

EXECUTION COPY (1/31/01)

LEASE AND OPERATING AGREEMENT

between

**THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION**

as Lessor

and

TEXAS PACIFICO TRANSPORTATION, LTD.

as Lessee

**REGARDING THE RAIL LINE BETWEEN SAN ANGELO
JUNCTION AND PRESIDIO, TEXAS**

January 31, 2001

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LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement") is entered into this 31st day of January, 2001, by and between the STATE OF TEXAS, acting by and through the Texas Department of Transportation ("State"), and TEXAS PACIFICO TRANSPORTATION, LTD. ("Lessee").

RECITALS

WHEREAS, pursuant to: (1) a Grant Funding Agreement for the Use and Operation of Railroad Property between the State and the South Orient Rural Rail Transportation District ("SORRTD"), dated December 30, 1991 (the "Grant Funding Agreement"), the State acquired the real property portion of that certain Rail Line, as defined in Section 1.1, located between San Angelo Junction, Coleman County, Texas and Presidio, Presidio County, Texas; (2) an Agreement to Purchase Lease and Assets between the State and the South Orient Railroad Company, Ltd. ("SORC"), dated January 31, 2001 (the "SORC Agreement"), the State, subject to the authorization of the Surface Transportation Board of the U.S. Department of Transportation, acquired all rights, titles, and interests of SORC in the Rail Line, including SORC's leasehold interest in the Rail Line, which leasehold has been cancelled and the lease agreement creating such leasehold as well as certain other rights has been terminated and cancelled, the operating rights and the rail freight transportation business conducted by SORC on the Rail Line, including interchange agreements related to railroad operations, intellectual property rights, and certain hardware and tangible personal property used in connection with railroad operations on the Rail Line (but excluding the railroad operating easement, which will be assigned to the State on the Effective Date and the Trackage Rights as herein defined); and (3) a Purchase and Transfer Agreement between the State and SORRTD, dated January 31, 2001 (the "SORRTD Agreement"), the State acquired the installed rails, ties, ballast, tracks, signals, switches, sidings, bridges, buildings, stations, communication facilities, and other structures, fixtures, and other improvements on the Rail Line;

WHEREAS, pursuant to the SORRTD Agreement, SORRTD has released all its rights to the Rail Line, including without limitation its right to lease the Rail Line;

WHEREAS, (1) Union Pacific Corporation, by letter dated February 11, 2000, has consented to the assignment by SORC to Grupo México or a wholly owned affiliate of Grupo México of the trackage rights granted pursuant to that certain Trackage Rights Agreement dated February 26, 1992, as amended, by and between SORC and the Southern Pacific Transportation Company ("SPT") regarding the rail line (the "SP Section") between SPT's Mile Post 608.46, in the vicinity of Alpine Junction, Texas, and SPT's Mile Post 619.64 in the vicinity of Paisano, Texas (the "Trackage Rights") and (2) SORC will assign the Trackage Rights to the Lessee on March 2, 2001 (the "Effective Date");

WHEREAS, SORC will permit Lessee to observe the rail transportation service operated by SORC on the Rail Line until the Effective Date;

WHEREAS, SORC will allow Lessee to assume the insurance policies of SORC presently in force as described on Addendum Three to the SORC Agreement ("SORC Insurance Policies");

WHEREAS, the option held by San Angelo Industries regarding the purchase of certain property constituting a portion of the Rail Line has been cancelled;

WHEREAS, pursuant to the SORRTD Agreement, all obligations and duties of SORRTD under the Grant Funding Agreement described above have been cancelled, the Grant Funding Agreement has been cancelled and Lessee has no obligation with respect to such Grant Funding Agreement;

WHEREAS, the State has advised the Lessee that the transactions contemplated by this Agreement, the SORC Agreement (including, without limitation, the Closing, as defined therein) and the SORRTD Agreement have been consummated simultaneously on the date first set forth above (the "Closing");

WHEREAS, from and after the Effective Date, Lessee desires to lease the Rail Line, as hereinafter defined, from the State, and to occupy, rehabilitate, use, maintain, and manage the Rail Line and improvements thereon, for the purpose of operating a rail freight transportation service;

WHEREAS, the State desires to lease the Rail Line to Lessee, provided the Lessee operates a rail freight transportation service on the Rail Line in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Texas Transportation Commission, by Minute Order No. 108240, dated June 29, 2000, authorized the Executive Director of the Texas Department of Transportation to negotiate and enter into agreements necessary for the continued operation of the Rail Line.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good, fair, and valuable consideration, the receipt, adequacy, and reasonable equivalency of which are hereby acknowledged, the parties hereto agree as follows:

1. LEASED PROPERTIES AND LEASE TERM

1.1. From and after the Effective Date, the State agrees to lease, demise, and let to the Lessee and by these presents, does hereby lease, demise and let to the Lessee, and Lessee hereby leases

and accepts from the State (i) the rail line running between San Angelo Junction, Coleman County, Texas and Presidio, Presidio County, Texas, consisting of those lands and premises, rights-of-way, and easements situated in the counties of Brewster, Coleman, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Runnels, Tom Green, and Upton, in the State of Texas, that is the line extending between Mile Post 1029.1 on the International Bridge near Presidio and Mile Post 956.7 at Paisano Junction and between Mile Post 945.3 at Alpine Junction and Mile Post No. 0 + 330 feet near San Angelo Junction, on the east, and Lampasas Subdivision Mile Post No. 373 + 4362 feet near San Angelo Junction, on the west, and that is more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, save and except those lands covered by the leases and agreements listed on Schedule I hereto, together with any and all installed rails, ties, switches, ballast, track structures, sidings, bridges, buildings, stations, communication facilities, fixtures, improvements or appurtenances located thereon (the entire length of the foregoing rail line and all lands, improvements, and interests being collectively referred to herein as the "Rail Line"); (ii) all equipment, hardware, books, records, uninstalled rails and ties and other tangible personal property used in connection with railroad operations on the Rail Line acquired by the State from SORC pursuant to the SORC Agreement; and (iii) any and all patents, trademarks, trade names, service marks, copyright registrations, any and all registrations and applications therefor, and any licenses under any proprietary rights used or held for use in connection with the Rail Line and acquired by the State from SORC pursuant to the SORC Agreement.

1.2. Primary Term. Unless this Agreement is terminated earlier in accordance with Section 7 hereof, this Agreement shall continue in full force and effect for a primary term commencing on the Effective Date and expiring on the date which is forty (40) years thereafter.

1.3. Renewal Options. Lessee shall have five (5) options to renew and extend the term of this Agreement, such option to follow consecutively upon the expiration of the last month of the primary term and each succeeding term. Each renewal option shall be for a term of ten (10) years. Such option shall be exercised by Lessee's giving written notice of its intention to renew and extend the term of this Agreement to the State at least one hundred and eighty (180) days before the expiration of the then effective term. The renewal and extension of this Agreement shall be on and under the same terms, provisions, and conditions as the primary term. Any termination of this Agreement pursuant to the terms hereof and after the occurrence of an event of default and the expiration of the applicable grace or curative period shall terminate all rights of renewal or extension set forth herein.

1.4. The State agrees that it shall be responsible for all leases, subleases, easements, crossing agreements, and all other agreements with third parties assigned to the State under the SORC Agreement, including without limitation those listed in Schedule I hereto (the "Third Party Agreements"). The State agrees that it shall enforce such Third Party Agreements so as to facilitate Lessee's operation of the Rail Line. The State hereby appoints Lessee and Lessee accepts such appointment to administer on behalf of the State such Third Party Agreements. The

State agrees that Lessee shall have access to any lands or railroad tracks covered by such Third Party Agreements as may be necessary in connection with Lessee's operation of the Rail Line and the State hereby grants the Lessee a license to enter upon all the land and railroad tracks covered by such Third Party Agreements in the course of the Lessee's operation of the Rail Line. The State hereby grants, transfers, and assigns to Lessee all of its rights and interests in any interchange agreements assigned to the State under the SORC Agreement. Lessee shall have the right to negotiate and enter into any other leases, subleases, easements, crossing agreements and other agreements after the Effective Date affecting the use, occupancy or possession of all or any portion of the Rail Line, except that the Lessee may not assign any or all of its rights or obligations under such leases, subleases, easements, crossing agreements and other agreements, other than to any affiliate of the Lessee, without the prior written consent of the State, which consent shall not be unreasonably withheld.

1.5. The State hereby represents and warrants that: (a) the State will own at Closing and will lease, demise and let to the Lessee the same right, title and interest in the Rail Line and other property that the State received from SORC pursuant to the SORC Agreement free and clear of all liens, charges, pledges, security interests and other encumbrances, other than permitted encumbrances in any lease, sublease, easement, license or crossing agreement, and any other agreement with a third party affecting the use and occupancy of the Rail Line that were assigned to the State under the SORC Agreement; (b) the Lessee will receive full use and enjoyment of the Rail Line for the full term of this Agreement in accordance with the terms hereof; (c) the State has full authority to execute and deliver this Agreement and to perform its obligations hereunder, and this Agreement constitutes a legal, valid and binding obligation of the State enforceable against the State in accordance with its terms; (d) to the best knowledge of the State no other party has any rights to the Rail Line or other property subject to this Agreement; (e) the State has not and will not hire any SORC employees for purposes related to the operation of the Rail Line; (f) to the best knowledge of the State no claims exist (or with the passage of time will exist) related to any event, condition or transaction regarding the Rail Line; (g) the State has no rights to the Rail Line or other property subject to this Agreement except as provided herein; (h) all active railroad-highway traffic control systems, including signals and gates, will be in good condition and fully operational no later than one hundred twenty (120) days after the Closing; (i) each lease, sublease, easement, license and crossing agreement related to the Rail Line is a customary and usual agreement entered into in the ordinary course of operating a rail freight transportation service on the Rail Line, is in full force and effect, has been fully performed by the parties thereto through the Closing, is not the subject of any claim or demand, and will not result in any obligation or other liability for the Lessee; (j) executed and acknowledged counterparts of (i) the Deed Without Warranty from Santa Fe to SORRTD dated December 30, 1991 in the form of Exhibit A-1 to the Agreement for Sale of Certain Assets, Rights and Obligations of the Atchison, Topeka and Santa Fe Railway Company to SORC and SORRTD dated December 30, 1991, (ii) the Deed Without Warranty from Santa Fe to SORRTD dated December 30, 1991 in the form of Exhibit A-2 to the Agreement for Sale of Certain Assets, Rights and Obligations of the Atchison, Topeka and Santa Fe Railway Company to SORC and SORRTD dated December

30, 1991, (iii) the Deed Without Warranty from Santa Fe to SORC dated December 30, 1991 in the form of Exhibit A-3 to the Agreement for Sale of Certain Assets, Rights and Obligations of the Atchison, Topeka and Santa Fe Railway Company to SORC and SORRTD dated December 30, 1991, (iv) the Deed Without Warranty from SORRTD to TxDOT dated December 30, 1991, and (v) the Lease Agreement between SORRTD, as lessor, and SORC, as lessee, dated as of December 30, 1991, or a memorandum thereof, were recorded in the real estate records of the counties of Brewster, Coleman, Crane, Crockett, Irion, Pecos, Presidio, Reagan, Runnels, Tom Green and Upton in the State of Texas; and (k) the lands and improvements conveyed by the Quitclaim Deed dated November 15, 1993 from the State of Texas to the City of San Angelo, Texas do not encroach upon and will not interfere with the operation of the approximately 381.9 mile railroad described in Exhibit A hereto.

1.6. The State will cause SORC to provide the Lessee with access (with an opportunity to make copies at Lessee's expense) to all records relating to the Rail Line that are retained by SORC pursuant to the SORC Agreement (other than records constituting privileged and confidential attorney-client communications or work product).

1.7. The State will cause SORC to take such commercially reasonable action to transfer to the State for the benefit of Lessee all of the assets covered by the SORC Agreement as contemplated therein.

1.8. The State and the Lessee intend that the lease and the related rights and obligations of the parties contemplated by this Agreement shall become effective as of the Effective Date. Notwithstanding any provision herein to the contrary, (a) the Lessee shall have the right to terminate this Agreement at any time on or prior to the Effective Date in the event that (x) subsequent to the date of this Agreement there is any change in or any event occurs that has an effect on the business, assets, condition (financial or otherwise) or operations of the Rail Line that is or is reasonably likely to (i) materially impair the ability of the Lessee to operate the Rail Line or (ii) otherwise be materially adverse to the business, assets, condition (financial or otherwise) or operations of the Rail Line (a "Materially Adverse Event"), it being understood, however, that the State shall have the right to cure such Material Adverse Event if such cure is completed and Lessee is provided with a full written explanation of such cure not later than five (5) days prior to the Effective Date, (y) prior to the Effective Date, the parties to the documents referred to in the Recitals hereto and in the Index of Closing Documents for the transactions contemplated therein and herein (including, without limitation, the Assignment of Union Pacific Trackage Rights by SORC to the Lessee) shall have failed to execute and deliver all such documents to Lessee, in form acceptable to counsel for Lessee, or (z) the transaction contemplated by the SORC Agreement (including, without limitation, the State's payment obligation under Section 9 of the SORC Agreement) is not consummated on or before the date of this Agreement (b) if the Lessee elects to exercise such right, it shall notify the State on or prior to the Effective Date, and (c) from and after such notification, neither party hereto shall have any further rights or obligations under this Agreement.

2. LEASE PAYMENTS

2.1. Lessee agrees to pay an annual fee in the amount of Ten Thousand Dollars (\$10,000) to the State to cover administrative and legal costs incurred by the State through ownership of the Rail Line, including costs incurred by the State in carrying out the inspection and oversight responsibilities set out in Section 4. The annual fee shall be reduced by fifty percent (50%) during the first eight (8) years of this Agreement to reimburse the Lessee for the sum advanced under Section 2.4. The initial fee shall be paid one (1) year in advance upon the Effective Date, and on each anniversary thereof until this Agreement is terminated. The annual fee is subject to review and adjustment every five (5) years based upon increases of the Texas Consumer Price Index during the five (5) year period. All payments due to the State hereunder shall be paid by the Lessee to the State at the address of the State set forth hereinafter, or to such other person and/or at such other address as the State may direct by notice to Lessee.

2.2. Payment of the annual fee shall be considered delinquent if not paid within thirty (30) days of the date the payment is due to the State. If the Lessee fails to pay any fee installment and such payment shall become delinquent, simple interest at the rate of ten percent (10%) per year shall be added to any such overdue payment from the due date to the date of payment.

2.3. In addition to the annual fee, the Lessee agrees to pay the State, upon the Effective Date, the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000), minus the Holdback Amount (as defined in Section 5.6), and minus the Storage Amount (as defined in Section 5.7), which amount, minus the Holdback Amount and the Storage Amount, shall be paid by the State to SORC on or before noon, CST, on the third (3rd) business day after the Effective Date. This amount is subject to reimbursement pursuant to the provisions of Section 7.2.

2.4. In addition to the annual fee and the payment made under Section 2.3, the Lessee agrees to pay SORRTD, upon the Effective Date, the sum of Forty Thousand Dollars (\$40,000) in consideration of SORRTD's release of all of its interests in the Rail Line.

3. RIGHTS AND OBLIGATIONS OF LESSEE

3.1. Subject to compliance with the terms and conditions of this Agreement, the State hereby grants and Lessee hereby acquires and assumes as of the Effective Date the exclusive right to provide rail transportation service on the Rail Line during the term of this Agreement, and to be the common carrier for the rail freight service provided on the Rail Line. It is Lessee's intention to conduct freight operations on the Rail Line. Lessee shall be entitled to provide passenger service at Lessee's discretion. Lessee, to the extent required by statute or regulation, at its sole expense, shall prepare and file such documents as may be required to secure exemption from approval by the Surface Transportation Board ("STB") or other governmental authority of Lessee's acquisition of the leasehold interest and operations on the Rail Line. Lessee, at its

discretion and at its expense, shall have the right to record this Agreement in the land record office of each of the counties through which the Rail Line runs. The parties acknowledge and agree that the State has and shall continue to have during the term of this Agreement the complete and exclusive ownership of the Rail Line, including the exclusive right to commence abandonment proceedings for the Rail Line or any portion thereof, following the termination of this Agreement pursuant to Section 7. Lessee shall have the right to obtain approval to discontinue rail service. For all purposes relating to the ownership of the Rail Line, including all filings with or appearances before the STB or any other federal or state authority, the State shall be shown as the owner of the Rail Line.

