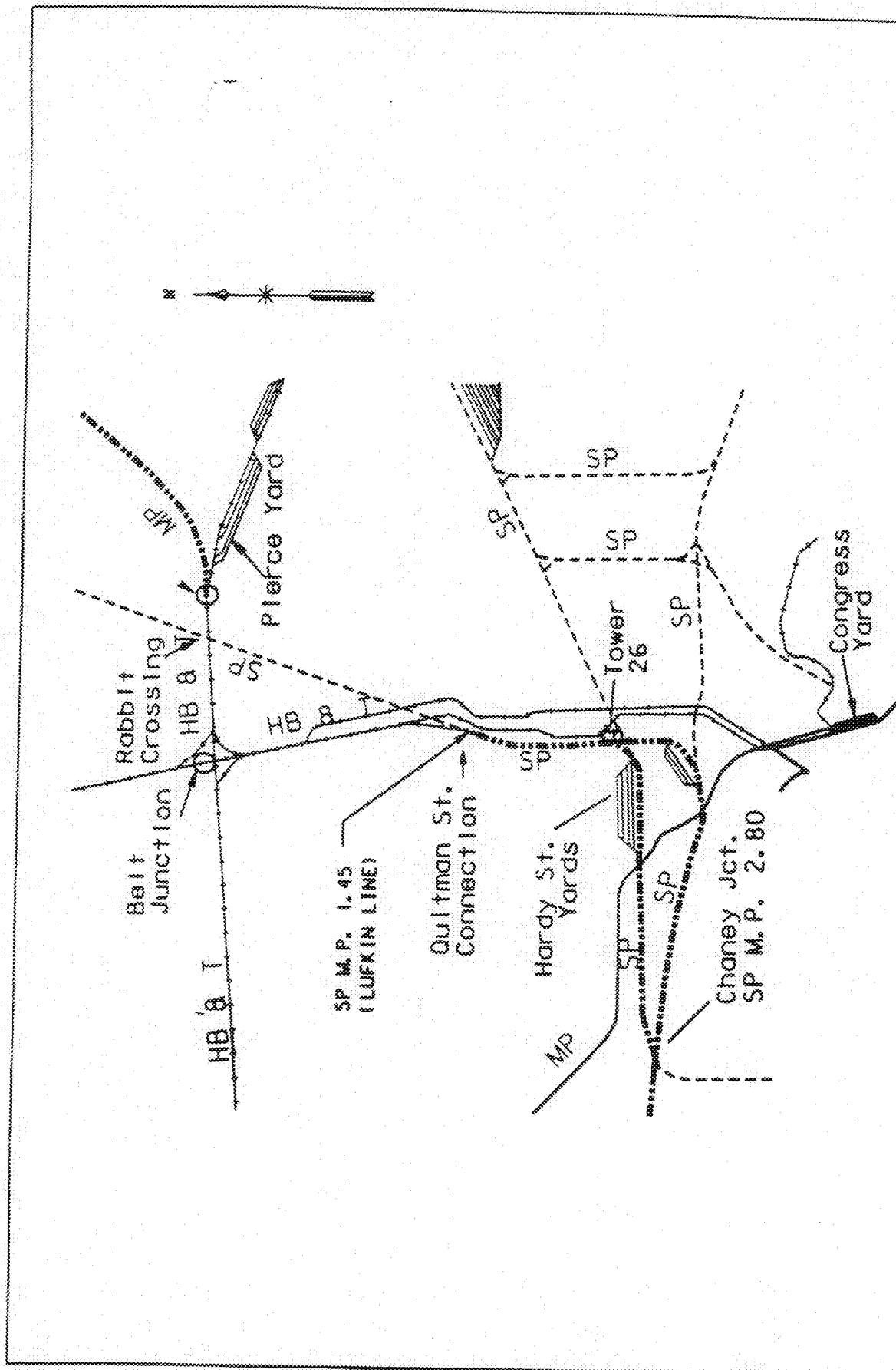


EXHIBIT A
TEX MEX TRACKAGE RIGHTS
ROBSTOWN TO BEAUMONT
09/23/96





LEGEND:

