

At a regular meeting of the Commissioner's Court of Sabine County, Texas, held on the 12th day of January, 1925, upon notice of C.W. Fuller, made in open Court, and unanimously carried, it is ordered by the Court that W.H. Davidson, County Judge, be authorized and empowered to execute for the County a contract with Gulf, Colorado, and Santa Fe Railway Company pertaining to the construction, maintenance and operation of a track for the County's use in loading gravel near the Station of Steep Creek in San Augustine County, Texas, as per copy recorded at the foot of this order.

AGREEMENT. Made this 5 day of February, 1925, between Gulf, Colorado and Santa Fe Railway Company (Lessee Gulf, Beaumont and Great Northern Railway), a Texas Corporation hereinafter called "Railway Company", party of the first part, and Sabine County, Texas, a political subdivision of the State of Texas, acting hereby by W.H. Davidson, its County Judge, thereunto duly authorized, hereinafter called "County", party of the second part.

RECITALS:

County has requested Railway Company to construct, operate and maintain a track Seven Hundred (700) feet in length, hereinafter in its entirety referred to as "The Track", at or near the station of Steep Creek, San Augustine County, Texas, to serve gravel loading docks (hereinafter called the "Plant"), to be operated by County. The Track is shown by red coloring upon the print hereto attached, marked "Exhibit A", and made a part hereof.

AGREEMENT:

ARTICLE I.

In consideration of the covenants of Railway Company, County agrees as follows:

1. That it will pay to Railway Company, in advance, the estimated cost of construction and removal of The Track, less the cost of grading and track ties which will be furnished by County, the cost so to be paid by county/<sup>being</sup> hereby estimated at Two Thousand Ninety-six and 73/100 Dollars (\$2096.73). If the actual cost shall be more or less than such estimated cost, the difference shall be promptly paid by County or repaid by Railway Company, as the case may be.
2. That it will pay to Railway Company, from time to time, within twenty (20) days after bills are rendered therefor, the entire cost (or an equitable share thereof in case other industries shall be served by the Track or a part thereof, or in case Railway Company shall make any other use of The Track in the exercise of the right given it in Article III, Section I) of maintaining and renewing The Track, Railway Company to be the judge of the necessity for and character of maintenance required on The Track. It is understood that the expense of maintaining and renewing The Track shall include any expense to which Railway Company may be put in the way of paving, sewers, crossing protection or other work; because of the existence of The Track.
3. County will furnish at its own expense, all track ties and do all grading necessary in the construction of The Track, all of said work to be done under the supervision and subject to the approval of Railway Company's Chief Engineer, and in a manner satisfactory to Railway Company.
4. That it will operate the Plant during the term hereof.
5. That in recognition of the fact that the movement of railroad locomotives involves some risk of fire, County hereby assumes all responsibility for and agrees to indemnify Railway Company against loss or damage to property of County or to property upon its premises regardless of Railway Company's negligence, arising from fire caused by locomotive operated by Railway Company on The Track or in its vicinity for the purpose of serving County, except to the premises of Railway Company and to rolling stock belonging to Railway Company or to others and to shipments in the course of transportation.

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County also agrees to indemnify and hold harmless Railway Company for loss, damage or injury from any act or omission of County, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about The Track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.

6. That it will at all times keep a space of six (6) feet from the nearest rail of any railroad track entirely clear of structures, material and obstructions of every sort and will observe an overhead clearance of not less than twenty-five (25) feet above the top of rail; provided, however, if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 6, then County shall strictly comply with such statute or order. In case of a breach of these obligations, or any of them, County assumes and agrees to indemnify railway Company against all liability for loss, damage, injury and death arising therefrom and to reimburse Railway Company for any sums which Railway Company may have been required to pay in the way of damages, fines, penalties or other expense resulting from the violation by County of any statute or order as aforesaid.

7. That it will adopt and enforce suitable rules and regulations for the protection of its employees and others while working in or on cars or on or near The Track, and will require such employees and others to notify, by proper signals or flags, the employees of Railway Company that they are in or on cars or on or near The Track.

#### ARTICLE II.

In consideration of the covenants of County, and the faithful performance thereof Railway Company, subject to the provisions of Sections 1, 2 and 3 of Article I thereof, agrees to construct and maintain The Track during the term of this agreement, unless its obligations so to maintain it may be sooner terminated as herein provided, and to transfer cars, loaded or empty, thereover to and from the Plant subject to any lawful charges that may be imposed by Railway Company for such transfer.

#### ARTICLE III.

The parties mutually agree as follows:

1. The title to The Track and to all property furnished in the maintenance thereof shall be in Railway Company. Railway Company shall have the right to use The Track for other than the express purpose for which it is constructed.

2. If County shall fail for a period of six (6) months in any period of twelve (12) months to operate the Plant, or shall fail or refuse to comply with or carry out any of the covenants or agreements herein contained, Railway Company may, at its option, expressed in writing, terminate this agreement; but no termination shall release County from any liability or obligation (whether of indemnity or otherwise) which may have attached or accrued previous to or which may be accruing at the time of such termination.

3. Unless earlier terminated as hereinbefore provided, this agreement shall be in force for the term of Six Months from its date and thereafter until terminated by either party giving to the other six (6) months written notice of its desire to terminate the same. Upon such or any other termination, Railway Company shall pay to County the salvage value, at the time, of such materials in The Track as County shall have paid Railway Company for under the provisions of this agreement, and Railway Company shall have the right to remove the track and every part thereof.

4. Any notice to be given by Railway Company to County hereunder shall be deemed to be properly served if the same be delivered to County, or if left at the Plant with any of the

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agents, servants or employes of County, or if posted on the Plant, or if deposited in the postoffice, postpaid, addressed to County at Hemphill, Texas.

5. Each and every covenant herein shall inure a favor of and run to the successors and assigns of railway Company and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the railroad of railway Company to the same extent, and as fully as though such person, firm or corporation were specifically named in this agreement in the place and stead of railway Company; however, no assignment hereof by County, nor any subsequent assignee, shall be binding upon Railway Company without the written consent of the President or a Vice-President of Railway Company in each instance.

In Witness Whereof, the parties have executed this agreement in duplicate the day and year first above written.

GULF, COLORADO AND SANTA FE RAILWAY COMPANY  
(Lessee Gulf, Beaumont and Great Northern  
Railway)

By F. G. Petabone, Its vice President  
and General Manager.

I.S.

SABINE COUNTY? TEXAS

ATTES:

By W.H. Davidson

J. H. Ener, County Clerk