

Project No. _____
Contract No. _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT FUNDING AGREEMENT
FOR THE PURCHASE AND OPERATION OF
RAILROAD PROPERTY

THIS AGREEMENT, is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State", and the Northeast Texas Rural Rail Transportation District, hereinafter called the "NETEX".

W I T N E S E T H

WHEREAS, Article 6663b, V.A.T.S. assigned a broad spectrum of public transportation roles and missions to the Texas Department of Transportation; and

WHEREAS, Rider No. 5 to the Texas A & M University System Administrative and General Offices section of the Appropriations Bill for the 1996-1997 Biennium (H.B. 1) provided that "...\$2,000,000.00 from the General Revenue Fund of the State of Texas is hereby appropriated to the Texas Department of Transportation for the biennium for the Rural Rail Transportation District...", and

WHEREAS, NETEX is a rural rail transportation district created pursuant to the requirements of

Article 6550c, V.A.T.S.; and

WHEREAS, subsequent communication clearly established that the Rural Rail Transportation District specified herein referred to NETEX; and

WHEREAS, the State and NETEX desire to enter into Agreement for grant funding under the provisions of Rider No. 5 as stated hereabove; and

WHEREAS, NETEX has submitted an application to the State for \$2,000,000.00 to facilitate its purchase from the St. Louis Southwestern Railway Company, hereinafter called the "SSW", of a rail system between a point west of Sulphur Springs, Texas (SSW Milepost 524.0) and the end of the existing track at a point west of Greenville, Texas (SSW Milepost 555.0), hereinafter called the "Rail System", as shown in "Exhibit A", attached hereto and made a part hereof; and

WHEREAS, NETEX's purchase of the Rail System will preserve a vital piece of transportation infrastructure, assist in maintaining the multimodal transportation infrastructure of Texas and support intrastate, interstate and international trade activities that will provide economic benefit to the people of Texas; and

WHEREAS, NETEX agrees to convey to the State title to sections of Rail System right-of-way and an interest in installed rails and all other improvements in the property conveyed to NETEX by the SSW; and

WHEREAS, the State agrees to allow NETEX or its assigns the right to operate the Rail System in accordance with applicable statutes and the terms and conditions of this Agreement; and

WHEREAS, on the 31st day of August, 1995, the Texas Transportation Commission approved Minute Order No. 106154, attached hereto and identified as "Exhibit B", authorizing the State to enter into Agreement with NETEX for the purposes defined herein; and

WHEREAS, on the 14th day of December, 1995, the Board of Directors of NETEX passed a Resolution, attached hereto and identified as "Exhibit C", authorizing NETEX to enter into Agreement with the State for the purposes defined herein;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

A G R E E M E N T

1. This Agreement becomes effective on the date of final execution of the parties hereto and shall continue until such time as the operation of the Rail System ceases for a specified period defined herein and the State acquires its interests in the Rail System in a manner defined herein.
2. NETEX shall undertake the public transportation project as described in its application on file with the State and in accordance with the terms and conditions of this Agreement.

3. The State and NETEX hereby agree that NETEX will grant and convey to the State all right, title and interests of NETEX in and to the right-of way marked and outlined on the maps hereinafter identified by reference, hereinafter called "the Property". The conveyance to the State shall not include NETEX's interest in any installed rails, ties, ballast, tracks, sidings, bridges, buildings, stations, communication facilities, fixtures, improvements and appurtenances, hereinafter called "Rail System Improvements", on the Property. NETEX and the State further agree that there shall be reserved and excepted from said conveyance an easement for the purpose of allowing NETEX to operate or cause to be operated a rail system as defined by and in accordance with Art. 6550c, V.A.T.S., and NETEX will continue to operate or cause to be operated the rail system in accordance with said statute and all applicable Federal Laws and Regulations. NETEX will convey the aforementioned interests in and to the Property to the State by a Deed Without Warranty in a form substantially similar to the form attached hereto and identified as "Exhibit D". Said Deed Without Warranty shall be filed and recorded in the counties of appropriate jurisdiction. NETEX further agrees to assign to the State all other interests, including but not limited to licenses, permits and crossing agreements with others regarding the Property, reserving therefrom any rights or interest necessary for the operation of a rail system as defined by and in accordance with art.. 6550c V.A.T.S. The Assignment shall be in a form substantially similar to the form attached hereto and identified as "Exhibit E". NETEX shall notify the State if all/or any portion of the Property is abandoned as a rail system for one hundred and eighty (180) days. If and when NETEX requests approval from any applicable governmental agency to abandon all or any portion of the Property as a rail system, NETEX agrees on behalf of the State to include in such request for abandonment a request for interim trail use and railbanking