- UNION PACIFIC RR
- - - SOUTHERN PACIFIC RR
- - - OTHER RAILROADS
- ===== TEX MEX TRACKAGE RIGHTS

EXHIBIT A - 3
TEX MEX TRACKAGE RIGHTS
QUITMAN ST. CONNECTION (HOUSTON)
9/23/96

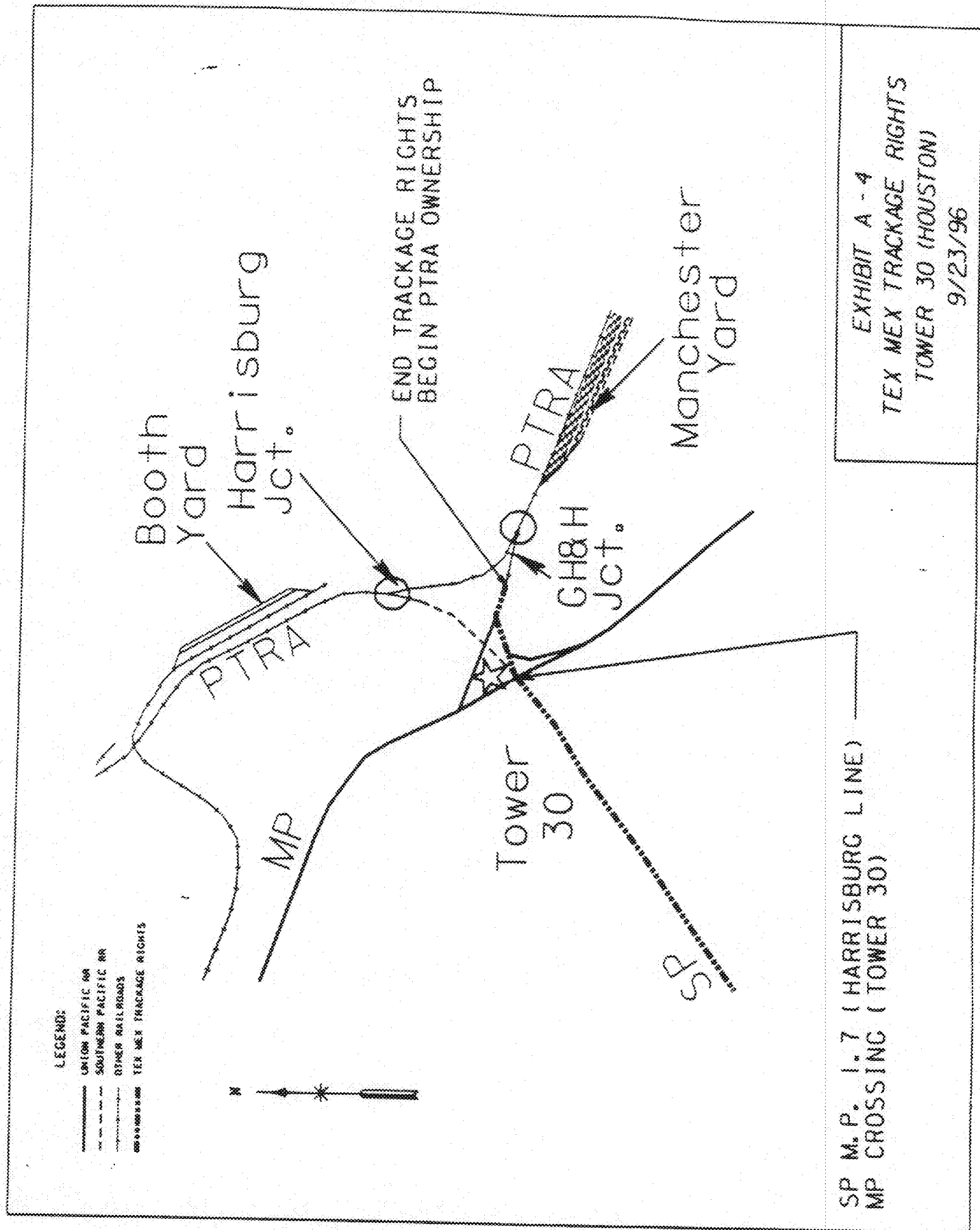


EXHIBIT A - 4
 TEX MEX TRACKAGE RIGHTS
 TOWER 30 (HOUSTON)
 9/23/96

EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

- 1.1 "Annual" shall mean a calendar year.
- 1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.
- 1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Terms.
- 1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.
- 1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and loading transported over one (1) mile of track included in the Joint Trackage.
- 1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.
- 1.7 "Joint Trackage" shall mean the track structure of Owner as described in the Terms including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.
- 1.8 "Mill" shall mean one-tenth of a cent (\$0.001 US).
- 1.9 "Owner" shall have the meaning given to it in the Terms.
- 1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Terms.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Terms, including special instructions for the Joint Trackage as of the date of the Terms, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Terms (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Terms. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Terms, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement

of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the Tex Mex-UP SP Dispatching Protocols attached hereto as Attachment 1. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules and standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under the Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise insure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work of the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Terms.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Terms for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Terms shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Terms, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 Except as otherwise may be provided in the Terms, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases; and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailled or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or

derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Terms, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Terms User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive

adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of the Terms shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Terms, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Terms; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Terms.

Section 4 COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to

observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Terms as a result of the other party's failure to perform or observe any other obligation or duty created by the Terms. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and

other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified:

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties:

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties:

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service:

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural

resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment:

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit:

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4 shall be deemed the Sole Employees of the employing party and the Sole Property of the using party:

(h) Any railroad not a party to the Terms heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Terms for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage:

(i) For the purpose of this Section 5, Equipment of foreign lines being Detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Terms be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Terms, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to the Terms;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto.

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5.

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence.

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit.

if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident.

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Terms, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Terms, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5, (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER

INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Terms upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may