3.2. Upon the commencement of rail freight service, the State hereby grants and the Lessee hereby acquires, subject to the State's inspection and oversight responsibilities set out in Section 4, the right to manage the Rail Line, and agrees to do so in compliance with all applicable federal and state laws and regulations, and with all generally accepted industry standards, including those standards promulgated by the Association of American Railroads ("AAR"). All revenues and expenses therefrom shall accrue to the Lessee. All contracts for freight transportation over the Rail Line shall be in the name of the Lessee or that of any connecting railroad with which it participates in through transportation over the Rail Line and Lessee shall be responsible for the operating policies, billing rates, and scheduling of transportation over the Rail Line and the relationship with all shippers and connecting rail carriers. Lessee shall not discriminate unreasonably with respect to rates, transportation, and services against any shipper and shall provide transportation or service on reasonable request. Lessee shall be responsible for negotiating directly with all connecting railroads with respect to switch charges, divisions of revenue, car hire agreements, interchange agreements, and clerical/data exchange agreements. Lessee shall be responsible for promptly remitting to the State as received all revenues collected by or credited to Lessee subsequent to the Closing that are attributable to operations prior to the Closing.

3.3. With regard to the rail freight service and its management of the Rail Line, the Lessee agrees to furnish all equipment, machinery, manpower and support services, make such improvements to the Rail Line, establish such rates, tariffs, and other commercial arrangements, provide rail freight service to shippers within the State of Texas, and maintain the Rail Line in the condition necessary to comply with all applicable federal and state laws and regulations, and with all generally accepted industry standards, including those standards promulgated by the AAR. The parties understand and agree that there is no intent by this Agreement to create any unique regulations. Lessee shall have management and control of the operation and maintenance of the Rail Line, which shall be carried out at the Lessee's sole cost and expense.

3.4. Subject to this Section 3, Lessee agrees to provide the following services as reasonably necessary for the efficient operation of the Rail Line and the transportation of freight thereover: routine marketing consistent with the business goals of Lessee; routine inspection and maintenance of the Rail Line (including railroad bridges and trestles, culverts, structures, signs,

road crossing signals, crossings, and lighting); equipment maintenance, repair, and supply, car repair and maintenance, and sufficient motive power, including fuel and supplies, and establishing a routine system in order to facilitate compliance with industry rules, regulations and practices. All operating personnel of Lessee, prior to operating any locomotive or other track mounted equipment, shall be qualified in accordance with applicable Federal Railroad Administration ("FRA") rules and regulations.

3.5. Lessee shall have the right to erect, construct or install any structures, guards, devices, rails, ties, ballast, tracks, sidings, bridges, buildings, stations, communication facilities or other improvements upon the Rail Line for any lawful purpose. During the term of this Agreement, the improvements shall remain the property of the Lessee, and Lessee shall have the sole right to all tax benefits that may be derived from or by virtue of the improvements. Lessee agrees to cause all new improvements to be constructed in compliance with all applicable laws, ordinances, rules, and regulations of any political subdivision, agency, or instrumentality having jurisdiction over the Rail Line. Upon termination of this Agreement, such improvements shall become the property of the State.

3.6. The inspection, maintenance and rehabilitation of the tracks and other improvements of the Rail Line, the repair and servicing of locomotives, cars and other equipment and the erection or repair of any bridges, buildings or other structures within the Rail Line's right-of-way, at the discretion of the Lessee, may be performed by contractors engaged by it for such purposes.

3.7. Lessee may, with the written consent of the State, which shall not be unreasonably withheld, allow the use of the Rail Line by other railroads for rail freight operations, and may enter into agreements with other railroads for such use.

3.8. If during the term of this Agreement, any rails, ties, switches, ballast, track structures, sidings, bridges, buildings, stations, communication facilities, fixtures, improvements or appurtenances, now or thereafter situated on the Rail Line, or fixtures or personal property therein or thereon, be wholly or partially destroyed or damaged by any cause whatsoever, the State shall have no liability or responsibility to repair or restore the same (unless the damage was a result of negligent or willful misconduct of the State). The cost of repairing and restoring the same shall be the responsibility of the Lessee, except as to the SP Section.

3.9. Notwithstanding anything to the contrary contained herein, with regard to any obligation or duty of Lessee to improve, repair, maintain, or rehabilitate the Rail Line, the State agrees and acknowledges that such obligations and duties of the Lessee shall not require Lessee to take any action to improve or rehabilitate the Rail Line to a better condition than the condition of the Rail Line as of the date of this Agreement.

3.10. (a) Lessee and the State agree that if all or substantially all of the Rail Line is taken (which term as used in this Section 3.10 shall include any conveyance in avoidance or settlement

of condemnation or eminent domain proceedings) by any governmental authority under the right of eminent domain or other similar proceedings, then this Agreement shall terminate as of the date of the taking of possession by such governmental authority, and any award made by any governmental authority shall belong to and be the property of the State, subject to the Lessee's rights of reimbursement hereunder.

(b) Lessee and the State agree that if less than all or substantially all of the Rail Line is taken by any governmental authority under the right of eminent domain or other similar proceeding, then this Agreement shall nevertheless continue in effect as to the remainder of the Rail Line unless, in Lessee's judgement, evidenced by notice by Lessee to the State, so much of the Rail Line has been taken or condemned as to make it economically unsound to attempt to use the remainder thereof for the uses and purposes contemplated herein, in which latter event this Agreement shall terminate in the same manner as if the whole of the Rail Line had been taken or condemned upon possession of such portion of the Rail Line by the condemning authority, and any award made by any governmental authority shall belong to and be the property of the State, subject to the Lessee's rights of reimbursement hereunder.

(c) The State agrees that it shall not use its condemnation or eminent domain authority to take any property constituting a part of the Rail Line during the term of this Agreement.

4. RIGHTS AND OBLIGATIONS OF THE STATE

4.1. Upon a decision by the Lessee to discontinue providing rail freight service, a failure by the Lessee to exercise a renewal option, or termination of this Agreement pursuant to Section 7, exclusive operating rights on the Rail Line shall revert to the State as the owner of the Rail Line (the "residual common carrier obligation"). The residual common carrier obligation retained by the State, and the State's complete and exclusive ownership of the Rail Line includes the exclusive right to commence abandonment proceedings for the Rail Line or any portion thereof following the termination of this Agreement pursuant to Section 7.

4.2. The State and its agents or its authorized representatives, after three (3) days written prior notice to the Lessee (except in an emergency, which for purposes of this Section 4 shall mean an immediate risk to human life or of bodily injury or of material damage to the Rail Line), shall have the right to enter at all times the premises, workings or operations of the Lessee in order to inspect and examine the same for the purpose of ascertaining the conditions of the operation, the methods of operation practiced or any other lawful purpose; provided, however, that such inspections shall not unreasonably interfere with the Lessee's operations. Additionally, responsible officers of the Lessee shall be available to consult with the State from time to time as may be necessary or required by the State in order to advise the State of ongoing activities and services performed by Lessee on the Rail Line. It is mutually understood and agreed that the State's agents or authorized representatives, when in or on the Rail Line or any of Lessee's operations for any purpose, shall not be regarded under the law or otherwise as employees of the

Lessee. During any such inspection, Lessee shall have the right to have appropriate personnel available to accompany the inspection party.

4.3. The parties shall, at least once annually, jointly inspect the Rail Line to determine whether the Rail Line has been maintained in accordance with Section 3.3 of this Agreement. The State and its agents or its authorized representatives shall have the right to inspect, at other times determined by the State and after three (3) days written prior notice to the Lessee (except in an emergency, which for purposes of this Section 4 shall mean an immediate risk to human life or of bodily injury or of material damage to the Rail Line), the Rail Line to ascertain whether it has been properly maintained by the Lessee, provided, however, that such inspections shall not unreasonably interfere with the Lessee's operations. To assist the State in its inspections, the Lessee shall provide the State with copies of all FRA track inspection reports within sixty (60) days of receipt.

4.4. If the State and the Lessee disagree concerning the condition of the Rail Line or any determination by the Lessee of the appropriate level of maintenance, it is agreed by the parties that an inspection by a qualified representative of the FRA shall be arranged and such representative shall inspect those segments or portions of track in dispute. The representative's findings in this regard shall be binding upon the parties.

4.5. The State reserves the exclusive right to grant easements for public road crossings. Lessee shall not be required to share in the cost and expense of providing the physical public road crossing surface or any associated warning devices on any such easement granted by the State unless agreed to, in advance and in writing, by the Lessee and the State. After installation, the Lessee shall maintain such crossings and associated warning devices as required by applicable Federal and State laws and regulations.

4.6. If the Lessee makes application for federal grant funding, federal loan assistance, or any other federal, state or local financial aid, redevelopment or other assistance program for rehabilitation of the Rail Line, the State shall, upon the request of the Lessee, provide reasonable assistance to the Lessee in the Lessee's application.

4.7. The State hereby covenants and agrees with Lessee and its successors and assigns that Lessee, upon observing and fulfilling the covenants on its part herein contained, during the lease term herein granted, shall and may peaceably and quietly have, use, occupy, possess and enjoy the full exclusive and unrestricted use and enjoyment of the Rail Line and receive and enjoy to its own use the earnings and income and all other benefits and advantages thereof, without and free from all manner of disturbance or interference.

4.8. Notwithstanding any other provision of this Agreement, the State reserves the right to grant easements for the installation of telecommunications or other utility facilities along, across, over, in, or on, the real property portion of the Rail Line, and to authorize a grantee to enter upon

the Rail Line for purposes of installation, adjustment, relocation, and maintenance of those facilities, provided that such installation, adjustment, relocation, and maintenance does not unreasonably interfere with Lessee's operations.

5. INSURANCE AND INDEMNIFICATION

5.1. Lessee shall secure and maintain in effect at all times during the term of this Agreement a commercial railroad liability insurance policy or policies providing liability coverage in connection with its lease and operation of the Rail Line substantially similar to the coverage maintained by SORC as of the Closing. Insurance shall be placed with insurance companies authorized to do business in the State of Texas, and shall name the Texas Department of Transportation as an additional insured. Lessee shall use commercially reasonable efforts to furnish to and maintain with the State certificates of such insurance evidencing current coverage, each containing agreements by the insurers not to cancel or modify the policies without giving the State at least thirty (30) days prior written notice.

5.2. Lessee shall hold harmless and indemnify the State and its officers, agents, and employees against any liability, loss, claim, or expense the State incurs that relates to or arises out of the acts or omissions of the Lessee as the operator of rail services on the Rail Line. Lessee shall hold harmless and indemnify the State and its officers, agents, and employees against any liability, loss, claim or expense for damage to property or for personal injury or death if such property damage, personal injury or death shall arise out of any act or omission of the Lessee in its performance of its rights and responsibilities as the operator of rail services on the Rail Line.

5.3. Except to the extent prohibited by law, the State shall hold harmless and indemnify the Lessee and its officers, agents, and employees against any liability, loss, claim, or expense the Lessee incurs that relates to or arises out of the acts or omissions of the State as the owner of the Rail Line. Except to the extent prohibited by law, the State shall hold harmless and indemnify the Lessee and its officers, agents, and employees against any liability, loss, claim or expense for damage to property or for personal injury or death if such property damage, personal injury or death shall arise out of any act or omission of the State in its performance of its rights and responsibilities as the owner of the Rail Line. Except to the extent prohibited by law, the State shall hold harmless and indemnify the Lessee and its officers, agents, and employees, for a period of one hundred twenty (120) days after the Closing, against any liability, loss, claim, or expense the Lessee incurs that arises out of the absence of fully operational active railroad-highway traffic control systems, including signals and gates. Except to the extent prohibited by law, the State shall hold harmless and indemnify the Lessee and its officers, agents, and employees against any liability, loss, claim, or expense the Lessee incurs that relates to any event or transaction regarding the Rail Line occurring prior to the Effective Date. The State hereby assigns to the Lessee a joint interest in any indemnities from the Atchison, Topeka and Santa Fe Railway Company and from SORC acquired by the State pursuant to the Grant Funding Agreement, SORC Agreement, SORRTD Agreement, or any other agreement, including the

Indemnity Agreement executed by SORC on or about December 30, 1991, pursuant to which SORC indemnifies TxDOT and its successors and assigns with respect to claims for damages resulting from the operation of the railroad business on the Rail Line and related activities; the State agrees it shall not release or terminate any such indemnities during the term of this Agreement.

5.4. Lessee shall require all persons entering upon or performing work on the Rail Line under any agreement with the Lessee (including any other railroads allowed on the Rail Line under Section 3.7) to agree to hold harmless and indemnify the State and its officers, agents, and employees from and against any liability, loss, claim, or expense for bodily injury or death to any persons or damage to any property arising out of any act or omission of such contractor on or in connection with the Rail Line, irrespective of the fault, failure or negligence (other than sole negligence) of the State. Lessee shall also require any such person or entity to secure and maintain in effect at all times during the performance of such work on the Rail Line a contractual liability insurance policy insuring such person or entity from liability under this section. Lessee shall provide the State a copy of all such policies or certificates of insurance upon request.

5.5. Anything hereto to the contrary notwithstanding, it is the intention of the parties that the Lessee shall be an independent contractor with regard to any and all activities and services performed and conducted by it under and pursuant to the terms of this Agreement. All persons engaged by the Lessee for purposes of discharging its duties hereunder shall be deemed to be the employees, agents or subcontractors (as the case may be) of the Lessee and shall not be deemed to be employees, agents or subcontractors of the State. Lessee shall be solely liable for compliance with all laws and regulations of the United States and the State of Texas and any other proper authority relating to employee wages and benefits, FELA and worker's compensation, unemployment compensation, social security, and all other employment laws and regulations, and Lessee shall hold harmless and indemnify the State from any and all liability for and on account of the aforesaid matters.

5.6. (a) Lessee shall withhold Eight Hundred Thousand Dollars (\$800,000) (the "Holdback Amount") from the payment provided for in Section 2.3. Lessee shall hold fifty percent (50%) of the Holdback Amount ("Retained Amount") for a period of three (3) years (the "Holdback Period") beginning on the Effective Date and ending on the third anniversary of the Effective Date ("Termination Date"). Lessee shall deposit the remaining fifty percent (50%) of the Holdback Amount ("Deposited Amount") with the State for the Holdback Period. The State shall deposit the Deposited Amount in the state treasury.

(b) Lessee shall have the right to apply all or part of the Retained Amount to pay or settle from time to time: (i) any costs, damages, claims, expenses (including reasonable attorneys' fees), losses and liabilities ("Claims") resulting from or relating to any event, condition or transaction regarding the Rail Line occurring prior to the Effective Date relating to environmental matters; and (ii) any costs and expenses (including reasonable attorneys' fees) of any project ("Project") to remediate or abate conditions on the Rail Line which are reflected in

the Flash Report Environmental Site Assessment (South Orient Rail Line – San Angelo Junction to Presidio, Texas), dated January 17, 2000 prepared by Environmental Resources Management (the “Environmental Report”) and, if not so reflected, which Lessee has concluded in its reasonable discretion might result in a Claim relating to environmental matters; provided, however, in the event that Lessee has been notified of a Claim or begins work on a Project, it shall promptly provide the State (which the State will promptly provide to SORC) with a reasonably detailed description of the Claim or Project. Upon completion of each Project, Lessee shall promptly provide the State (which the State will promptly provide to SORC) with a reasonably detailed description of the work done in connection with such Project. An environmental matter shall be deemed to include, without limitation, the presence or release into the environment of any materials of environmental concern or circumstances forming the basis of any violation, or alleged violation, of any environmental law. Materials of environmental concern shall be deemed to mean any pollutant, contaminant, waste, toxic substance, hazardous substance or petroleum. Environmental laws shall be deemed to mean all federal, state and local laws and regulations relating to pollution or protection of human health or the environment, including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of materials of environmental concern, or otherwise relating to the use, treatment, storage, disposal, transport or handling of materials of environmental concern.

(c) Lessee shall have the right to apply all or part of the Deposited Amount to pay or settle from time to time any Claims resulting from or relating to any event, condition or transaction regarding the Rail Line occurring prior to the Effective Date relating to environmental matters; provided (i) the Claim is the subject of a claim, action or investigation initiated by an environmental agency or other individual, firm, corporation, partnership, trust or other entity of any kind; (ii) Lessee promptly provides the State (which the State will promptly provide to SORC) with a reasonably detailed description of the Claim; (iii) SORC shall have a reasonable opportunity to analyze such Claim and to express to the State and Lessee its opinion regarding the validity of the Claim; and (iv) SORC shall have consented to the payment or settlement of such Claim, provided consent shall not be unreasonably withheld.

(d) At the end of each calendar quarter during the Holdback Period, Lessee shall pay the State interest at the prime rate of interest for commercial banks quoted in the Money Rates Section (or other place) of The Wall Street Journal from day to day on the daily balance of that part of the Retained Amount on each such day during such quarter which has not been paid in respect of or allocated to Claims or Projects. The State shall promptly remit such interest to SORC.