under Section 8(d) of the National Trails System Act. Once the State has been so notified or if the State is notified by any Governmental Agency that an actual abandonment of the Rail System has occurred, then the rights reserved in the easement contained in the aforementioned Deed Without Warranty and all rights or interests reserved in the aforementioned Assignment shall automatically revert to the State, its successors or assigns without necessity of any notice or further action by State.

4. It is further agreed by and between the parties to this Agreement that the maximum consideration payable by the State to NETEX is Two Million Dollars (\$2,000,000.00). It is further agreed that the total value of the Property to be conveyed to State is One Hundred Ninety-Six Thousand Three Hundred and Eight Dollars (\$196,308.00). NETEX agrees to grant State a security interest in the existing Rail System Improvements owned by NETEX as of the date of this Agreement and to all rehabilitated Rail System Improvements to the existing Rail System Improvements owned by NETEX. Said interest granted to the State shall be in an amount equal to One Million Eight Hundred Three Thousand Six Hundred and Ninety-Two Dollars (\$1,803,692.00). The existing Rail System Improvements are as shown on Exhibit "F" attached hereto. All terms and provisions of this interest granted to the State will be fully set forth in the Deed Without Warranty finally agreed to and executed by the parties hereto. NETEX agrees, as long as the rail system is in operation, to maintain in good, safe repair and condition and at NETEX's sole expense and risk, all of the Rail System Improvements which are subject to the security interest referred to in this paragraph. NETEX agrees to furnish to State on a quarterly basis beginning February 29, 1996 an accounting of its expenditures of the funds advanced by the

State under this Agreement as they relate to railroad operations, track maintenance and/or rehabilitation of the Rail System. Said accounting shall include the amount of each expenditure made by NETEX, the date of each expenditure and to what entity said expenditure was made.

5. As agreed by the parties in paragraph 3 above, NETEX shall continue to maintain and operate or cause to be maintained and operated the Rail System in accordance with Art. 6550c V.A.T.S. and all applicable Federal Laws and Regulations.

NETEX or any entity authorized to provide rail freight service and to maintain the Rail System, hereinafter called Operator, shall not have the right to mortgage, pledge or hypothecate any of its interest in the existing Rail System Improvements as of the date of this Agreement, or to any rehabilitated Rail System Improvements to the existing Rail System Improvements, except as may be expressly granted in writing by State.

6. The State and NETEX hereby agree that during the time the Rail System is operated, NETEX or its assigns shall cause any Operator of the Rail System to carry commercial general liability insurance against bodily injury and property damage with a company authorized to do business in the State of Texas satisfactory to the State protecting the Operator of the Rail System and the State, as an additional insured, against any and all claim of injuries to persons or damages to property as a result of NETEX use and/or occupancy of the Property, or arising out of, the construction, use, maintenance repair and/or replacement of all or any portion of the Rail System. Said insurance must be in an amount of not less than \$1,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence, and an amount to not less than