be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Terms shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL AND ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Terms and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Terms without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice; provided, however, it is understood that Burlington Northern Railroad Company and The Atchison, Topeka & Santa Fe Railway Company (collectively, "BNSF") shall be given an option upon the Terms set forth in this Section 7.3, prior to that given User, to purchase the Placedo, Texas to Robstown, Texas segment of the Joint Trackage, subject to User's trackage rights, if BNSF is operating over that segment at the time of its proposed abandonment. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Terms shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Terms shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 User shall have the right to terminate the Terms upon twelve (12) months' prior written notice to Owner. Liabilities created under the Terms, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Terms, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Terms, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Terms, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Terms and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Terms may be assigned by Owner without restriction. In the event of an authorized assignment, the Terms and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Terms (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Terms claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Terms under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default

relates to the provisions and terms of the Terms, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Terms.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to affect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Terms and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Terms not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Terms be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Terms.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Terms, the provisions of the Terms shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Terms.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

TEX MEX - MP/SP DISPATCHING PROTOCOLS

1. Scope: These protocols apply on all segments of the Joint Trackage.
2. Purpose: To ensure that Tex Mex and MP/SP trains operating on Joint Trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiently and that the competitiveness of Tex Mex operations on the Joint Trackage is not adversely affected by the fact that MP/SP owns the track.
3. General Instructions: MP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on the Joint Trackage that Tex Mex trains are to be dispatched exactly as if they were trains of the same class of MP/SP and given equal treatment with trains of MP/SP. These instructions will be issued at agreed intervals or at the request of Tex Mex.
4. Monitoring Systems: MP/SP will provide Tex Mex with timely and accurate information about the status of Tex Mex trains operating over the Joint Trackage.
5. Train Information: Tex Mex will provide the MP/SP, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over the Joint Trackage, preferably using electronic data interchange. Tex Mex and MP/SP will establish run time standards by train category based on expected train volumes for Tex Mex. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. Tex Mex will provide reliable and current information about trains approaching the Joint Trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching the Joint Trackage, sufficiently in advance to allow dispatchers to plan for them. MP/SP will provide to Tex Mex advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. Tex Mex and MP/SP will consult in advance about maintenance-of-way windows resulting from planned maintenance projects so as to minimize disruptions to the operations of both carriers.
6. Specific Instructions: MP/SP will permit Tex Mex to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.
7. Train Priorities/Run Time Standards: MP/SP will provide to Tex Mex current procedures for assigning dispatching priorities or rankings to trains and information sufficient to show how those procedures are applied to their own trains. Tex Mex will assign priorities or rankings to its trains operating on the Joint Trackage using MP/SP's procedures, and MP/SP will dispatch Tex Mex trains in accordance with those priorities or rankings. It is understood that

technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads.