(e) Promptly after the Termination Date, Lessee shall pay to the State that part of the Retained Amount that has not been applied to Claims and Projects, and the State shall pay to SORC (i) such balance of the Retained Amount and (ii) that part of the Deposited Amount that has not been applied to Claims; provided that Lessee may withhold and may direct the State to withhold an amount reasonably necessary to pay or settle any then unresolved Claims and

uncompleted Projects (with the balance of such withheld amounts to be paid to SORC after such resolution and completion are final).

(f) The payment obligations of Lessee under Section 5.6(d) and (e) will be unconditionally and irrevocably guaranteed by Nuevo Grupo Mexico, S.A. de C.V.

5.7. Lessee shall withhold from the payment provided for in Section 2.3 an amount equal to One Hundred Seventy Five Dollars (\$175) times the number of rail cars that are still in storage on the Rail Line on the Effective Date ("remaining GE Rail Cars") under a Storage Agreement ("GE Agreement") between SORC and General Electric Rail Services Corporation ("GE") dated January 17, 2000 (the "Storage Amount"). Lessee shall deposit the Storage Amount with the State, which shall deposit the Storage Amount in the state treasury. At the end of ninety (90) days after the Effective Date, the Lessee will be entitled to payment from the Storage Amount of an amount equal to the Storage Amount minus any revenue received or receivable by the Lessee from GE as storage payments for or for the movement of the remaining GE Rail Cars to Alpine Junction, Texas or to Mexico during such ninety (90) day period (but not to exceed the Storage Amount). TxDOT will promptly remit the remainder of the Storage Amount to SORC. The State will cause SORC to terminate the GE Agreement effective as of the Effective Date, and to assist the Lessee in negotiating a new storage agreement with GE.

5.8. If requested by the Lessee prior to the Effective Date, the State shall cause SORC to transfer the SORC Insurance Policies to the Lessee.

6. EVENTS OF DEFAULT

6.1. The occurrence of any of the following events, in the absence of a Force Majeure Event (except as to Section 6.1 (a)), shall constitute a default by the Lessee hereunder:

(a) Failure to make payments of the annual fee when due, and such failure continues for sixty (60) days following written demand therefor;

(b) Failure to perform its duties in a manner required by law, rule, regulation, or ordinance or, in the absence of such laws, rules, regulations or ordinances, in a manner consistent with industry accepted practices and procedures and generally accepted railroad safety practices or procedures;

(c) Failure to provide transportation or service upon reasonable request to shippers located on the Rail Line in the absence of a lawfully filed and maintained embargo, and such failure continues for a period of sixty (60) days;

(d) The performance of its duties in such a manner that results in a cessation or closure order from any governmental agency, department, or bureau, including without

limitation any order from any agency, department, or bureau regarding the work environment of railroad employees;

(e) The breach of any other provision of this Agreement for a period of thirty (30) days after receipt of notice of such breach from the State;

(f) The filing of a petition for bankruptcy, reorganization or arrangement of the Lessee pursuant to the U.S. Bankruptcy Reform Act or any similar proceeding, and such petition is not dismissed or stayed within thirty (30) days; or

(g) The levy of a writ of execution, foreclosure or attachment or the filing of a mechanics' or materialmens' lien against the personal property of the Lessee located on the Rail Line or used in connection therewith that precludes the Lessee's ability to perform its duties hereunder unless Lessee has posted a surety bond therefor.

6.2 The occurrence of any of the following events shall constitute a default by the State hereunder:

(a) Failure to perform its duties in a manner required by law, rule, regulation, or ordinance or, in the absence of such laws, rules, regulations or ordinances, in a manner consistent with industry accepted practices and procedures and generally accepted railroad safety practices or procedures;

(b) The breach of any other provision of this Agreement for a period of thirty (30) days after the receipt of notice of such breach from the Lessee; or

(c) The levy of a writ of execution, foreclosure or attachment or the filing of a mechanics' or materialmens' lien against the personal property of the State located on the Rail Line or used in connection therewith that precludes the State's ability to perform its duties hereunder unless the State has posted a surety bond therefor.

7. TERMINATION

7.1. This Agreement shall terminate upon the occurrence of any of the following:

(a) Upon the expiration of the primary term or any renewal term without a renewal option having been exercised in accordance with Section 1.3;

(b) Upon the expiration of ninety (90) days following written notice given by the State of the occurrence or existence of any event of default as provided for in Section 6.1, unless such default has been cured or waived or such notice is withdrawn within such ninety (90) day period provided that if Lessee within such ninety (90) days period shall

have commenced action to cure such default but is unable, by reason of the nature of the performance required, to cure same within such period, and if Lessee continues such action thereafter diligently and without unnecessary delays, Lessee shall not be in default hereunder until the expiration of a period of time as is reasonably necessary to cure such default;

(c) Upon the expiration of ninety (90) days following written notice given by the Lessee of the occurrence or existence of any event of default as provided for in Section 6.2, unless such default has been cured or waived or such notice is withdrawn within such ninety (90) day period; provided that if the State within such ninety (90) days period shall have commenced action to cure such default but is unable, by reason of the nature of the performance required, to cure same within such period, and if the State continues such action thereafter diligently and without unnecessary delays, the State shall not be in default hereunder until the expiration of a period of time as is reasonably necessary to cure such default; or

(d) At any time by written mutual agreement of the parties hereto.

7.2. Except for termination of this Agreement based in whole or in part on a failure by the Lessee to make a payment of the annual fee when due, the State agrees that upon the termination of this Agreement by the State it will reimburse the Lessee, subject to the appropriation of funds, for sums paid the State under Section 2.3 or expended by the Lessee to improve the installed rails, ties, switches, ballast, other track structures on the Rail Line and any other improvements reasonably necessary for the continued operation or maintenance of the Rail Line (collectively "Rail Line Improvements") on the following basis:

(a) If the Lessee improves the Rail Line to FRA Class 2 track standards or better, and service is terminated within five (5) years after the Effective Date, the State shall reimburse the entire amount paid under Section 2.3, and shall reimburse the Lessee for sixty five percent (65%) of the depreciated book value of the Rail Line Improvements as calculated in accordance with generally accepted accounting principles, with the amount of reimbursement for Rail Line Improvements not to exceed seven million five hundred thousand dollars (\$7,500,000); or

(b) If the Lessee improves the Rail Line to FRA Class 2 track standards or better, and service is terminated more than five (5) years after the Effective Date, the State shall reimburse the Lessee for fifty percent (50%) of the depreciated book value of the Rail Line Improvements as calculated in accordance with generally accepted accounting principles, with the amount of reimbursement for Rail Line Improvements not to exceed five million dollars (\$5,000,000).

7.3. In the event of termination during a period in which the Lessee has paid in advance the annual fee payment, the State shall reimburse the Lessee for a pro rata percentage of that payment.

7.4. In the event of any termination of this Agreement, the Lessee shall vacate the Rail Line, in an orderly manner, and shall deliver to the State all occupation agreements, track and signal maps, structural, bridges and other drawings and plans in its possession, files related to maintenance history, a list of customers the Lessee has provided service to since the commencement of this Agreement, and any other data related to the continued operation and maintenance of the Rail Line. In the event of any termination of this Agreement, Lessee, with the written consent of the Union Pacific Railroad Company or its successor in interest, shall assign or otherwise transfer the Trackage Rights to the State or a rail carrier designated by the State to provide rail transportation service on the Rail Line. Notwithstanding any provisions herein to the contrary, the State may only terminate this Agreement if it has performed all its obligations hereunder to Lessee, including without limitation any payment to be made to Lessee. For example, no termination shall occur until funds for payment of amounts referred to in Section 7.2 have been appropriated and such amounts have been paid to the Lessee. Lessee hereby expressly waives the institution of legal proceedings to authorize the State's re-entry and repossession of the Rail Line pursuant to a valid termination of this Agreement.

7.5. In the event of termination of this Agreement pursuant to Section 7.1 (a), (b) or (d), the Lessee, at its sole cost and expense, will promptly seek any necessary authority to discontinue rail service from the STB or other governmental authority. If the Lessee fails to do so, the Lessee agrees that the State may seek such authority on behalf of the Lessee, and the Lessee shall reimburse the State for all costs (including filing fees and attorney's fees) incurred by the State. Following its having been authorized to discontinue providing service on the Rail Line, Lessee shall not oppose the efforts of any rail carrier designated by the State to operate rail freight services on the Rail Line to obtain authority from the STB or other governmental authority to provide rail service.

7.6. All accrued obligations and indemnity provisions shall survive the termination of this Agreement.

8. AUDITS AND REPORTS

8.1 Lessee shall file an annual report with the State in the form attached hereto as Exhibit B on or prior to May 1 of each calendar year during the term of this Agreement beginning on May 1, 2002, and covering the preceding calendar year. The financial statement will be unaudited and will fairly present the following information: (a) income from operating the Rail Line during the preceding calendar year, specifying freight revenue and all other revenue; (b) expenses incurred

by the Lessee in operating the Rail Line during the preceding calendar year, specifying transportation expense, maintenance expense, general and administrative expense, and all other expense; and (c) the depreciated book value of the Rail Line Improvements as of December 31st of the preceding calendar year.

8.2. Lessee's business, financial and management data are highly sensitive, proprietary and confidential. Any and all information acquired by the State under the terms of this Section 8 shall only be divulged as may be required by law or in connection with any administrative or legal proceeding.

9. TAXES

9.1. Railroad properties owned by the State are currently exempt from ad valorem taxation of real property by the Texas Constitution. In the event that the Texas Constitution is amended or lawfully construed to permit ad valorem taxes to be assessed by any taxing jurisdiction authorized to assess and/or collect ad valorem taxes against the Rail Line properties, including right-of-way and other lands and improvements thereto, the Lessee shall be responsible for such taxes; provided, however, the State shall reimburse the aggregate of such taxes to the Lessee upon termination of this Agreement (except for termination based in whole or in part on a failure by the Lessee to make a payment of the annual fee when due).

9.2. Nothing herein shall be construed to relieve the Lessee from any liability to pay taxes assessed against its motive power, rolling stock or other equipment, or any other personal property owned by the Lessee.

10. FORCE MAJEURE

10.1. Lessee shall have no obligation to operate over any portion of the Rail Line or perform any of its other obligations hereunder (other than its obligations to make lease payments pursuant to Section 2 hereof) during any period when it is prevented or hindered from operating or performing such obligations by acts of God, public authority, strikes, riots, labor disputes, judicial or administrative order or decree, or any other cause beyond its control.

10.2. Events or conditions referred to in Section 10.1 are referred to herein as "Force Majeure Events".

11. OTHER USES OF THE RAIL LINE

11.1. Lessee shall not make any use of the Rail Line, other than as provided herein, except with the prior consent of the State.

12. MISCELLANEOUS PROVISIONS

12.1. Entire Agreement. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein, and no amendment of this Agreement shall be effective unless set forth in writing and duly executed by both parties.

12.2. Notices. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given: (a) upon receipt if personally delivered or by overnight courier; (b) on the date sent if made by facsimile transmission to the party to whom such notice or communication is directed to the facsimile number of such person stated on Exhibit C (or as otherwise provided to or obtained by the sending party) and if followed by a telephone call to such person at the same time to the telephone number stated on Exhibit C (or otherwise provided to or obtained by the sending party) advising such person that the facsimile transmission has been sent and a general statement about the contents thereof; or, (c) on the third business day after being sent by registered or certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth in Exhibit C. Any party by written notice to the other may change the address or the persons to whom notices or copies thereof shall be directed.

12.3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the State and the Lessee, and shall be binding upon the successors and assigns of the Lessee, subject to the limitations hereinafter set forth. Lessee may not assign its rights and obligations under this Agreement or any interest therein, or attempt to have any other person, firm or corporation assume its rights or obligations under this Agreement other than to any affiliate of the Lessee, without the prior written consent of the State, which consent shall not be unreasonably withheld. The State may not assign its rights and obligations under this Agreement or any interest therein, or attempt to have any other person, firm or corporation assume its rights or obligations under this Agreement, other than to another agency of the State of Texas, without the prior written consent of the Lessee, which consent shall not be unreasonably withheld.

12.4. Non-Collusion. The officer or duly authorized agent of the Lessee that has executed this Agreement on behalf of the Lessee warrants and affirms that: (a) the execution, delivery, and performance by the Lessee under the terms of this Agreement have been duly and validly authorized by all necessary action under applicable law, its governing documents and otherwise (none of which actions have been modified or rescinded and all of which actions are in full force and effect); and (b) he is fully aware of the facts and circumstances surrounding the making of this Agreement, and neither the Lessee, its partners, or anyone else subject to the Lessee's direction and control has paid, given, donated or agreed to pay, give or donate any money or other thing of value, either directly or indirectly, to any officer or employee of the State in procuring this Agreement.

12.5. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.

12.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

12.7. Waivers. Any waiver by any party of any violation of, breach of, or default under any provision of this Agreement or any other agreements provided for herein, by the other party must be in writing and shall not be construed as, or constitute, a continuing waiver of such provision, or waiver of any other violation of, breach of, or default under any other provision of this Agreement or any other agreements provided for herein.

12.8. Headings. The headings herein are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.

12.9. Governing Law. All issues, claims, disputes or controversies arising out of or related hereto shall be governed by and resolved in accordance with the laws of the State of Texas, excluding the choice-of-law rules of the State of Texas. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used to attempt to resolve all disputes arising between the parties under this Agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 
Charles W. Heald, P.E.
Executive Director

TEXAS PACIFICO TRANSPORTATION, LTD.

By: TEXAS PACIFICO GP, LLC, its General Partner.

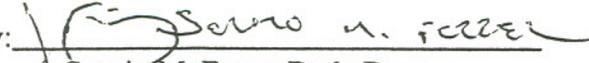
By: 
Sergio M. Ferrer De la Barrera
Manager

EXHIBIT A -- LEGAL DESCRIPTION OF RAIL LINE REAL ESTATE

ALL INTERESTS IN THE REAL ESTATE (INCLUDING, WITHOUT LIMITATION, FEE SIMPLE, LEASEHOLD [AS LANDLORD OR TENANT], EASEMENT, RIGHT-OF-WAY, LICENSE, REVERSIONARY AND OTHER REAL PROPERTY INTERESTS AND ALL IMPROVEMENTS AND FIXTURES THEREON AND APPURTENANCES THERETO) CONVEYED BY THOSE TWO CERTAIN DEEDS WITHOUT WARRANTY DATED DECEMBER 30, 1991 (WHICH DEEDS ARE RECORDED IN THE DEED RECORDS OF THE COUNTIES MENTIONED BELOW) FROM THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (HEREIN CALLED "SANTA FE") TO SOUTH ORIENT RURAL RAIL TRANSPORTATION DISTRICT (HEREIN CALLED "SORRTD"), SAVE AND EXCEPT THOSE LANDS AND IMPROVEMENTS THEREON LOCATED IN TOM GREEN COUNTY, TEXAS, WHICH WERE CONVEYED BY QUITCLAIM DEED DATED NOVEMBER 15, 1993 (WHICH DEED IS RECORDED IN VOLUME 410, PAGE 147 OF THE OFFICIAL PUBLIC RECORDS OF TOM GREEN COUNTY, TEXAS) FROM THE STATE OF TEXAS TO THE CITY OF SAN ANGELO, TEXAS, WHICH INTERESTS IN REAL ESTATE COMPRISE THAT CERTAIN APPROXIMATELY 381.9-MILE RAILROAD BEGINNING AT THE RAILROAD STATION OF SAN ANGELO JUNCTION, TEXAS (NEAR THE CENTER OF COLEMAN COUNTY, TEXAS) AND RUNNING IN A WEST SOUTHWESTERLY DIRECTION THROUGH OR NEAR THE CITIES OR TOWNS OF BALLINGER, SAN ANGELO, MERTZON, BIG LAKE, SANTA RITA, RANKIN, McCAMEY, FORT STOCKTON, ALPINE AND PRESIDIO, TEXAS, ENDING IN THE MIDDLE OF THE INTERNATIONAL BRIDGE AT PRESIDIO, TEXAS AND WHICH CONSTITUTES THAT PORTION OF THAT CERTAIN LINE OF RAILROAD DESIGNATED IN THE RECORDS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AS THE SAN ANGELO SUBDIVISION OF THE SOUTHERN REGION, CONNECTING THE RAILROAD STATION OF SAN ANGELO JUNCTION, COLEMAN COUNTY, TEXAS AND PRESIDIO, PRESIDIO COUNTY, TEXAS, AND LYING IN THE COUNTIES OF BREWSTER, COLEMAN, CRANE, CROCKETT, IRION, PECOS, PRESIDIO, REAGAN, RUNNELS, TOM GREEN, AND UPTON, IN THE STATE OF TEXAS, AND DESCRIBED MORE SPECIFICALLY AS FOLLOWS:

- A. THAT PORTION OF THAT CERTAIN 464 MILE RAILROAD DESCRIBED FIRST IN DEED DATED AUGUST 1, 1965, FROM KANSAS CITY, MEXICO AND ORIENT RAILWAY COMPANY OF TEXAS, AS GRANTOR, TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS GRANTEE, FILED FOR RECORD AUGUST 2, 1965, IN VOLUME 151 OF DEED RECORDS, AT PAGE 302 OF THE RECORDS OF BREWSTER COUNTY, TEXAS, WHICH PORTION LIES SOUTHERLY OF SAN ANGELO SUBDIVISION MILEPOST 712 + 0000 FEET, BEING THE SOUTHERLY LIMIT OF THE ABANDONMENT APPROVED BY THE INTERSTATE COMMERCE COMMISSION ON SEPTEMBER 15, 1982 IN ICC FINANCE DOCKET NO. 30002, AND NORTHERLY OF SAN ANGELO SUBDIVISION MILEPOST 945 + 1818.7 FEET, BEING THE SOUTHERLY LIMIT OF THAT 464 MILE RAILROAD;

- B. ALL OF THAT CERTAIN 72 MILE RAILROAD DESCRIBED SECOND IN THE DEED DATED AUGUST 1, 1965 FROM KANSAS CITY, MEXICO AND ORIENT RAILWAY COMPANY OF TEXAS, AS GRANTOR, TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS GRANTEE, FILED FOR RECORD AUGUST 2, 1965 IN VOLUME 151 OF DEED RECORDS, AT PAGE 302 OF THE RECORDS OF BREWSTER COUNTY, TEXAS;
- C. THAT PORTION OF THAT CERTAIN 70.8 MILE RAILROAD DESCRIBED FIFTH IN DEED DATED AUGUST 1, 1965, FROM GULF, COLORADO AND SANTA FE RAILWAY COMPANY, AS GRANTOR, TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS GRANTEE, FILED FOR RECORD AUGUST 2, 1965 IN VOLUME 427 OF DEED RECORDS, AT PAGE 96 OF THE RECORDS OF COLEMAN COUNTY, TEXAS, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY BOUNDARIES OF THOSE CERTAIN 100-FOOT WIDE STRIPS OF LAND DESCRIBED IN DEED FROM THE ESTATE OF JOHN SEALY, FILED FOR RECORD DECEMBER 5, 1885, IN VOLUME "O" AT PAGE 175, AND IN DEED DATED OCTOBER 5, 1885, FROM COLEMAN COUNTY, FILED FOR RECORD OCTOBER 6, 1885, IN VOLUME "O" AT PAGE 60, BOTH OF THE RECORDS OF COLEMAN COUNTY, AND NORTHEASTERLY OF SAN ANGELO SUBDIVISION MILEPOST 70 + 3715.3 FEET, BEING THE SOUTHWESTERLY TERMINUS OF THAT 70.8 MILE RAILROAD, AT ITS CONNECTION WITH THE ABOVE DESCRIBED 464 MILE RAILROAD AT SAN ANGELO SUBDIVISION MILEPOST 715 + 1072 FEET;
- D. ALL OTHER INTERESTS IN REAL ESTATE WHICH IS WITHIN 500 FEET OF THE CENTERLINE OF THE SAID RAILROAD IN WHICH THE STATE OF TEXAS (TxDOT) OWNS AN INTEREST IN EACH OF THE ELEVEN COUNTIES DESCRIBED IN THE FIRST PARAGRAPH ABOVE;
- E. INCLUDING ALL YARD, SPUR, INDUSTRIAL, TEAM, SWITCHING OR SIDE TRACKS SPRINGING FROM OR CONNECTED WITH ANY AND ALL OF SAID LINES OF RAILROAD AND ALL OF TxDOT'S INTEREST IN AND TO THE LAND, RIGHT-OF-WAY, AND OTHER PROPERTY INTEREST, REAL, PERSONAL OR MIXED, IN THE RAIL LINE AS DEFINED IN THE LEASE AND OPERATING AGREEMENT TO WHICH THIS EXHIBIT A IS ATTACHED IN THE ABOVE NAMED COUNTIES IN THE STATE OF TEXAS OWNED BY TxDOT;
- F. TOGETHER WITH ALL LANDS, TENEMENTS, HEREDITAMENTS, WAYS, AND RIGHTS-OF-WAY HELD FOR SAID RAILROAD OR FOR ANY PURPOSE IN CONNECTION WITH THE CONSTRUCTION, OPERATING, WORKING OR MAINTENANCE OF THE SAME OR ANY OF THE SAME TOGETHER WITH ALL EASEMENTS AND APPURTENANCES THEREUNTO BELONGING OR IN ANY WISE APPERTAINING.

THE ABOVE DESCRIBED RAIL LINE REAL ESTATE BEING THE SAME RAIL LINE REAL ESTATE DESCRIBED IN THAT CERTAIN LEASE AGREEMENT DATED AS OF DECEMBER 30, 1991 BETWEEN SORRTD AND THE SOUTH ORIENT RAILROAD COMPANY, LTD., SUCH LEASE, OR A MEMORANDUM THEREOF, BEING RECORDED IN THE REAL ESTATE RECORDS OF THE ABOVE NAMED COUNTIES (THE "ELEVEN COUNTIES").

WHICH RAIL LINE REAL ESTATE IS ALSO THE SAME RAIL LINE REAL ESTATE DESCRIBED IN:

1. THAT CERTAIN ASSIGNMENT OF LEASE AND OTHER ASSETS WITHOUT WARRANTY DATED AS OF JANUARY 31, 2001 BY THE SOUTH ORIENT RAILROAD COMPANY, LTD. IN FAVOR OF THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION AND RECORDED IN THE REAL ESTATE RECORDS OF THE ELEVEN COUNTIES;

2. THAT CERTAIN CANCELLATION OF LEASE AGREEMENT DATED AS OF JANUARY 31, 2001 BY AND BETWEEN THE SOUTH ORIENT RURAL RAIL TRANSPORTATION DISTRICT AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION AND RECORDED IN THE REAL ESTATE RECORDS OF THE ELEVEN COUNTIES; AND

3. THAT CERTAIN DEED WITHOUT WARRANTY DATED AS OF JANUARY 31, 2001 BY THE SOUTH ORIENT RURAL RAIL TRANSPORTATION DISTRICT IN FAVOR OF THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION AND RECORDED IN THE REAL ESTATE RECORDS OF THE ELEVEN COUNTIES.

EXHIBIT B
Annual Report*

The report is divided into four sections as follows:

Section 1 -- Financial Statement

Section 2 -- Maintenance to the Rail Line

Section 3 -- Improvements to the Rail Line

Section 4 -- Carload Movements

* Note- all portions of the report are to be in the English language and submitted to TxDOT by May 1st of each year.

5

EXHIBIT B
Annual Report*

Section 1 – Financial Report for the calendar year beginning January 1, _____ through December 31, _____.

The Texas Department of Transportation requires the following financial information to be submitted annually:

1. Income from operating the Rail Line
 - (a) Freight revenue _____
 - (b) All other revenue _____
 - (c) Total revenue _____

2. Expenses from operating the Rail Line
 - (a) Transportation expense _____
 - (b) Maintenance expense _____
 - (c) General and administrative expense _____
 - (d) All other expenses _____
 - (e) Total expenses _____

3. Depreciated book value of Rail Line Improvements
As of December 31, _____

* Note- all portions of the report are to be in the English language and submitted to TxDOT by May 1st of each year.

AG

EXHIBIT B
Annual Report*

Section 2 – Maintenance to the rail line during the calendar year beginning January 1, _____ through December 31, _____.

Description of the maintenance work – provide a brief narrative including the locations, scope of work and what was being accomplished.

List of maintenance work accomplished:

<u>Type of maintenance work</u>	<u>Location</u>	<u>Costs**</u>	<u>Date Installed***</u>
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* Note- all portions of the report are to be in the English language and submitted to TxDOT by May 1st of each year.

**Costs – provide the costs in US dollars itemized by: materials, labor and salvage value of any replaced items. Copies of documentation such as paid invoices, paid contracts, completed work orders, etc. shall be attached.

***Date work was completed.

AG

EXHIBIT B
Annual Report*

Section 3 – Improvements to the rail line during the calendar year beginning January 1, _____ through December 31, _____.

Description of improvements installed on the rail line - provide a brief narrative including locations, scope and what was being accomplished.

<u>Type of improvement</u>	<u>Location</u>	<u>Costs**</u>	<u>Date of installation***</u>
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* Note- all portions of the report are to be in the English language and submitted to TxDOT by May 1st of each year.

**Costs – provide the costs in US dollars itemized by: materials, labor and salvage value of any replaced items. Copies of documentation such as paid invoices, paid contracts, completed work orders, etc. shall be attached.

***Date work was completed.



EXHIBIT B
Annual Report*

Section 4 - Carload Movements during the calendar year beginning January 1, _____ through December 31, _____.

Provide the total number of carloads transported itemized by:

- a) the total number of carloads originating in Mexico and crossing the border at Presidio into Texas. _____
- b) the total number of carloads originating in the United States and crossing the border at Presidio into Mexico. _____
- c) the total number of carloads originating in Texas and moved to another destination in Texas and/or interchanged with another rail company in Texas. _____

* Note- all portions of the report are to be in the English language and submitted to TxDOT by May 1st of each year.

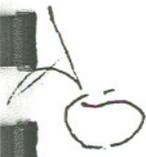


EXHIBIT C -- NOTICES

<u>STATE</u>	<u>LESSEE</u>
<p>Texas Department of Transportation Attn: Executive Director 125 East 11th Street Austin, Texas 78701-2483 Telephone: 512-305-9501 Facsimile: 512-305-9567</p>	<p>Texas-Pacifico Transportation, Ltd. Attn: Sergio Ferrer Piso 10, Ave. Baja California No. 200 Col. Roma Sur Deleg. Cuauhtemoc Mexico, D.F. 06760 Telephone: 011-525-574-8440 Facsimile: 011-525-574-8442</p>
<p><u>with a copy to:</u> Texas Department of Transportation Office of General Counsel 125 East 11th Street Austin, Texas 78701-2483 Telephone: 512-463-8630 Facsimile: 512-475-3070</p>	<p><u>with a copy to:</u> Jaime Serra SAI Law & Economics Edificio Plaza Reforma Prol. Paseo de la Reforma No. 600-103 Mexico, D.F. 01210 Telephone: 011-525-259-6618 Facsimile: 011-525-259-3928</p> <p><u>and a copy to:</u> Michael S. Moehlman Baker Botts L.L.P. One Shell Plaza 910 Louisiana Houston, Texas 77002 Telephone: 713-229-1370 Facsimile: 713-229-7770</p>

SCHEDULE I

LEASE NO.	CUSTOMER	LEASE TYPE	LOCATION	CONTACT
5113	Big Lake Farm and Ranch	Land	Big Lake	Tim Bennie
5127	H.H. Lintchicum	Land	Barnhart	H.H. Lintchicum
5134	Western Wool and Mohair	Land		Chip Taylor
5146	National Diversified Co.	Land	Ballinger	Trey Lindemann
5171	Brunson Feed Mill	Land	Ballinger	Stephen Brunson
5188	West Texas Wool and Mohair	Land	Mertzon	
5190	San Angelo Elevator	Land	Rowena	
5192	Ranchers Supply Store	Land	Rankin	Brent Wrinkle
5198	San Angelo Elevator	Land	Rankin	
5199	McCoy Lumber	Land	San Angelo	
5200	Brunson Feed Mill	Land	Ballinger	Stephen Brunson
5205	West Texas Wool and Mohair	Land	Mertzon	
5214	Ballinger Co-op Gin Co.	Land	Ballinger	Ken Drake
0398	West Texas Wool and Mohair	Land	Mertzon	
6101	Bode Feed and Supply	Track		Tommy Turney
6102	Veribest Cattle Feeders	Track		President
6104	City Lumber Co.	Track		
6105	Galbraith Steel and Supply	Track		
6106	City Lumber	Track		
6107	Ballinger Compress	Track		President
6108	Standard Sales	Track		President
6109	Ballinger Co-op Gin Co.	Track		President
6110	Hirschfield Steel Co.	Track		Vice President
6111	Miles Co-op Gin	Track		President
6118	West Texas Wool and Mohair	Track		President

Handwritten mark

6119	Halliburton Oil Well Co.	Track		President
6120	Texas Tank Car Works	Track		
6121	Texas Tank Car Works	Track		
6122	Fred C. Kennedy	Track		
6123	M System Food Store	Track		President
6125	Conoco, Inc.	Track		President
6126	Badger Mining Corp.	Track	Rankin	Robert Bartol
6127	Mayfield Paper Co.	Track		President
6131	San Angelo Feed Yard	Track		President
6132	Southwestern Livestock	Track		President
6133	H.H. Lintchicum	Track		J.B. Miller
6134	San Angelo By-Products, Inc.	Track		Manager
6135	Brunson Feed Mill	Track		Stephen Brunson
6136	West Texas Wool and Mohair	Track		
6138	Butts Recycling	Track		
6140	West Texas Utilities	Track		Vice President
6141	Tapia Dairies	Track		
6142	4 D Distributing Co.	Track		
6143	Angelo Pellets	Track	San Angelo	Bruce Tinney
6144	West Texas Utilities	Track		Vice President
6145	Dinsoil	Track		
6146	Texas Compress	Track		Vice President
6152	Big Lake Farm and Ranch	Track		Tim Bennie
6154	Brunson Feed Mill	Track		Stephen Brunson
6157	Lawdermilk Service Co.	Track		M. Lawdermilk
6160	Red Bluff Lumber	Track		President
6166	F.C. Bolen	Track		
6167	M-I Drilling Fluids	Track		President
6169	American Metals	Track		President
6170	Drilling Mud, Inc.	Track		President
6177	Swift Independent Packing	Track		Vice President

6178	Halliburton Co.	Track		Vice President
6179	Big Lake Farm and Ranch	Track		Tim Bennie
6182	Texaco Refining	Track		F.B. Stanley
6183	M-I Drilling Fluids	Track		President
6184	M-I Drilling Fluids	Track		President
6185	Milchem, Inc.	Track		Vice President
6186	Milchem, Inc.	Track		Vice President
6188	Milpark Drilling	Track		Vice President
6189	McCoy Corporation	Track		Vice President
6190	Certain-Teed Products	Track		Vice President
6194	Miles Gin Co.	Track		G.A. Kasberg
6195	Texas Tank Car Works	Track	San Angelo	President
6196	Hendrix, Miles and Hendrix	Track		
6197	San Angelo By- Products Co.	Track		President
6198	Veribest Cattle Feeders, Inc.	Track		President

AS

STATE OF TEXAS §

COUNTY OF TRAVIS §

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee

REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION AND PRESIDIO, TEXAS
AMENDMENT No. 1

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the State, and TEXAS PACIFICO TRANSPORTATION, herein after called "Lessee."

W I T N E S S E T H

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Lessee do agree as follows:

A G R E E M E N T

Article 1. Description of Amended Items

Paragraph 3.3 is amended by substituting the following sentence for the last sentence of the paragraph: "Lessee shall have management and control of the operation and maintenance of the Rail Line, which shall be carried out at the Lessee's sole cost and expense, subject to the improvements contained in Attachment A."

Paragraph 3.9 is substituted as follows: "Notwithstanding anything to the contrary contained herein, with regard to any obligation or duty of Lessee to improve, repair, maintain, or rehabilitate the Rail Line, the State agrees and acknowledges that such obligations and duties of the Lessee shall not require Lessee to take any action to improve or rehabilitate the Rail Line to a better condition than the condition of the Rail Line as of the date of this Agreement, except as provided in Attachment A."

Paragraph 3.10(a) and (b) are amended by adding the following sentence to the end of the paragraphs. "The Lessee shall not receive reimbursement for the project identified in Attachment A."