\$600,000 with respect to property damage in any one accident or occurrence. Said insurance limits are subject to review and escalation as deemed necessary by State once every two (2) years from the date of conveyance of the Property and continuing for so long as the Rail System is operated. All liability insurance policies shall name State as an additional insured and shall include waiver of subrogation endorsements in a form acceptable to the State. NETEX shall cause to be furnished to State certified copies or certificates of all coverage required herein prior to the conveyance of the Property, and annually thereafter for each renewal policy not less than thirty (30) days prior to the expiration of said policies. NETEX shall cause the insurance carrier to certify that such insurance will not be cancelled without (30) days prior written notice to the State. If NETEX fails to have a certified copy or certificate of any required policy of insurance on deposit with the State as required herein, or in the event the certified copy or certificate, as applicable, fail to comply with the insurance company quality or coverage requirements hereof, the State shall have the right (but not the obligation) to purchase and maintain such policy, and if the State does so and gives notice thereof to NETEX, then NETEX shall be obligated to pay the State the amount of the premium applicable to such policy within ten (10) days following any such notice from State.

7. NETEX agrees to require that its contractors or any contractors hired by the Operator of the Rail System carry at all times while engaged in the construction, alteration, repair or maintenance of the Rail System, the following minimum insurance with companies authorized to do business in the State of Texas, protecting the Operator of the Rail System and the State, as an additional insured, against any and all claims for injuries to persons or damage to property, as a result of, or

arising out of such construction, alteration, repair or maintenance of the Rail System by NETEX's contractors:

A. Workers compensation or other similar programs as required and/or authorized by State or Federal law with the policy endorsed, where reasonably available, to provide a waiver or subrogation as to the Operator of the Rail System and the State, and employers' liability insurance of not less than \$100,000 (or the statutorily required minimum if higher) for each accident;

B. Commercial general liability insurance including independent contractor's liability, completed operations and contractual liability, adequately insuring each contractor's liability for bodily injury, extended to include personal injury liability converge, and for damage to property of third parties, with insurance limits of not less than \$1,000,000 with respect to bodily injury or death to any number of persons in any one accident or occurrence and not less than \$600,000 with respect to property damage in any one accident or occurrence;

C. Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with minimum limits of \$250,000, each person and \$500,000, each occurrence, for bodily injury and \$100,000, each occurrence, for property damage, such insurance to include coverage for loading and unloading hazards.

All insurance limits set forth in this Paragraph are subject review and escalation as deemed necessary by State once every two (2) years from the date of conveyance of the Property and continuing for so long as the Rail System is operated.

8. The insurance required by this Agreement must be specific as to coverage and not contributing insurance with any permanent insurance maintained by NETEX or any Operator of the Rail System.

9. Except for the sole negligence of the State for which the State is legally liable, NETEX shall and does hereby indemnify and hold harmless State, its respective successors and assigns and its respective agents, representatives, Commissioners, contractors and employees (Indemnified Parties) against any and all proceedings, suits, actions, claims, damages, judgements, liabilities, awards and expenses whatsoever (Claims), without limit and without regard to the cause or causes thereof or the negligence of any party or parties, and regardless of whether such Claims are caused directly or indirectly by the negligence of State, that may be brought or instituted on account of or growing out of any and all injuries or damages, including death, to persons or property relating directly or indirectly to any occurrence in, upon, at or from the use and/or occupancy of the Property, the operation of the Rail System or any part thereof, and/or any construction and related activities by NETEX, and/or NETEX's licensees, invites, agents, NETEXs, representatives and employees and all losses thereto, including, but not limited to, all costs of defending again, investigating and settling the Claims. It is the expressed intention of the parties hereto, both the State and NETEX, that the indemnity provided for is indemnity by NETEX to indemnify and protect State from the consequences of State's own negligence where that negligence is a concurring cause of the Claim. Furthermore, the indemnity provided for shall have no application to any Claim where the Claim results from the sole negligence of State. NETEX shall assume on behalf of the Indemnified Parties and conduct with due diligence and in

good faith the defense of any and all Claims against any of the Indemnified Parties. Maintenance of the insurance referred to herein does not affect NETEX's obligations of indemnity. NETEX will have the right to contest the validity of any Claims, in the name of the State or NETEX, as NETEX may deem appropriate, provided at the expenses thereof are paid by NETEX, or NETEX causes the same to be paid by its insurer.