8. Entry to Joint Trackage: At points where Tex Mex trains enter the Joint Trackage, entry will be provided by MP/SP on a first-come first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. If operating circumstances make strict application of this principle difficult or uncertain, Tex Mex and MP/SP may jointly establish standards for determining sequence of entry to Joint Trackage. The parties will communicate daily on any conflicts concerning entry to the Joint Trackage to gain resolution.
9. Communication: MP/SP will provide to Tex Mex, and keep current, lists of dispatching personnel responsible for dispatching the Joint Trackage and contact numbers. Tex Mex and MP/SP will designate more supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.
10. Access to Dispatching Center: Appropriate officials of Tex Mex will be admitted at any time to dispatching facilities and personnel responsible for dispatching the Joint Trackage to review the handling of trains on the Joint Trackage (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to the review). It is understood that management and supervision of dispatching operations is the responsibility of MP/SP.
11. Performance Measurement: Tex Mex and MP/SP will cooperate to develop train performance evaluation methods under which train performance of Tex Mex trains on the Joint Trackage can be compared to train performance of MP/SP's trains on the Joint Trackage for the same train category and priority.
12. Personnel Incentives and Evaluation: In evaluating the performance of employees and supervisors responsible for dispatching the Joint Trackage, MP/SP will consider train performance of Tex Mex trains and effectiveness in cooperating with Tex Mex personnel and meeting Tex Mex service requirements in the same manner as such factors are considered with respect to MP/SP's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of MP/SP's trains, performance of Tex Mex's trains shall be considered on the same basis to the extent feasible.

13. Disagreements: The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.
14. Modifications: As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of Tex Mex and MP/SP on the Joint Trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

HOUSTON TO BEAUMONT, TEXAS TRackage RIGHTS AGREEMENT

THIS AGREEMENT made as of this 16th day of June, 1997, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter referred to as "SP" or "Owner"), and THE TEXAS MEXICAN RAILWAY COMPANY (hereinafter referred to as "Tex Mex" or "User"), (SP and Tex Mex sometimes referred to collectively herein as "Parties").

RECITALS

A. SP owns a line of railroad consisting of track structure extending between Houston, Texas, in the vicinity of SP's Milepost 360.42 (Carr Street Connection) and Beaumont, Texas, in the vicinity of SP's Milepost 282.4, as shown by bold line on the attached print dated June 4, 1997 (and identified as Exhibit "A"), and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage".

B. Union Pacific Railroad Company, a Utah corporation, (hereinafter referred to as "UP"), owns a line of railroad extending between Houston and Beaumont, Texas, over which Tex Mex was granted rights for use of UP tracks along with trackage rights over portions of SP's lines between Beaumont, Texas and Robstown/Corpus Christi, Texas, pursuant to Terms For Texas Mexican Railway Company Trackage Rights effective September 11, 1996 (the "Terms"), between SP, Missouri Pacific Railroad Company, UP's predecessor in interest, and Tex Mex; and

C. SP desires to implement directional operations between Houston, Texas and Beaumont, Texas using its line for eastbound movements and the lines subject to the Terms, Agreement for westbound movements so that Tex Mex and SP may operate their through trains directionally between Houston and Beaumont, Texas, to reduce train delays caused by the meeting of trains; and

D. SP is agreeable to granting Tex Mex bridge trackage rights over the Joint Trackage only to facilitate such directional operations between Houston and Beaumont, Texas and only so long as SP operates directionally between Houston and Beaumont; and

E. SP and Tex Mex wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

2. Rights of Tex Mex:

(a) Subject to the terms and conditions contained herein, SP hereby grants to Tex Mex the nonexclusive right to use the Joint Trackage for the limited operation of eastbound movements of Equipment in Tex Mex's account over the Joint Trackage in common with SP, UP and such other railroad company or companies as SP has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered SP for the purposes of this Agreement, it being understood and agreed that Tex Mex shall not have the right to:

- (i) Switch industries upon the Joint Trackage;
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Sections 2.11, 2.12 and 2.13 of Exhibit B;
- (iii) Serve any industry, team or house track, transload facilities, intermodal or auto facility now existing or hereafter located along the Joint Trackage;
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of Tex Mex; provided, however, that the foregoing shall not prevent Tex Mex, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement;
- (v) Build into or out from any facility from/to the Joint Trackage; or

- (vi) Connect with or interchange with any other railroad; provided, however that Tex Mex shall have the right to connect with Houston Belt & Terminal Railway Company's East Belt main line in the vicinity of Tower 87 via SP's East Yard solely for the purpose of ingressing and egressing the Joint Trackage.

(b) The rights granted in Section 2 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal, in Equipment that meets all applicable specifications established by the Association of American Railroads and the Federal Railroad Administration, provided that all freight handled by Tex Mex pursuant to such rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi Line.

(c) If Tex Mex uses the Joint Trackage, it shall be obligated to use the Houston - Beaumont rights granted by the September 11, 1996 Terms only for movements in the same direction as the directional current of flow on those lines, notwithstanding any additional rights set forth in the September 11, 1996 Terms.

3. GTM Rate:

(a) In addition to other payments to be made under this Agreement, Tex Mex shall remit to SP monthly for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of 3.84 mills per GTM for all Equipment, which sum per GTM ("GTM Rate") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, operating expenses, interest rental, depreciation and taxes.

(b) For the purpose of computing the GTM Rate under this Section 3, it is mutually agreed that the distance between the designated points of the Joint Trackage shall be determined by reference to SP's Station Pair Master File, which shall be subject to verification by Tex Mex.

(c) The GTM Rate set forth in Section 3(a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 1998, as follows:

All trackage rights charges under this Section 3 shall be subject to adjustment annually beginning as of the effective date of this Agreement to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the STB or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration.

Additions:

(a) Expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings, Centralized Traffic Control, grade separations, and future connections, shall be handled as follows: (i) if the Change in and/or Addition to the Joint Trackage is for the sole benefit of one party, that party shall be solely responsible for the entire cost and expense thereof; (ii) all other Changes in and/or Additions to the Joint Trackage shall be shared by SP and Tex Mex on the basis that the parties' respective GTM's operated over the Joint Trackage bear to total GTM's operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of Joint Trackage by any third party shall be attributed to SP for purposes of computing respective GTM's for purposes of this Section 4.

(b) In the event such Changes in and/or Additions to the Joint Trackage are constructed at the sole cost and expense of one party (party of the first part), the other party (party of the second part) shall be denied access to such Change in and/or Addition to the Joint Trackage. If the party of the second part at some future date shall choose to use such Changes in and/or Additions to the Joint Trackage, such right shall be granted to party of the second part by party of the first part upon payment of fifty percent (50%) of party of the first part's initial costs plus per annum interest thereon at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by party of the first part commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in the first year of completion of the trackage. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e. the adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

(c) In the event Tex Mex shall have been required to participate in the cost of any Changes in and/or Additions to the Joint Trackage as set forth in the preceding paragraph of this Section 4, and SP subsequently elects to cease directional operations and terminate this Agreement as provided for in Section 9.1 of the General Conditions, SP shall reimburse Tex Mex for the unamortized portion of any Change in and/or Addition based upon a straight line amortization methodology over a 25 year period. For the purpose computing the refund, the amortization will be assumed to begin on the first date such Changes in and/or Additions to the Joint Trackage are placed in service and shall end on the effective date of termination of this Agreement. In the event SP terminates this Agreement pursuant to Section 9.1 of the General Conditions within the first year after any Change or Addition is placed in service, SP will refund to Tex Mex any payments made for such Changes in and/or Additions to the Joint Trackage.

In the event Tex Mex elects to terminate this Agreement at any time as provided for in Section 9.1 of the General Conditions, Tex Mex will not be entitled to any refund.

5. Modification of Directional Flow.

SP and Tex Mex recognize that at some time in the future it may be necessary, for operational efficiencies, for SP to modify the directional flow specified in this Agreement so that the line used for eastbound through trains may be used for westbound through trains and vice versa at the discretion of SP. Such a directional modification may be instituted upon thirty (30) days notice from SP to Tex Mex.