Paragraph 5.1 is amended by adding the following paragraphs to the end:

"Once, the line is open, as indicated by the provision of freight rail service to the border at Presidio, the Lessee shall maintain the track at the FRA track classification that is in place at the time of the opening of the line. If an unexpected event occurs or the infrastructure is allowed to deteriorate to a lower FRA track

classification, the Lessee shall have seven (7) days to notify the State of the unexpected event or deterioration to a lower FRA track classification. The lessee shall have thirty (30) days from the date of the occurrence to present a preliminary plan for correcting the deficiencies reported. The lessee will present to the State a specific, detailed plan for correcting the deficiencies reported within forty-five (45) days of the unexpected event or deterioration to a lower FRA track classification. The lessee and the State will work cooperatively to finalize and approve a specific, detailed plan for correcting the deficiencies reported with sixty (60) days of the unexpected event or deterioration to a lower FRA track classification. The plan shall include a liquidated damages clause which shall be assessed not as a penalty, but as reimbursement for costs to the State. The liquidated damages will be assessed by: (1) determining the number of loaded freight cars that would have moved over the line if the tracks had been in service; and (2) subtracting the number of freight cars that would have been diverted from another rail line if the tracks had been in service; and, (3) calculating the number of trucks that would be needed to move the net carloads of freight from this calculation over the highways. The number of trucks will then be used to calculate pavement maintenance costs necessary due to the increased freight on the highways utilizing Federal Highway Administration cost allocation methodologies, currently set at 12.7 ¢ per mile. The liquidated damages clause shall only be assessed if TXPF, as the result of negligence, fails to perform the agreed upon plan for correcting the deficiencies reported."

Paragraph 7.2 is amended by adding the following sentence to the end of the entire paragraph. The Lessee shall not receive reimbursement for any part of the project identified in Attachment A without regard to the date of termination."

The provisions of Attachment A are incorporated into this agreement.

All other provisions of the original contract are unchanged and remain in full force and effect.

Article 2. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

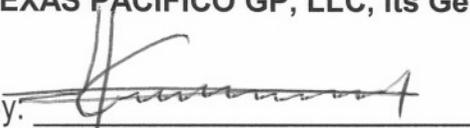
IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

STATE OF TEXAS DEPARTMENT OF TRANSPORTATION

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 
Michael W. Behrens, P.E.
Executive Director

LESSEE TEXAS PACIFICO GP, LLC, its General Partner

By: 
Manager

ATTACHMENT A

State Project No. 1

A. 1. The Project is described as the improvement of the Rail Line by rehabilitating the main line between Paisano Junction and Presidio, including the installation of approximately 32,500 ties with associated securement, ballast, surfacing and other necessary work; rehabilitating the Fort Stockton Railyard, including the installation of approximately 5,000 ties with associated securement, ballast, surfacing and other necessary work; and the rehabilitation of the Nelson Street highway/rail grade crossing and the 5th Street highway/rail grade crossing in Fort Stockton, including the installation of concrete crossing panels on the main track and sidings, with associated tie replacement, securement, ballast, subgrade, surfacing and other necessary work (the Project).

A. 2. The State will perform the environmental review for, contribute \$5.5 million towards, contract for, and oversee the Project.

A. 3. The Lessee will contribute:

(1) \$990,000 (nine hundred and ninety thousand) toward the improvements which may be made in either in cash and/or in services (such as transporting materials), or in additional improvements to the rail line. These improvements may credited against the \$990,000 (nine hundred and ninety thousand) if they meet the following criteria:

(a) the Lessee had not been and will not be reimbursed by any source for the services;

(b) the improvements are not ordinary maintenance;

(c) the improvements are performed within two (2) years subsequent to the final execution of this Amendment to the Agreement; and

(d) a notice of completion of work on the improvement is delivered to the State no later than thirty (30) calendar days after work is completed.

(2) maintenance in accordance with Paragraph 5.1 of this agreement.

Written documentation, suitable for audit, of the structural or improvement work completed or contracted for by Lessee, in relation to the above paragraph, shall be kept on file by the Lessee for four (4) years after completion of work or claims, lawsuits, or audits related thereto, whichever is longer. All services and additional improvements shall be informed in writing to the State, and the services may not exceed a total amount of \$135,000. The state shall approve the invoices within 30 days, and such approval may not be reasonably withheld. Copies of the Lessee's requests for proposal, scope of work documentation, bid documentation, and contractual documents for rehabilitation or maintenance of the rail line shall be provided to TxDOT as soon as possible, but no later than forty-five (45) days after creation or receipt.

The balance of the \$990,000 (nine hundred and ninety thousand) in improvements will be paid on the date that is two (2) years subsequent to the final execution of this Amendment.

A. 4. Since TxDOT will own the Project and any additional improvements, TxDOT is responsible for repayment of any loans used to obtain funds for the rehabilitation of the rail line, unless Lessee, directly, obtains any loan for rehabilitation and/or improvement of the rail line.

A.5. The State will require the contractor for the Project to warrant the rehabilitation for a period of one (1) year. For work performed by TxDOT or its contractors, and/or any other work of rehabilitation and/or improvement of the rail line, Lessee will inspect the project upon completion of the Project and/the works, and accept the work or reject the work after the expiration of the one (1) year warranty. Such acceptance shall not be unreasonably withheld. After acceptance, Lessee shall hold harmless and indemnify the contractor, the State and its officers, agents, and employees against any liability, loss, claim, or expense incurred that relates to or arises out of the Project.

STATE OF TEXAS §

COUNTY OF TRAVIS §

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee

**REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION AND PRESIDIO,
TEXAS AMENDMENT No. 2**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the "State", and TEXAS PACIFICO TRANSPORTATION, herein after called "Lessee."

WITNESSETH

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas; and,

WHEREAS, it has become necessary to amend that contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Lessee do agree as follows:

AGREEMENT

Article 1. Description of Amended Items

Paragraph 3.3 is amended by substituting the following sentence for the last sentence of the paragraph: "Lessee shall have management and control of the operation and maintenance of the Rail Line, which shall be carried out at the Lessee's sole cost and expense, subject to the improvements contained in Attachment A of Amendment No. 1 and Attachment A of Amendment No. 2."

Paragraph 3.9 is substituted as follows: "Notwithstanding anything to the contrary contained herein, with regard to any obligation or duty of Lessee to improve, repair, maintain, or rehabilitate the Rail Line, the State agrees and acknowledges that such obligations and duties of the Lessee shall not require Lessee to take any action to improve or rehabilitate the Rail Line to a better condition than the condition of the Rail Line as of the date of this Agreement, except as provided in Attachment A of Amendment No. 1 and Attachment A of Amendment No. 2."

Paragraph 3.10(a) and (b) are amended by adding the following sentence at the end of each of those paragraphs. "The Lessee shall not receive reimbursement for the projects identified in Attachment A of Amendment No. 1 and Attachment A of Amendment No. 2."



Paragraph 7.2 is amended by adding the following sentence to the end of the entire paragraph. "The Lessee shall not receive reimbursement for any part of the project identified in Attachment A of Amendment No. 1 and Attachment A of Amendment No. 2 without regard to the date of termination."

The provisions of Attachment A are incorporated into this agreement.

All other provisions of the original contract and Amendment No. 1 are unchanged and remain in full force and effect.

Article 2. Lessee's Compliance with Amendment No. 1

The State and Lessee agree that Lessee's obligation under Amendment No. 1 to contribute to the State in the amount of \$990,000.00 has been reduced to \$910,000.00 as stated in a letter from TxDOT to TXPF dated August 20, 2007. The State and Lessee agree that the Lessee's obligation under Amendment No. 1 shall be satisfied when Lessee submits to the State an executed copy of this Amendment No. 2 and payment of \$910,000.00 (nine hundred and ten thousand dollars) by check or warrant. The Lessee agrees to continue to comply with the remaining requirements in Amendment No. 1.

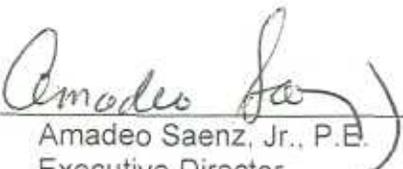
Article 3. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

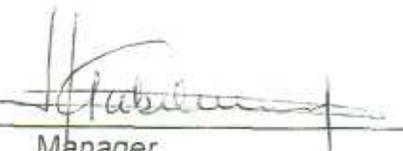
**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 
Amadeo Saenz, Jr., P.E.
Executive Director

10/31/07
Date

**LESSEE
TEXAS PACIFICO GP, LLC, its General Partner**

By: 
Manager

10/10/07
Date

**AMENDMENT NO. 2
ATTACHMENT A**

- A. 1. The State shall improve the Rail Line by additional rehabilitation of the railroad infrastructure (the "Project"). The Project shall consist of installing ties with associated securement, ballast, surfacing and other work. The State shall first consult with Lessee prior to selecting the work to be performed, but otherwise the nature and termini of the work shall be determined by the State.
- A. 2. The State shall perform the environmental review for, contribute \$212,355.58 towards, contract for, and oversee the Project.
- A. 3. The Lessee shall pay \$910,000.00 (nine hundred and ten thousand dollars) by check or warrant to the State upon executing the Amendment. The check or warrant shall be made payable to "Texas Department of Transportation Trust Fund." The State will deposit the funds in an escrow account to be managed by the State, to be applied only to the Project.
- A. 4. The State will require the contractor for the Project to warrant the rehabilitation work for a period of one year, commencing upon the State's acceptance of the Project work. The Lessee will then be given the opportunity to inspect the work. The Lessee may accept or reject the work within the warranty period. Any disagreements or disputes regarding the condition of the Project or the acceptance of the work shall be resolved in accordance with Article 4.4 of the Lease and Operating Agreement. Upon the expiration of the warranty period, the Lessee will no longer have the right to dispute the work. After the earlier of Lessee's acceptance of the work or the expiration of the warranty period, the Lessee shall hold harmless and indemnify the contractor, the State and its officers, agents, and employees against any liability, loss, claim, or expense incurred that relates to or arises out of the Project.



STATE OF TEXAS §
COUNTY OF TRAVIS §

AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE ESTABLISHMENT OF A VEGETATION CONTROL PLAN
AMENDMENT No. 3

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the State, and TEXAS PACIFICO TRANSPORTATION, herein after called "Lessee."

W I T N E S S E T H

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas; and,

WHEREAS, the Federal Railroad Administration has taken exception to excessive vegetation at various locations along the rail line on numerous occasions; and,

WHEREAS, on July 17, 2007, the State declared the Lessee to be in default of the Lease and Operating Agreement due to excessive vegetation along the rail line, as well as other issues of default; and,

WHEREAS, the State has agreed to allow the Lessee to correct the excessive vegetation issue of default by implementing an acceptable Vegetation Control Plan (the "Plan"); and,

WHEREAS, it has therefore become necessary to amend the contract between the State and the Lessee to provide for the acceptance of the Plan by the State and the Lessee;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Lessee agree as follows:

A G R E E M E N T

Article 1. Description of Amended Items

Paragraph 3.3 is amended by adding the following at the end of the paragraph: "Lessee shall implement and comply with the Vegetation Control Plan (the "Plan"), as that term is defined in Attachment A of Amendment No. 3."

Paragraph 3.4 is amended by adding the following at the end of the first sentence: "Lessee agrees to implement and comply with the Vegetation Control Plan (the "Plan") and to provide adequate routine inspection of existing and emergent vegetation and to provide for the control and removal of vegetation as provided for the Plan.

All other provisions of the original contract and Amendment No. 1 and Amendment No. 2 to the original contract are unchanged and remain in full force and effect.

Article 2. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

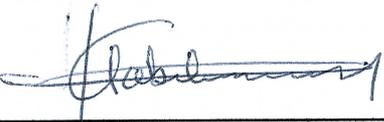
**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 
Amadeo Saenz, Jr., P.E.
Executive Director

Date: 12/14/07

**LESSEE
TEXAS PACIFICO GP, LLC, its General Partner**

By: 
Manager

Date: 14/12/07

AMENDMENT NO. 3
ATTACHMENT A

The Lessee shall implement an annual Vegetation Control Plan in accordance with the following tasks:

- 1) The Lessee's roadmaster(s), track inspector(s), or other qualified personnel will inspect for excessive vegetation on the rail line, bridges, switch areas, train crew walking areas, city limit right of way areas, and roadway – rail grade crossing areas. An inspection of each such area shall occur no less frequently than once a week. The person making an inspection will report the vegetation conditions to their supervisor, and recommend the application of herbicides or cutting of vegetation as appropriate.
- 2) A supervisor shall promptly record the weekly inspection reports and forward them to the Lessee's management;
- 3) Each year the Lessee shall apply herbicides along the entire rail line between March 15 and April 20;
- 4) Each year the Lessee shall spray herbicides and cut vegetation under bridges, and around switches and train crew walking areas, no less often than every 10 weeks, beginning with the second week of March and ending the third week of December;
- 5) The Lessee shall cut vegetation within city limits as required by city ordinances, or when a weekly inspection shows it is necessary for the safe operation of rail facilities or activities outside the rail right of way;
- 6) The Lessee will clear vegetation along the rail line within 250 feet on all sides of each roadway – rail grade crossing intersection. The vegetation clearing at an intersection shall be completed when a weekly inspection shows it is necessary for the safe operation of rail facilities or activities outside the rail right of way, but no less often than once per calendar year;
- 7) When a weekly inspection report shows that vegetation at a location prevents the safe operation of rail facilities or activities outside the rail right of way, the Lessee shall perform vegetation cutting and apply herbicides at the location no later than four weeks after the initial inspection;
- 8) The Lessee shall submit to the State records which show herbicide applications and vegetation cutting. The records showing such activities occurring in a calendar quarter shall be submitted to the State no later than ten days after the end of the quarter.

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION
AND PRESIDIO, TEXAS
AMENDMENT No. 4

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the "State", and TEXAS PACIFICO TRANSPORTATION, LTD., herein after called "Lessee."

W I T N E S S E T H

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (the "Agreement"); and,

WHEREAS, it has become necessary to amend that contract to provide for certain improvements to the rail line and other matters;

NOW THEREFORE, the State and the Lessee agree as follows:

A G R E E M E N T

Article I. Upgrade of rail line between San Angelo and San Angelo Junction

A. Financial contributions.

1. The State will use \$14,090,000.00 (FOURTEEN MILLION NINETY THOUSAND DOLLARS) of federal funds made available to the State pursuant to the American Reinvestment and Recovery Act [Pub. L. No. 111-5].

2. The State will use \$212,355.00 (TWO HUNDRED TWELVE THOUSAND THREE HUNDRED FIFTY FIVE DOLLARS) of federal funds made available to the State for use under Amendment No. 1 but which have not yet been used.

3. The State will use \$910,000.00 (NINE HUNDRED TEN THOUSAND DOLLARS) currently held in the State's Trust Fund



927 unused from Amendment No. 2 (representing funds paid by Lessee to satisfy its obligations under Amendment Nos. 1 and 2).

4. Lessee will pay to the State \$4,600,000.00 (FOUR MILLION SIX HUNDRED THOUSAND DOLLARS) simultaneously with execution of this amendment which funds the State will deposit into the State's Trust Fund 927 to be controlled and used by the State on the projects provided for in this amendment. The Lessee's payment will be made payable to "Texas Department of Transportation," and will be transmitted to the Texas Department of Transportation with a letter explaining the payment is for purposes of the State of Texas' South Orient Rail Line and this Amendment No. 4 and should be deposited to Trust Fund 927.

5. Any interest on funds paid by Lessee shall accrue to the benefit of the State and will not be used on the projects provided for in this amendment.

6. If by November 30, 2009, for any reason whatsoever the State has failed to execute a construction contract to implement the "first project" described in paragraph (D)(2) below, then Lessee's contribution of \$4,600,000.00 will be returned to Lessee.

B. Lessee's contributions in kind.

1. The State's work on the segment will require transportation and distribution of construction materials. Lessee must provide a work train for transportation, and will charge the State's contractor only the actual costs (including the appropriately associated indirect costs) of the train and the flagman.

2. Lessee agrees that the State may use the approximately 21,000 rail ties owned by Lessee and currently located along the rail line for purposes of the first project (described below). Upon installation, the crossties shall become part of the rail line owned by the State.

C. The State's use of Lessee's contributions. The State will use Lessee's financial contributions together with the State's contributions for the rehabilitation and construction projects provided for in this amendment. The State will draw down from such funds proportionately at a rate of 72 percent State-provided funds and 28 percent Lessee-provided funds. Upon written request from the Lessee, the State will inform the Lessee on the use of the parties' contributions as provided herein.

D. The State will make improvements to the San Angelo to San Angelo Junction segment as needed.

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1. The State will conduct several rehabilitation and construction projects to permit speeds of a least 25 mph on the rehabilitated line and that satisfy the Class 2 track requirements of the Federal Railroad Administration (FRA). The State will consult in good faith with Lessee concerning the rehabilitation and construction projects provided for under this amendment. Because the State is the owner of the facility, the State will determine in its ultimate discretion the scope and nature of the projects. The State will determine in its discretion the construction contractors who will perform the work.

2. The State will conduct a first project to install approximately 62,000 rail ties (of which approximately 21,000 ties are provided by Lessee as described in this amendment). The project will include the installation of rail ties in the rail yard in San Angelo, expending no less than \$500,000 on the rail yard, unless otherwise agreed by the State and Lessee.