10. NETEX agrees that the consideration it receives from the transaction contemplated by this Agreement shall be totally used to accomplish the purposes of Rider No. 5 referenced previously in this Agreement including its purchase of the SSW Rail System. NETEX further agrees and does hereby transfer and assign to State any warranties, guaranties or any affirmation it receives from said SSW in any contract of sale or other agreement, written or verbal, it has with the said railway company concerning the transfer of the said Rail System. Notwithstanding anything in this Agreement to the contrary, NETEX hereby warrants and forever agrees that it is conveying to State all interests set forth in this Agreement free and clear of any lien, security interest or any other interest that could result in a loss of any or all of the title acquired by the State, by foreclosure or otherwise. NETEX further hereby warrants and forever agrees that the security interest referred to in Paragraph 4 above shall be a first and superior lien and security interest on the Rail System Improvements.

11. It is agreed by and between the State and NETEX that the terms and provisions of the above Paragraphs shall survive the closing of the transaction contemplated by this Agreement.

12. The relationship between the parties to this Agreement shall not be deemed an agency, a partnership or joint venture.

13. NETEX agrees to furnish to the State at the Closing of the transaction contemplated by this agreement copies of all right way maps, deeds and other instruments of conveyance to SSW or its predecessors in title regarding the Property.

14. Any changes to the Agreement shall be enacted by written amendment approved by both parties to this Agreement.

15. NETEX or any subcontractor shall not use State assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or the Texas Legislature.

No member of or delegate to the Legislature of the State of Texas shall be admitted to any share or part of this Agreement or to any benefit arising therefrom, in accordance with Article III, Section 18, of the Constitution of the State of Texas.

No member, officer or employee of NETEX during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

16. Texas Transportation Commission policy mandates that employees of the State shall not

accept any benefits, gifts or favors from any person doing business or who reasonably may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director. Any persons doing business with or who may reasonably speaking do business with the State under the Agreement may not make any offer of benefits, gifts or favors to departmental employees, except as mentioned hereabove. Failure on the part of NETEX to adhere to this policy may result in the termination of this Agreement.

17. NETEX will comply with Texas Civil Statutes, Article 5996a, by ensuring that no officer, employee or member of NETEX's governing board or of NETEX's subcontractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

NETEX will ensure that all information collected, assembled or maintained by NETEX relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law. NETEX will comply with Texas Civil Statutes, Article 6252-17, which requires all regular, special or called meetings, or governmental bodies to be open to the public, except as otherwise provided by law

or specifically permitted in the Texas Constitution.

18. In case one or more of the provisions contained in this contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19. This agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understanding and/or written or oral agreements between the State and NETEX respecting the with subject matter.

20. NETEX shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations and the orders and decrees of a court of competent jurisdiction or administrative bodies or tribunals in any matter affecting the performance of this Agreement.

21. All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

The State: Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483
Attn: Director, Multimodal Operations Office

NETEX: Chairman of the Board
Northeast Texas Rural Rail Transportation District
P.O. Box 306
1504 Washington St.
Commerce, TX 75429

22. The undersigned for NETEX represents and warrants that he is an officer of the organization for which he has executed this Agreement and that he has the full and complete authority to enter into this Agreement on behalf of NETEX.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in triplicate counterparts.

STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission under the authority of Minute Order No. 82513 and Administrative Order 15-88, for the purpose and effect of activating and/or carrying out the order, establishing policies or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order No. 100002.

Northeast Texas Rural Rail
Transportation District

By: Thompson B. Dyer

Title: Chairman

Date: 12-13-95

BY: Tom A. Griebel
Tom A. Griebel, Assistant Executive Director
Multimodal Transportation

Date: 12-13-95

ATTEST: See A. Harten
Secretary
Title