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for SP:

With a copy to:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for Tex Mex:

The Texas Mexican Railway Company
1200 Washington Street
P.O. Box 419
Laredo, Texas 78042

Notice of address change may be given any time pursuant to the provisions of this Section 6.

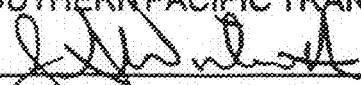
7. Term.

This Agreement shall be effective upon execution and, unless earlier terminated as provided herein below, shall terminate on the same date that the September 11, 1996 agreement between SP, UP and Tex Mex covering trackage rights between Beaumont, Texas and Robstown/Corpus Christi, Texas terminates; provided, however, that this Agreement may be terminated upon thirty (30) days prior written notice from SP

to Tex Mex that SP will cease to operate directionally between Houston and Beaumont, Texas; and provided, further, that Tex Mex shall have the right to terminate the Agreement upon twelve (12) months prior written notice to SP. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

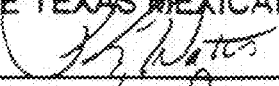
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By 

Position: Dir. Joint Facilities

THE TEXAS MEXICAN RAILWAY COMPANY

By 

Position: Vice President - Transportation



SP M.P. 360.42
CARR ST. CONN.
BEGIN TRACKAGE RIGHTS

BEAUMONT

UP

DAYTON

SP M.P. 282.4
END TRACKAGE RIGHTS

TO NEW ORLEANS

BAYTOWN

HOUSTON

WEST JCT.

LEGEND:

- UNION PACIFIC RR
- SOUTHERN PACIFIC RR
- TEX MEX TRACKAGE RIGHTS OVER SP

EXHIBIT A
TEX MEX TRACKAGE RIGHTS
HOUSTON TO BEAUMONT
06/04/97

EXHIBIT "B"
GENERAL CONDITIONS

Section 1. **DEFINITIONS**

- 1.1 "Annual" shall mean a calendar year.
- 1.2 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.
- 1.3 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of the Agreement.
- 1.4 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purposes of the maintenance or repair of such railroad tracks.
- 1.5 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.
- 1.6 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.
- 1.7 "Joint Trackage" shall mean the track structure of Owner as described in this Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.
- 1.8 "Mill" shall mean one-tenth of a cent (\$0.001 US).
- 1.9 "Owner" shall have the meaning given to it in the Agreement.
- 1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "Terms" shall mean those certain Terms for Texas Mexican Railway Company Trackage Rights to which this Exhibit "B" is attached.

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage, for such use as is permitted by Section 2 of the Agreement, equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over

and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under this Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility and quality for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another

party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of User, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of User engaged in or connected with User's operations on or along the Joint Trackage. At User's request, Owner shall furnish a pilot or pilots, at the expense of User, to assist in operating trains of User over the Joint Trackage.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be suspended by User from working on the Joint Trackage unless and until requalified to return to work and approved to do so by Owner. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of

such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), and such Equipment is unable to proceed, or if a train of User fails to maintain the

speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under the Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). Except with Owner's prior consent, User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and Section 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials

release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of the Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by the Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using

the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury

or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to the Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of the Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other

expenses shall be reimbursed by the other party as allocated pursuant to the Agreement;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit

involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned between Owner, User and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of the Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of the Agreement, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT

LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL AND ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice; provided, however, it is understood that Burlington Northern Railroad Company and The Atchison, Topeka & Santa Fe Railway Company (collectively, "BNSF") shall be given an option upon the Agreement set forth in this Section 7.3, prior to that given User, to purchase the Placedo, Texas to Robstown, Texas segment of the Joint Trackage, subject to User's trackage rights, if BNSF is operating over that segment at the time of its proposed abandonment.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the

same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

The Agreement and any rights granted hereunder may not be assigned in whole or in part by User without the prior written consent of Owner except (i) as provided in Section 3.5, and (ii) to the purchaser of substantially all of User's rail properties. The Agreement may be assigned by Owner without restriction. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The 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. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or

provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.