3. The State will conduct a second project concerning crossings of the line, bridges, and other elements of the line.

4. The State will conduct the environmental review work.

5. For work performed by the State or its contractors Lessee will inspect the project upon completion, and accept the work or reject it. The Lessee's acceptance shall not be unreasonably withheld. Upon acceptance the State will require a contractor to warrant the work for a period of one year. After the expiration of the one year warranty the Lessee shall hold harmless and indemnify the contractor, the State and its officers, agents, and employees against any liability, loss, claim, or expense incurred that relates to or arises out of the project.

6. The State will give Lessee no less than ten working days notice prior to inspecting the rail line for purposes of developing the scope of work for the projects. Lessee is welcome to attend the inspections.

7. The State will consult in good faith with Lessee concerning the scope of projects and the prioritization of repairs, including considering in good faith the Lessee's proposed upgrades as shown in the "Exhibit A" that Lessee provided to the State on June 3, 2009. The State will issue change orders to the construction contract if needed for agreed upon work. The State will submit the construction plans to Lessee and allow Lessee no less than 14 days to respond with comment. The State will act in good faith in making final decisions on construction work, giving due regard to

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the recommendations made by Lessee or its engineering consultant.

8. The State and Lessee will work cooperatively during planning, determining scope, and construction so that Lessee has reasonable time to inspect the work and make recommendations. The State will consult in good faith with Lessee so that recommendations and operational issues are addressed to permit speeds of a least 25 mph on the rehabilitated line.

E. Funds that the State does not use for the San Angelo to San Angelo Junction segment will be used by the State, in consultation with Lessee regarding location, to upgrade the rail line between San Angelo and Fort Stockton. The goal will be to permit speeds of a least 25 mph on the upgraded line. The funds will be used for purposes of upgrading the line, and will not be used to satisfy Lessee's existing obligations to maintain the line as required in the Agreement.

Article II. Reconstruction of the bridge at Presidio, repair of washouts

A. By August 1, 2009, Lessee must submit a plan to the State for reconstruction of the Presidio bridge.

B. By June 1, 2011, Lessee must submit to the State the plans, specifications, and engineering for the Presidio bridge. By this date, Lessee must also have completed the environmental review and any required permitting for the bridge unless the State and Lessee agree to an extension of the deadline to comply with the directions of resource or permitting agencies. Bridge construction must be completed by June 1, 2014, unless Lessee and the State agree in writing to another deadline.

C. Repair of washouts must be completed by December 31, 2009.

D. Lessee must pay all costs and undertake the work.

Article III. The State's return of Lessee's contribution

If the Agreement is terminated for any reason within five years of execution of this amendment, the State shall return a portion of Lessee's contributions made under this amendment. The maximum amount will be \$4,600,000.00, plus the current market value of the approximately 21,000 rail ties that Lessee will provide under the agreement (Maximum Amount). The value of the rail ties shall be included in the Maximum Amount only if Lessee within 60 days after the execution of this amendment provides written documentation to the State showing the market value of the ties. In any event, the market value of the ties shall be no greater than \$1,200,000.00. If upon termination Lessee has completed the construction of the Presidio bridge, the State shall reimburse 65 percent of



the annually depreciated book value of the assets the funds were used to purchase, not to exceed the Maximum Amount (the Reimbursement). If upon termination Lessee has not completed construction of the bridge then the Reimbursement shall be reduced by the amount the State estimates it will incur to reconstruct the Presidio bridge to the same standard as existed when the bridge was destroyed by fire in February 2008.

Article IV. Joint committee on rail operations and marketing

A. Lessee and the State will each appoint two persons to a committee that will meet semi-annually to discuss all aspects of rail operations on the rail line and Lessee's marketing of rail service.

B. No later than 30 days prior to a meeting of the joint committee, Lessee must submit to the State a written report on the reconstruction of the bridge at Presidio and the repair of the washouts until such work is completed.

C. No later than 30 days prior to a meeting of the joint committee, Lessee must submit to the State a written marketing report that includes the information listed in this paragraph.

1. For the current calendar year to date, the number of rail cars transported on the line.
2. The average annual number of rail cars moved during the five years prior to the current calendar year.
3. For the current calendar year to date, identification of each shipper, the number of rail cars transported, and the commodity shipped.
4. A description of the marketing efforts taken during the period and how those efforts compare to the annual marketing plan.
5. A list of each written request for rates or services, and Lessee's response, together with copies of written communications.
6. If applicable, an explanation regarding the reasons for Lessee not providing rates or service in response to a request, including thru-rates quoted by connecting carriers.

Article V. Duty to maintain rail line

A. Requirements that apply to "Class 2 or higher track."

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1. These more stringent maintenance requirements apply to the following:

a) Segments that are Class 2 or higher track on the execution date of this amendment, that is, milepost 738.0 (west of San Angelo) to milepost 869.4 (Sulfur Junction); and

b) Segments upgraded pursuant to this amendment, which are milepost 0.03 (San Angelo Junction) to milepost 721.52 (San Angelo), and any additional rehabilitation work completed under this amendment, whether on the segment identified in paragraph (1)(a) above, or on milepost 869.4 (Sulfur Junction) to milepost 882.84 (Fort Stockton).

2. Lessee must maintain a segment in the same or better condition, as compared to the segment's condition when the upgrade was completed by the State. If a portion of the segment running from milepost 738.0 (west of San Angelo) to milepost 869.4 (Sulfur Junction) is not upgraded under this amendment, Lessee must maintain the segment in the same or better condition, as compared to the condition on the execution date of this amendment.

3. Lessee must not allow the condition of track (including the alignment and profile of the rails) to deteriorate in any substantial manner or form.

4. Lessee must undertake all maintenance and repairs needed to satisfy this requirement. If Lessee or FRA issue a "slow order," designate track as "excepted," or otherwise prohibit rail operations at speeds of 25 mph or greater, Lessee must repair and rehabilitate the line within 60 days (unless Lessee and the State agree in writing to another deadline) so that FRA requirements allow rail operations at 25 mph or greater. The requirements of this paragraph (4) apply to milepost 869.4 (Sulfur Junction) to milepost 882.84 (Fort Stockton) only if the State upgrades the segment to permit speeds of a least 25 mph, and the track satisfies the Class 2 track requirements of the FRA.

B. Requirements that apply to segments of rail line that the State upgraded under Amendment No. 1.

1. The requirements apply to milepost 968.0 (south of Paisano Junction) to milepost 1029.0 (Presidio)(project completed in the year 2006).

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2. Lessee must maintain a segment in the same or better condition, as compared to the segment's condition when the upgrade was completed by the State.

3. Lessee must not allow the condition of track (including the alignment and profile of the rails) to deteriorate in any substantial manner or form.

4. The maintenance requirements, as they apply to the bridge at Presidio and to the washouts of track located south of Fort Stockton, shall be suspended during the period Lessee reconstructs and rehabilitates those facilities in accordance with the requirements of this amendment.

C. Requirements that apply to the entire rail line, from San Angelo Junction to Presidio.

1. In addition to the requirements in the Agreement concerning the maintenance of the rail line, Lessee must maintain all segments of the line in the same or better condition, as compared to the segment's condition on January 31, 2001.

2. Lessee must undertake all maintenance and repairs needed to satisfy this requirement. Lessee must submit to the State a written plan to undertake the necessary maintenance and repairs. For a portion of the line that is not then being operated, Lessee must repair the line within 90 days (unless Lessee and the State agree in writing to another deadline).

3. Lessee must provide to the State a copy of all FRA inspection reports within 10 working days of receipt.

4. If Lessee or FRA designate or find an exception to or violation of FRA rules Lessee must correct the exception or violation and submit written documentation showing the correction to the State, and to FRA as required by FRA. Lessee must submit a copy of the documentation to the State within 30 days.

5. The maintenance requirements, as they apply to the bridge at Presidio and to the washouts of track located south of Fort Stockton, shall be suspended during the period Lessee reconstructs and rehabilitates those facilities in accordance with the requirements of this amendment.

Article VI. Marketing of services to shippers and potential shippers, and provision of service

A. State Policy.



1. Lessee acknowledges that the State's ownership of the rail line is intended to promote economic development of the areas served by the line.

2. Lessee further acknowledges that the State's upgrade of a segment of the line under this amendment is for purposes of promoting job creation in the communities adjacent to the segment, and that Lessee will cooperate fully with the State by undertaking additional marketing efforts and rail service in such communities.

B. In addition to Lessee's obligations in the Agreement, Lessee must undertake the following additional marketing activities and service for the Class 2 or higher track identified in this amendment.

1. Lessee shall not discriminate unreasonably with respect to rates, transportation, and services against any shipper and shall provide transportation or service on reasonable request.

2. Lessee must respond promptly (but no later than 30 days) in writing to written inquiries by shippers, potential shippers, or to persons who promote economic development in a community adjacent to the line. Lessee must work cooperatively to develop rates and rail operations which will encourage the development of rail-oriented businesses and increases in rail traffic.

3. Lessee must respond in writing no later than 30 days after receiving a written request for rates for rail service from a connecting railroad or a shipper, and provide the rates to be charged.

4. Lessee must provide adequate service in response to a reasonable request by a shipper based upon an appropriate demand.

Article VII. Required increase in annual number of rail cars transported

Each calendar year Lessee must transport a total number of rail cars that is greater than the average number of rail cars transported in the five previous calendar years. Lessee's failure to satisfy the requirement is an event of default under the Agreement.

However, this requirement does not apply (and there shall be no breach of the Agreement based on the requirement), in any calendar year in which the growth rate in the counties served by the rail line is less than the growth rate of the State of Texas as a whole. The growth rate in the counties served by the rail line shall be the growth rate of cumulative taxable sales in Coleman, Runnels, Tom Green, Irion, Reagan, Upton, Pecos, Brewster, and Presidio Counties, for the calendar year compared



to the average of such cumulative annual sales for the previous five calendar years. The growth rate in the State of Texas shall be the taxable sales for the State of Texas as a whole compared to the average of such annual sales for the previous five calendar years.

This requirement expires in the year when the number of rail cars transported is so great that additional traffic would require the construction of additional capacity on the line.

Article VIII. Monthly report on maintenance

Lessee shall provide monthly reports concerning the maintenance of the rail line, including the following:

1. Condition of the rail line, grade crossings, bridges, and signals.
2. Status of planned or completed construction and maintenance projects.
3. Condition of vegetation affecting the rail line, including planned or completed vegetation control efforts.
4. Operational issues.
5. Status of work undertaken by contractors. A report must include a copy of any new contracts.
6. An identification of track which is designated "excepted" under 49 CFR 213.4, and an explanation why the designation is needed and the date the designation will end.

Article IX. Information concerning contractors

If requested by the State, Lessee must provide within three days written information concerning payments to a specific contractor, including an explanation of the reason for any delay of making payments to such contractor.

Article X. Lessee's confidential Information

If any portion of a report submitted by Lessee to the State in accordance with this amendment, whether concerning reconstruction of facilities, operations, or marketing, is confidential Lessee must mark "confidential" on each page of such information. In the event a member of the public makes a request under the Texas Public Information Act to review the confidential information, the State would comply with the requirements in law to protect information Lessee has marked confidential including requesting an opinion from the Texas Attorney General that the



information may be withheld. The State would advise the Attorney General that Lessee argues the information is trade secrets or commercial or financial information (Texas Government Code Section 552.110) or other appropriate exception to disclosure. Lessee would be given notice of a request, and the opportunity to submit argument to the Texas Attorney General. Lessee's assertion that information is confidential must be consistent with the requirements of 49 U.S.C. Sections 11163 and 11904.

Article XI. Enforcement

The Termination provisions of the Agreement in Section 7.1 are amended concerning a failure by Lessee to comply with certain requirements of this amendment. In every instance where Section 7.1 allows Lessee a 90 day period to cure a default, the Agreement is amended so that such period shall be 45 days if the default concerns a failure to comply with one or more of the following requirements of the amendment: (1) Article I concerning upgrade of rail line between San Angelo and San Angelo Junction; (2) Article II concerning reconstruction of the bridge at Presidio, repair of washouts; (3) Article V concerning duty to maintain rail line; (4) Article VI concerning marketing of services to shippers and potential shippers, and provision of service; and (5) Article VII concerning required increase in annual number of rail cars transported.

Article XII. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

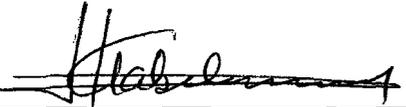
Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: Amadeo Saenz, Jr. P.E.
Amadeo Saenz, Jr., P.E.
Executive Director

6/17/09
Date

Lessee

TEXAS PACIFICO GP, LLC, its General Partner

By: 
Hilario Gabilondo P.
Vice President,
CEO & Managing Director

June 15th 2009
Date

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION
AND PRESIDIO, TEXAS
AMENDMENT No. 5

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the "State," and TEXAS PACIFICO TRANSPORTATION, LTD., hereinafter called "Lessee."

W I T N E S S E T H

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (the "Agreement"); and

WHEREAS, it has become necessary to amend the Agreement to provide for certain improvements to the rail line and other matters;

NOW THEREFORE, the State and the Lessee enter into this Amendment No. 5 ("Amendment") of the Agreement as follows:

A G R E E M E N T

Article I. Upgrade of Rail Line Between San Angelo Junction and Fort Stockton.

A. Financial contributions.

1. The State will use \$3,000,000.00 (THREE MILLION U.S. DOLLARS) of General Revenue funds allocated to TxDOT by the 2009 Texas Legislature.

2. The State will use \$2,000,000.00 (TWO MILLION U.S. DOLLARS) of federal funds allocated to the State of Texas by the Federal Railroad Administration ("FRA").

3. The Lessee will contribute \$1,400,000.00 (ONE MILLION FOUR HUNDRED THOUSAND U.S. DOLLARS) toward the improvements. The Lessee will make the contribution in cash and in kind as follows:



a) \$400,000 (FOUR HUNDRED THOUSAND U.S. DOLLARS) within one week of the effective date of this Amendment which funds the State will deposit into State's Trust Fund 927 to be controlled and used by the State on the projects provided for in this Amendment. The Lessee's payment will be made payable to "Texas Department of Transportation" and will be transmitted to the Texas Department of Transportation with a letter explaining the payment is for purposes of the State of Texas's South Orient Rail Line and this Amendment and should be deposited to Trust Fund 927.

b) \$400,000 (FOUR HUNDRED THOUSAND U.S. DOLLARS) within thirty (30) days of the State's awarding the rehabilitation project identified as CSJ 7107-09-003, etc., which funds the State will deposit into State's Trust Fund 927 to be controlled and used by the State on the projects provided for in this Amendment. The Lessee's payment will be made payable to "Texas Department of Transportation" and will be transmitted to the Texas Department of Transportation with a letter explaining the payment is for purposes of the State of Texas's South Orient Rail Line and this Amendment and should be deposited to Trust Fund 927.

c) \$600,000 (SIX HUNDRED THOUSAND U.S. DOLLARS) to be retained by Lessee to use for improvements to the rail line in accordance with Article I.C. of this Amendment in order to address critical infrastructure deficiencies that must be corrected as soon as possible.

4. Any interest on funds paid by Lessee shall accrue to the benefit of the State and will not be used on the projects provided for in this Amendment.

B. State work. The State will use the financial contributions to perform work between San Angelo Junction and Fort Stockton.

1. The State and Lessee agree that the work to be performed will be generally located between San Angelo Junction and Fort Stockton, but otherwise the nature and actual limits of the work shall be determined by the State in coordination with the Lessee.

2. The State will improve the rail line with the goal of railroad operations at speeds of up to 25 miles per hour between San Angelo Junction and San Angelo. If adequate funding is available, the State will improve the portions of the rail line between San Angelo and Fort



3. The funds will be used for purposes of upgrading the line, and will not be used to satisfy Lessee's existing obligations to maintain the line as required in the Agreement as amended.

4. The State will contract for and oversee the design, environmental review, and construction of improvements to the rail line. This includes obtaining any necessary permits; environmental clearance; inspections; plan, specification, and estimate development; construction contracting; and construction completion.

5. The \$3,000,000.00 (THREE MILLION U.S. DOLLARS) in State funding must be spent between San Angelo Junction and San Angelo as directed by the Texas Legislature. Of the \$2,000,000 (TWO MILLION U.S. DOLLARS) in FRA funds, \$1,000,000.00 (ONE MILLION U.S. DOLLARS) must be spent on grade crossing improvements within the City of San Angelo.

6. For work performed by the State or its contractors, upon completion the Lessee will inspect the work and accept it or reject it. The Lessee's decision must be made no later than ninety (90) days after the State gives written notice to Lessee that the work is completed. The Lessee's acceptance shall not be unreasonably withheld. Any disagreements or disputes regarding the condition of the work shall be resolved in accordance with Article 4.4 of the Agreement. If the resolution of a dispute requires the State to perform additional work, the State shall begin such work within forty-five (45) days of the resolution. Upon the Lessee's acceptance of the work the State will require the contractor to warrant the work for a period of one year. AFTER THE EXPIRATION OF THE WARRANTY PERIOD, THE LESSEE SHALL HOLD HARMLESS AND INDEMNIFY THE CONTRACTOR, THE STATE, AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LIABILITY, LOSS, CLAIM, OR EXPENSE INCURRED THAT RELATES TO OR ARISES OUT OF THE WORK.

C. Lessee Work. Improvements must meet the following criteria:

(1) The Lessee has not and will not be reimbursed by any source for the improvement(s);



(2) The improvement(s) are not ordinary or routine maintenance;

(3) The improvements are performed within one (1) year of the effective date of this Amendment;

(4) Lessee submits to the State copies of all documentation for the improvement(s) as soon as possible, but no later than forty-five (45) days after creation or receipt;

(5) Lessee submits to the State copies of the requests for proposal, scope of work documentation, bid documentation, and contractual documents, if any, for the improvement(s) as soon as possible, but no later than forty-five (45) days after creation or receipt;

(6) Lessee reports to the State the prosecution and progress of the improvements in the monthly report on maintenance required by Article VIII of Amendment No. 4 of the Agreement;

(7) Lessee delivers to the State a notice of completion of the work on the improvement(s) with appropriate documentation substantiating the cost of the improvement no later than 30 calendar days after Lessee makes final payment to contractor; and

(8) Lessee pays to the State the balance of the unused portion (if any) of \$600,000 (SIX HUNDRED THOUSAND U.S. DOLLARS) on the date that is one (1) year subsequent to the final execution of this Amendment. Payment shall be made using the procedure in paragraph 3.a. above.

(9) Lessee's contributions shall be used for obtaining any necessary permits; environmental clearance; inspections; plan, specification, and estimate development; construction contracting; and construction completion for any repairs or improvements needed on the line between San Angelo Junction and San Angelo. If any funds remain after the completion of these projects, those funds shall be applied toward additional improvements of the line between San Angelo and Fort Stockton.



D. Lessee's additional contributions in kind (work train).

The State's work on the rail line will require transportation and distribution of construction materials. Lessee must provide a work train for transportation, and will charge the State's contractor only the actual costs (including the appropriately associated indirect costs) of the train and the flagman.

E. Cooperation concerning selection of improvements.

1. No later than 45 days after the effective date of the Amendment, Lessee will submit a detailed list of potential infrastructure improvements that Lessee believes are necessary for each section of the line in order to improve services and operating efficiencies. The Lessee may submit at a later date a list of additional potential infrastructure improvements to address newly discovered deficiencies in any bridges. The State will work cooperatively with the Lessee in using this information to help define the scope, sequence, and timing of the repair projects.

2. The State will give the Lessee no less than ten working days notice prior to inspecting the rail line for purposes of developing the scope of work for the projects. Lessee is welcome to attend the inspections.

3. The State will consult in good faith with the Lessee concerning the scope of projects and the prioritization of repairs. The State will issue change orders to the construction contract if needed for agreed upon work. The State will submit the construction plans to the Lessee and allow the Lessee no less than 30 days to respond with comment. The State will act in good faith in making final decisions on construction work, giving due regard to the recommendations made by the Lessee or its engineering consultant.

4. The State and the Lessee will work cooperatively during planning, determining scope, and construction so that the Lessee has reasonable time to inspect the work and make recommendations. The State will consult in good faith with the Lessee so that recommendations and operational issues are addressed to permit speeds of a least 25 mph on the rehabilitated line.

5. The State will use the Lessee's financial contributions together with the State's contributions for the rehabilitation and construction projects provided for in this Amendment. Upon written request from the Lessee, the State will inform the Lessee of the use of the parties' contributions as provided herein.



Article II. Reimbursement.

If the Agreement is terminated for any reason within five years of execution of this Amendment, the State shall return a portion of the Lessee's contributions made under the Amendment. Upon termination the State shall reimburse 65 percent of the total amount of money spent by Lessee on rail improvements and repairs under the Amendment and contributed to the State by Lessee under this Amendment.

Article III. Duty to Maintain Rail Line.

A. Requirements that apply to "Class 2 or higher track." The requirements in this Article III are in addition to the maintenance requirements in the Agreement as amended, and apply to the segments upgraded pursuant to this Amendment. (The additional maintenance requirements are the same as set forth in Amendment No. 4 of the Agreement for the Class 2 or higher track identified in that amendment.)

B. The Lessee must maintain a segment upgraded under this Amendment in the same or better condition, as compared to the segment's condition when the work was completed.

C. The Lessee must not allow the condition of track (including the alignment and profile of the rails) to deteriorate in any substantial manner or form.

D. If the Lessee or FRA issues a "slow order," designates track as "excepted," or otherwise prohibits rail operations at speeds of 25 mph or greater, the Lessee must repair and rehabilitate the line within 60 days (unless the Lessee and the State agree in writing to another deadline) so that FRA requirements allow rail operations at 25 mph or greater. The requirements of this paragraph (D) apply from milepost 0.03 (San Angelo Junction) to milepost 882.84 (Fort Stockton) only to portions of the segment that the State upgrades to permit speeds of a least 25 mph, and to track that satisfies the Class 2 track requirements of the FRA.

E. If a portion of the segment running from milepost 0.03 (San Angelo Junction) to milepost 882.84 (Fort Stockton) is not upgraded under this Amendment, the Lessee must maintain the segment in the same or better condition, as compared to the condition on the effective date of the Amendment.

F. The Lessee must undertake all maintenance and repairs needed to satisfy the requirements in this Article III.



Article IV. Enforcement.

The Termination provisions of the Agreement in Section 7.1 are amended concerning a failure by the Lessee to comply with the requirements of this Amendment. In every instance where Section 7.1 allows the Lessee a 90 day period to cure a default, the Agreement is amended so that such period shall be 45 days if the default concerns a failure to comply with one or more of the requirements of the Amendment.

Article V. Effective Date.

The Amendment is effective on the date the last party executes it.

Article VI. Signatory Warranty.

The signatories to this Amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

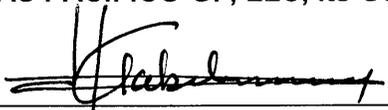
Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 
Amadeo Saenz, Jr., P.E.
Executive Director

4/12/11
Date

LESSEE

TEXAS PACIFICO GP, LLC, its General Partner

By: 
Hilario Gabilondo P.
President,
CEO & Managing Director

04/08/2011
Date

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION
AND PRESIDIO, TEXAS
AMENDMENT No. 6

THIS AMENDMENT NO. 6 IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the "State," and TEXAS PACIFICO TRANSPORTATION, LTD., hereinafter called "Lessee."

WITNESSETH

WHEREAS, the State and the Lessee executed that certain Lease and Operating Agreement dated January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (as amended by that certain Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and Amendment No. 5, collectively, the "Agreement"); and

WHEREAS, it has become necessary to amend the Agreement to provide a procedure for the Lessee to repay the State for certain State-funded improvements to the Rail Line, and other matters;

NOW THEREFORE, the State and the Lessee enter into this Amendment No. 6 ("Amendment") of the Agreement as follows:

AGREEMENT

Article I. Reports.

Beginning on the date of this Amendment, the annual report required by Section 8.1 ("Annual Report") and the monthly reports on maintenance required by Article VIII of Amendment No. 4 to the Agreement (the "Monthly Reports"), shall include, in addition to the requirements set forth in Section 8.1, the total number of loaded freight railcars interchanged to or from a connecting railroad (the "Loaded Freight Cars") during the preceding calendar year for the Annual Report, and during the preceding month for the Monthly Reports.

Article II. Annual Surcharge.

A. In addition to any other amounts due under the Agreement, beginning in the calendar year 2013 and continuing for the remainder of the term of the Agreement, Lessee agrees to pay to the State an annual payment (the "Annual Surcharge") for each calendar year equal to \$50.00 multiplied by the Loaded Freight Cars for that calendar year, and shall be payable in accordance with the provisions of subarticle C below. The Annual Surcharge for any year shall not exceed the Authorized State Funds less the sum of all Annual Surcharge payments previously made by Lessee, exclusive of any interest paid pursuant to subarticle C below.

B. For purposes of this Amendment, the term "Authorized State Funds" shall mean the total amount of State funds made available to the Texas Department of Transportation specifically for use in connection with the Rail Line, including Contingency Provision Section 18.56 of S.B. 1, the General Appropriations Bill of the Regular Session of the 83rd Legislature, and other funds made available on or after the date of this Amendment, whether by appropriation from the Texas Legislature or by an authorization from the Texas legislature or by an authorization from the Texas Transportation Commission, and actually spent or used to maintain or improve the Rail Line. The State will work cooperatively with the Lessee to identify infrastructure improvements to be completed using the Authorized State Funds. Authorized State Funds will include only those funds expended on projects identified in future amendments of this Agreement agreed to by the State and Lessee. The amount of Authorized State Funds shall not include any funding that originates from, or is administered by, the United States Department of Transportation, or any other federal agency, even if those funds are made available for use in connection with the Rail Line through the Texas Department of Transportation.

C. After the expiration of each calendar year after the date of this Amendment, the State shall send written notice to Lessee setting forth the Annual Surcharge for the preceding calendar year, which notice shall also include the Authorized State Funds as of December 31 of that calendar year (each, an "Annual Surcharge Notice"). All payments of the Annual Surcharge shall be made without offset, deduction or prior demand within 30 days of the date an Annual Surcharge Notice is delivered to Lessee by the State. If Lessee fails to make a payment of the Annual Surcharge within the 30 day period, such payment will be delinquent, and simple interest at the rate of 10% per year shall be added to any such overdue payment from the due date to the date of payment.

D. As an example, to illustrate how the annual Surcharge will be calculated and paid, if the Monthly Reports for 2014 indicate 30,000 Loaded Freight Cars for that year, and as of December 31, 2014, the Authorized State Funds equals \$10 Million, Lessee will owe \$50.00 per Loaded Freight Car, for a total Annual Surcharge of \$1,500,000, which will be payable in 2015 upon receipt of the Annual Surcharge Notice for 2014.



Article III. Effective Date.

This Amendment is effective on the date the last party executes it.

Article IV. Defined Terms.

Terms used but not defined in this Amendment have the meanings assigned to them in the Agreement.

Article V. Signatory Warranty.

The signatories to this Amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

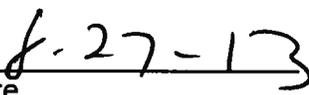
IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

 Executed by the Executive Director for the purpose and effect of activation and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: 

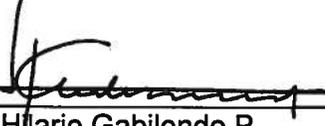
Phil Wilson
Executive Director



Date

LESSEE

TEXAS PACIFICO GP, LLC, its General Partner

By: 

Hilario Gabilondo P.
President,
CEO & Managing Director



Date

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN SAN ANGELO JUNCTION
AND PRESIDIO, TEXAS
AMENDMENT No. 7

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called the "State," and TEXAS PACIFICO TRANSPORTATION, LTD., hereinafter called "Lessee."

WITNESSETH

WHEREAS, the State and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (as amended by Amendment Nos. 1 through 6, collectively, the "Agreement"); and

WHEREAS, it has become necessary to amend the Agreement to provide for certain improvements to the rail line and other matters;

NOW THEREFORE, the State and the Lessee enter into this Amendment No. 7 ("Amendment") of the Agreement as follows:

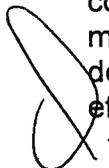
A G R E E M E N T

Article I. Upgrade of Rail Line Between San Angelo Junction and Fort Stockton.

A. Contributions.

1. The State will use \$5,000,000.00 (FIVE MILLION U.S. DOLLARS) of General Revenue funds allocated to the Texas Department of Transportation by the 2013 Texas Legislature, to make improvements to the rail line as identified in this Amendment.

2. The Lessee will contribute \$1,250,000.00 (ONE MILLION TWO HUNDRED FIFTY THOUSAND U.S. DOLLARS) to make such improvements. Except as provided in the next succeeding paragraph concerning Lessee's contribution by providing a work train or by making improvements to the rail line, the Lessee must make such dollar contribution to the State no later than two years after the effective date of this Amendment.



3. a) The Lessee shall provide locomotive equipment, and train service employees to the contractor performing the rehabilitation as a "work train," at TXPF's actual cost with no mark up or increases over actual costs.

b) The Lessee may elect to make any portion of its required contribution by means of in-kind improvements to the rail line. The documented cost of an improvement will be credited against the required contribution if:

i) The improvements occur during the period beginning on the effective date of this Amendment and ending two years later;

ii) The improvements are agreed to in advance by the State and Lessee, and are not ordinary maintenance;

iii) The Lessee's costs are reasonable and not reimbursed by any source; and

iv) The Lessee gives the State a notice of completion of the work no later than thirty days after it is completed.

4. Any accrued interest on funds paid by Lessee shall accrue to the benefit of the State and will not be used to make improvements to the rail line.

B. State work. The State will make the improvements to the rail line described in Attachment A of this Amendment using the dollar contributions made by the State and the Lessee.

1. The State and Lessee agree that the improvements will be generally located in the City of San Angelo. The description and limits of the work shall be determined by the State in coordination with the Lessee and is described in Attachment A.

2. The funds will be used for purposes of upgrading the rail line, and will not be used to satisfy Lessee's existing obligations to maintain the rail line as required in the Agreement.

3. The State will contract for and oversee the design, environmental review, and construction of improvements to the rail line. This includes obtaining any necessary permits; environmental clearance; inspections; plan, specification, and estimate development; construction contracting; and construction completion.

4. For work performed by the State or its contractors, upon completion the Lessee will inspect the work and accept it or reject it.

The Lessee's decision must be made no later than ninety days after the State gives written notice to Lessee that the work is completed. The Lessee's acceptance shall not be unreasonably withheld. Any disagreements or disputes regarding the condition of the work shall be resolved in accordance with Article 4.4 of the Agreement. If the resolution of a dispute requires the State to perform additional work, the State shall begin such work within forty-five days of the resolution. Upon the Lessee's acceptance of the work the State will require the contractor to warrant the work for a period of one year. AFTER THE EXPIRATION OF THE WARRANTY PERIOD, THE LESSEE SHALL HOLD HARMLESS AND INDEMNIFY THE CONTRACTOR, THE STATE, AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LIABILITY, LOSS, CLAIM, OR EXPENSE INCURRED THAT RELATES TO OR ARISES OUT OF THE WORK.

C. Cooperation concerning selection of improvements.

1. The State and the Lessee will work cooperatively during planning and construction so that the Lessee has reasonable time to inspect the work and make recommendations. The State will consult in good faith with the Lessee so that recommendations and operational issues are addressed to permit speeds of a least 25 mph on the rehabilitated rail line.

2. The State will use the Lessee's financial contributions together with the State's contributions for the rehabilitation and construction projects provided for in Attachment A to this Amendment. Upon written request from the Lessee, the State will inform the Lessee of the use of the parties' contributions as provided herein.

D. Reimbursement of State Contribution. In accordance with Amendment No. 6 of the Agreement, the State's contribution of \$5,000,000.00 is "Authorized State Funds." The calculation of the Lessee's "Annual Surcharge" under Amendment No. 6 will include the State's contribution made under this Amendment No. 7. The Lessee's own contributions under this Amendment No. 7, whether a dollar amount or an in-kind contribution, will not be considered "Authorized State Funds" for purposes of Amendment No. 6.

Article II. Reimbursement.

 If the Agreement is terminated for any reason within five years of the effective date of this Amendment, the State shall return 65 percent of any dollar contribution or in-kind contribution made under the Amendment.

Article III. Duty to Maintain Rail Line.

A. Requirements that apply to "Class 2 or higher track." The requirements in this Article III are in addition to the maintenance requirements in the Agreement, and apply to the segments upgraded pursuant to this Amendment. (The additional maintenance requirements are the same as set forth in Amendment No. 4 of the Agreement for the Class 2 or higher track identified in that amendment.)

B. The Lessee must maintain a segment upgraded under this Amendment in the same or better condition, as compared to the segment's condition when the work was completed.

C. The Lessee must not allow the condition of track (including the alignment and profile of the rails) to deteriorate in any substantial manner or form.

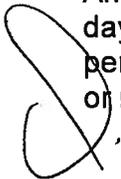
D. If the Lessee or the Federal Railroad Administration ("FRA") issues a "slow order," designates track as "excepted," or otherwise prohibits rail operations at speeds of 25 mph or greater, the Lessee must repair and rehabilitate the rail line within 60 days (unless the Lessee and the State agree in writing to another deadline) so that FRA requirements allow rail operations at 25 mph or greater. The requirements of this paragraph (D) apply from milepost 0.03 (San Angelo Junction) to milepost 945.34 (Alpine) and only to the portions of such segment that the State upgrades to permit speeds of a least 25 mph, and to track that satisfies the Class 2 track requirements of the FRA.

E. If a portion of the segment running from milepost 0.03 (San Angelo Junction) to milepost 945.34 (Alpine) is not upgraded under this Amendment, the Lessee must maintain the segment in the same or better condition, as compared to the condition on the effective date of the Amendment.

F. The Lessee must undertake all maintenance and repairs needed to satisfy the requirements in this Article III.

Article IV. Enforcement.

The Termination provisions of the Agreement in Section 7.1 are amended concerning a failure by the Lessee to comply with the requirements of this Amendment. In every instance where Section 7.1 allows the Lessee a 90 day period to cure a default, the Agreement is amended so that such period shall be 45 days if the default concerns a failure to comply with one or more of the requirements of this Amendment.



Article V. Effective Date.

The Amendment is effective on the date the last party executes it.

Article VI. Signatory Warranty.

The signatories to this Amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LESSEE have executed duplicate counterparts to effectuate this agreement.

**STATE OF TEXAS
DEPARTMENT OF TRANSPORTATION**

 Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: James M Bass
James Bass
Interim Executive Director

2/21/14
Date

LESSEE

TEXAS PACIFICO GP, LLC, its General Partner

By: Hilario Gabilondo P.
Hilario Gabilondo P.
President,
CEO & Managing Director

02/05/2014
Date

Attachment A

Improvements to Rail Line

The work to be performed will be located generally within the City of San Angelo. The project(s) will consist of:

- (1) replacing a minimum of 37,846 linear feet of existing rail with continuously welded rail;
- (2) welding a minimum of 549 joints on existing rail that is not replaced;
- (3) replacing a minimum of 400 cross ties and a minimum of 126 switch ties, including associated work for securement, addition of ballast, and surfacing;
- (4) removing at least three out-of-service turnouts; and
- (5) replacing at least one active turnout.

LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN
SAN ANGELO JUNCTION AND PRESIDIO, TEXAS
AMENDMENT No. 8

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION, hereinafter called "TxDOT", and TEXAS PACIFICO TRANSPORTATION, LTD., hereinafter called "Lessee."

WITNESSETH

WHEREAS, TxDOT and the Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (as amended by Amendment Nos. 1 through 7, collectively, the "Agreement");

WHEREAS, the international rail bridge at Presidio (the "Bridge") was destroyed by two separate fires on February 29, 2008 and March 1, 2009;

WHEREAS, on June 17, 2009, TxDOT and Lessee executed Amendment No. 4 to the Agreement to provide for the reconstruction of the Presidio Bridge, among other matters and the dates therein established could not be met for the requirements established by the IBWC (International Boundaries and Waters Commission; one of the permitting agencies) and the time it took to resolve such situation;

WHEREAS, it has become necessary to amend the Agreement to provide for a timeline for TXPF's reconstruction of the Presidio Bridge under current conditions.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, TxDOT and the Lessee agree as follows:

AGREEMENT

Article 1. Reconstruction of the Presidio Bridge

A. This Amendment No. 8 supersedes and replaces Article II of Amendment No. 4.

B. Lessee, at its sole cost and expense, shall prepare, or cause to be prepared by others, the designs, plans and specifications for the Bridge. On December 14,



2015, Lessee presented a set of "Phase 1" plans for the reconstruction of the Bridge for review by TxDOT. The Phase 1 plans excluded track approaches to the bridge and road crossings over the U.S. side levee. By April 15, 2016 Lessee must submit to TxDOT the final and complete plans, specifications, and engineering for the Bridge, including track approaches and road crossings over the levee, which shall comply with all applicable statutes and regulations. TxDOT shall have the continuing right to review and approve or disapprove all plans and all proposed changes to the designs, plans and specifications for the bridge, provided that such approvals or disapprovals and reviews are reasonable and do not contravene any federal regulations. TxDOT's review and approval of any plans in no way relieves Lessee or any of its contractors from their respective responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that TxDOT makes no representations or warranties as to, and shall not be deemed to be liable to Lessee or any contractor in connection with, the validity, accuracy, legal compliance, or completeness of such plans and that any reliance by Lessee or any such contractor on such plans is at the risk of Lessee and each such contractor.

C. As owner of the Bridge, TxDOT will submit any application(s) and obtain any required permit(s) in TxDOT's name from any U.S. entity with jurisdiction over the Bridge reconstruction process. Lessee agrees to work with TxDOT and provide any information required for TxDOT to obtain the necessary permits within 10 days of the request, unless otherwise agreed to in writing by both parties. TxDOT acknowledges that aspects of the U.S. permitting process are beyond the control of Lessee and TxDOT. TxDOT agrees not to hold Lessee in default due to a delay in the permitting process, including while the permit is under review by the permitting agencies, provided that any such delay is not due to Lessee's action or inaction, including failure to provide within 10 days any necessary information reasonably requested by TxDOT or failure to immediately address any requests or concerns raised by permitting agencies. All costs of the permitting process are Lessee's responsibility, even if incurred by TxDOT.

D. Lessee is currently updating the bridge location topographic survey. If any additional environmental review, plan revision, survey work, hydrology studies, or similar work ("work") is required by any permitting agency, Lessee shall be solely responsible for completing that work. In the event additional work is required, TxDOT shall provide to Lessee any previous work completed by TxDOT that may assist Lessee in completing the work.

E. 1. On March 26, 2015, the U.S. Army Corps of Engineers (USACE) issued permit No. SPA-2015-00078-LCO which, in accordance with Section 404 of the federal Clean Water Act, authorized the reconstruction of the Bridge. TxDOT will confirm with USACE whether the new design is covered under the same permit or if any modification or new application is required. Lessee shall abide by the permit terms, and any applicable regulations.

2. Lessee agrees to work with TxDOT to timely provide any information



needed by TxDOT to obtain any approval needed under Section 10 of the Rivers and Harbors Act of 1899, as referenced in the USACE permit identified in section E.1.

F. On March 12, 2012, the United States Department of State confirmed its prior determination that no Presidential Permit is needed to "repair, replace, or enlarge" the existing Bridge, for as long as the nature of the traffic (i.e., rail) across the Bridge remains the same. Lessee shall design and construct the bridge in accordance with the Act of Congress approved on February 16, 1928, the confirmation letter of March 12, 2012, FRA requirements and any additional approvals or permits needed to be in compliance with federal regulations and any applicable laws.

G. Lessee agrees to complete construction of the Bridge in accordance with the terms of this amendment and under the following schedule:

- **Complete Design, Plans, and Specifications:** Delivered to TxDOT by April 15, 2016.
- **Contract:**
 - Advertise the project for bids within 60 days of receiving a copy of all required approved permits.
 - Award the Contract for construction of the bridge within 5 months of receiving a copy of all required approved permits.
- **Construction:** Completed within 10 months after contract awarded, unless the parties agree to an extension in accordance with Article I, section K.

H. Lessee will work cooperatively with TxDOT and will copy TxDOT on any correspondence to any U.S. government agency involved in the reconstruction process, and will immediately forward to TxDOT a copy of any correspondence received from such agencies. Lessee acknowledges that TxDOT may have direct communications with any such agencies concerning the reconstruction process, and TxDOT shall notify Lessee of any situation that may affect the reconstruction process.

I. The hydraulic study, the land survey, and the geotechnical studies carried out by TxDOT to support the Bridge design were provided to Lessee on July 16, 2015. TxDOT has no further data available. If Lessee determines additional data is necessary, Lessee will be responsible for obtaining it at Lessee's expense. TxDOT will reasonably assist in obtaining any additional data.

J. This Amendment pertains solely to work to be completed in the United States. All design, work, and construction will be coordinated by Lessee with the owner and operator of the connecting rail line in the Republic of Mexico (Ferromex), and with the proper Mexican governmental authorities, to ensure the U.S. portion of the Bridge will properly connect with the Mexican portion of the Bridge at Presidio and Ojinaga. Lessee will notify TxDOT within five (5) working days of the date Lessee receives knowledge of any situation which may in any form delay the reconstruction of the Bridge. TxDOT hereby acknowledges the



international nature of the project and agrees to support the binational reconstruction process as it may be required

K. TxDOT and Lessee may agree in writing to an extension of a deadline herein, to comply with the directions of resource or permitting agencies, or to delay construction due to weather or force majeure, as defined by Article 10 of the Agreement. Provided, however, no extension will be agreed to that which would have the effect of violating a deadline imposed by a permit issued by the U.S. government. In the case an extension is agreed to under this section, both parties shall work together in good faith to resolve the delay.

L. All costs to plan, design, and construct the Bridge shall be at the sole expense of Lessee.

Article 2. Miscellaneous

Except as specifically amended in this Amendment No. 8, all other provisions of the Agreement remain unchanged and in full force and effect. Capitalized terms used but not defined in this Amendment No. 8 shall have the meanings given to such terms in the Agreement.

Article 3. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this Amendment No. 8 on behalf of the organization they represent.

IN WITNESS WHEREOF, TxDOT AND LESSEE have executed duplicate counterparts to effectuate this agreement.

TEXAS DEPARTMENT OF TRANSPORTATION

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: James M Bass
James Bass
Executive Director

April 19, 2016
Date

**LESSEE
TEXAS PACIFICO GP, LLC, its General Partner**

By: Rogelio Velez Lopez de la Cerda
Rogelio Velez Lopez de la Cerda
CEO

March 29, 2016
Date



LEASE AND OPERATING AGREEMENT
between
THE STATE OF TEXAS
acting by and through the
TEXAS DEPARTMENT OF TRANSPORTATION
as Lessor and
TEXAS PACIFICO TRANSPORTATION, LTD.
as Lessee
REGARDING THE RAIL LINE BETWEEN
SAN ANGELO JUNCTION AND PRESIDIO, TEXAS
AMENDMENT No. 9

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT") and TEXAS PACIFICO TRANSPORTATION, LTD. ("Lessee").

RECITALS

- A. TxDOT and Lessee executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (as amended by Amendment Nos. 1 through 8, collectively, the "Agreement");
- B. The third sentence of Article II.B of Amendment 6 of the Agreement provides that Authorized State Funds will be only those funds expended on projects agreed to in future amendments of the Agreement;
- C. It has become necessary to amend the Agreement to provide a simpler method by which the parties shall agree to the projects on which Authorized State Funds will be spent and to make other clarifying amendments to the Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, TxDOT and the Lessee agree as follows:

AGREEMENT

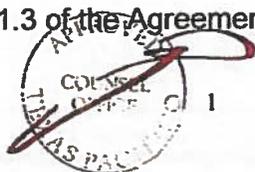
Article 1. Amendment of Amendment 6

The third sentence of Article II.B of Amendment 6 of the Agreement is replaced in its entirety with the following:

Authorized State Funds will include only those funds expended on projects identified and agreed to in writing by the State and Lessee. A Letter of Agreement substantially in the form attached as Attachment "A" hereto, and signed by the legal representatives of both parties, shall satisfy this requirement.

Article 2. Amendment of Paragraph 1.3 (Renewal Options)

The fourth sentence of Paragraph 1.3 of the Agreement is replaced in its entirety with the following:



Any renewal and extension of this Agreement shall be on and under the same terms, provisions, and conditions as the primary term, as amended by any applicable Amendment(s).

Article 3. Amendment of Amendments 4, 5, and 7

The second sentence of Article V.A.4 of Amendment 4, the first sentence of Article III.D of Amendment 5, and the first sentence of Article III.D of Amendment 7 are each replaced in their entirety with the following:

If Lessee or FRA designate track as "excepted" or otherwise prohibit rail operations at speeds of 25 mph or greater, Lessee must repair and rehabilitate the line within 60 days (unless Lessee and the State agree in writing to another deadline) so that FRA requirements allow rail operations at 25 mph or greater.

Article 4. Miscellaneous

Except as specifically amended in this Amendment No. 9, all other provisions of the Agreement remain unchanged and in full force and effect. Capitalized terms used but not defined in this Amendment No. 9 shall have the meanings given to such terms in the Agreement.

Article 5. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this Amendment No. 9 on behalf of the organization they represent.

IN WITNESS WHEREOF, TxDOT AND LESSEE have executed duplicate counterparts to effectuate this agreement.

TEXAS DEPARTMENT OF TRANSPORTATION

Executed by the Executive Director for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: James M Bass Date 6/15/18
James Bass
Executive Director

LESSEE
TEXAS PACIFICO GP, LLC, its General Partner
By: Federico Diaz Page Date 1st June 2018
Executive VP



**Attachment A
Letter of Agreement Form**

Date

Mr. ("____")
" Title"

Texas Pacifico Transportation, Ltd.
106 S. Chadbourne Street
San Angelo, Texas 76903

RE: [*Project Name*]

Dear Mr. "____"

The Texas Department of Transportation ("TxDOT") and Texas Pacifico Transportation, Ltd ("Lessee") executed a contract on January 31, 2001, to lease and operate the rail line between San Angelo Junction and Presidio, Texas (as amended by Amendment Nos. 1 through 9, collectively, the "Agreement"). As provided by Amendment 9 to the Agreement, TxDOT proposes entering into this Letter of Agreement for the purpose of using Authorized State Funds for the project described below under the following terms ("Project"):

Project Name:

Project Description:

Project Total Cost: \$

Authorized State Funds: \$
[*Describe source of funds*]

Lessee will contribute as follows:
[*Terms of TXPF contribution, deadlines, etc.*]

Project General Schedule:

Terms and Conditions of Authorized State Funds

1. The funds will be used solely for the purpose of the Project. They will not be used to



satisfy Lessee's existing obligation to maintain the rail line as required in the Agreement.

2. TxDOT will perform and/or contract for, and oversee, the design, environmental review, and construction of the Project, and administer the Authorized State Funds. The State and the Lessee will work cooperatively during planning and construction so that the Lessee has reasonable time to inspect the work and make recommendations.
3. Lessee will work cooperatively and coordinate with TxDOT and the contractor(s) to provide all contractor's employee's safety training, work windows, work trains, and flaggers (at cost), to perform the work in the shortest possible time.
4. For work performed by TxDOT or its contractors, upon completion Lessee will inspect the work and accept or reject it. The Lessee's decision must be made no later than ninety days after TxDOT gives written notice to Lessee that the work is completed. Lessee's acceptance shall not be unreasonably withheld. Any disagreements or disputes regarding the condition of the work shall be resolved in accordance with Paragraph 4.4 of the Agreement. If the resolution of a dispute requires TxDOT to perform additional work, TxDOT shall begin such work within 45 days of the resolution. Upon Lessee's acceptance of the work, TxDOT will require the contractor to warrant the work for a period of one year. AFTER THE EXPIRATION OF THE WARRANTY PERIOD, LESSEE SHALL HOLD HARMLESS AND INDEMNIFY THE CONTRACTOR, TxDOT, AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LIABILITY, LOSS, CLAIM, OR EXPENSE INCURRED THAT RELATES TO OR ARISES OUT OF THE WORK.
5. In accordance with Amendment No. 6 of the Agreement, the Authorized State Funds provided under this Letter of Agreement will be included in the calculation of Lessee's "Annual Surcharge." Lessee's own contributions under this Letter of Agreement, whether a dollar amount or an in-kind contribution, will not be considered Authorized State Funds for purposes of Amendment No. 6.
6. The requirements in this Letter of Agreement are in addition to the maintenance requirements in the Agreement, and apply to the Project only. The Lessee must maintain the Project in the same or better condition, as compared to the Project's condition when the work was completed. If the Project includes upgrade of any track segments, Lessee must not allow the condition of the upgraded track (including the alignment and profile of the rails) to deteriorate in any substantial manner or form. If Lessee or the Federal Railroad Administration ("FRA") designates track as "excepted" or otherwise prohibits rail operations at speeds of 25 mph or greater, Lessee must repair and rehabilitate the rail line within 60 days (unless Lessee and TxDOT agree in writing to another deadline) so that FRA requirements allow rail operations at 25 mph or greater. Lessee must undertake all maintenance and repairs needed to satisfy the requirements of this Letter of Agreement.

If you agree with the terms presented in this Letter of Agreement, please sign and return one copy of this letter to us. A scanned copy will be sufficient for our purposes.

Sincerely,



James Bass
Executive Director



Agreed to and accepted this ____ day of _____, _____ by LESSEE, TEXAS
PACIFICO GP, LLC, its General Partner.

By:

[legal representative]
[Title]

