

South of Main

SANTA FE ORIGINAL

AT

Happy South

CONTRACT FOR INDUSTRY TRACK

Contract No. 175635

RETURN TO

Secretary, The A.T. & S.F. RY. CO. Topeka

AGREEMENT, Made as of this 1st day of September, 19 86,
between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
hereinafter referred to as "Santa Fe," and
ATTEBURY GRAIN, INC.,
a Texas corporation,
hereinafter, whether one or more persons, corporations, or other entities,
referred to as "Industry."

RECITALS:

The Industry has requested the Santa Fe to operate and maintain two
tracks or track extensions, as the case may be, aggregating about 2,044
feet in length, hereinafter in their entirety referred to as "The Track," at
or near the station of Happy, Swisher County, Texas
to serve grain elevators
(hereinafter called the "Plant"), to be operated by the Industry. The Track
is shown by bold line upon the print hereto attached, marked "Exhibit A" and
made a part hereof.

Therefore, in consideration of the mutual covenants of the parties
herein contained, Santa Fe and Industry agree upon the following terms and
conditions.

AGREEMENT:

ARTICLE I

Section 1. Industry shall and hereby does grant to the Santa Fe for
the term of this Agreement, free of cost, a right of way, of such widths as
are indicated on Exhibit A, or if Exhibit A does not indicate the width, such
right of way shall be eight and one-half (8 1/2) feet on each side of the
center line thereof, for all that portion, if any, of The Track located on
property belonging to Industry, with the right to maintain and operate The
Track thereon. Where any part of The Track will lie on a public street, alley
or other thoroughfare, or upon property owned by third persons, corporations
or other entities, Industry shall secure to Santa Fe by ordinance or grant, as
the case may be, in form satisfactory to Santa Fe's Counsel, and without cost
to Santa Fe, the right, but not the obligation, to maintain and operate The
Track thereon, together with the right to remove the same; in the case of a
grant, the right of way shall be of such widths as shown on Exhibit A, or if
not shown, such right of way shall be eight and one-half (8 1/2) feet on each
side of the center line of The Track.

Section 2. Industry shall pay Santa Fe, in advance,

No cost to be borne by Industry under this Section 2.

Section 3. Industry shall pay to Santa Fe, 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 the Santa Fe shall make any other use of The Track in the exercise of the right reserved in Article III, Section 1) of maintaining and renewing that portion of The Track designated "Track No. 2" and that portion of The Track designated "Track No. 6" beyond the clearance point with track designated "Track No. 1", as shown on Exhibit A, the Santa Fe to be the judge of the necessity for and character of maintenance required on The Track. Industry shall also reimburse Santa Fe promptly upon receipt of bills for all expenses incurred by Santa Fe as a result of the existence of The Track including, but not limited to, the costs of grade crossing protection, roadway construction, drainage installation, lighting, signalling and special maintenance.

Section 4. Industry shall operate the Plant during the term of this Agreement.

Section 5. (a) Industry shall indemnify and hold harmless Santa Fe for any claim, loss, damage, expense or injury, including death, arising out of any act or omission of the Industry, 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 public body, individual, partnership, corporation, or other legal entity while on or about The Track or while exercising any right or performing any obligation, pursuant to this Agreement. If any claim, loss, damage, expense, injury or death shall arise from the joint or concurring negligence or misconduct of both parties hereto, it shall be borne by them equally; provided, however, such claim, loss, damage, expense, injury or death did not arise out of a violation of a statute, ordinance, rule, order or judgment, concerning clearances from railroad tracks, or from the installation, maintenance, use, removal, state of repair or presence of any gates, track scales, unloading pits, loading or unloading devices or other obstructions placed along, across, over or under The Track by Industry.

(b) If any loss, expense, damage, injury or death shall arise from a violation of a statute, ordinance, rule, order or judgment, concerning clearances from railroad tracks, or from the installation, maintenance, use, removal, state of repair or presence of any gates, track scales, unloading pits, loading or unloading devices or other obstructions, then Industry shall bear the entire loss, damage or expense incurred, as provided in Section 6 of Article I hereof.

Section 6. (a) Industry shall strictly comply with any and all statutes, ordinances, rules, orders and judgments of all governmental bodies having jurisdiction in the State in which The Track is located, governing side clearances and overhead clearances from railroad tracks in that State. Notwithstanding any provision of Section 5, Article I of this Agreement, Industry shall indemnify Santa Fe from and against any and all claims, loss, damage, expense, injury and death arising out of any breach or alleged breach by Industry of the obligations of this Section 6, regardless of whether such claim, loss, damage, expense, injury or death be caused or contributed to by the negligence or alleged negligence of the Santa Fe, its agents or employees, or otherwise. Industry shall also reimburse Santa Fe for any money which Santa Fe has paid as a result of a violation or alleged violation by Industry of any statute, ordinance, rule, order, or judgment referred to in this Section 6.

(b) In the event Industry desires to install any gates across and adjacent to The Track, or to install a track scale, unloading pit, loading or unloading device, adjustable loading docks or doors at warehouses, or any other structure which will impair the required clearances along The Track, Industry shall first secure any and all required authority from the State or other governmental body or agency having jurisdiction, prescribed by statute or Order of competent public authority, and shall furnish Santa Fe with a copy of such Order approving installation of the facility which will impair required clearances. Industry shall submit to Santa Fe the plans and specifications for such facilities, and shall secure Santa Fe's written approval thereof before any construction of such facilities is undertaken.

(c) Industry shall install, use and maintain all facilities described in paragraph (b) of this Section 6, at its sole cost and expense, in such a manner and of such materials, satisfactory to Santa Fe, and as will not at any time be a source of danger to or interference with the safe operations by Santa Fe on The Track and on its railroad. Gates across The Track shall be opened whenever necessary to enable Santa Fe to operate over The Track. Unloading pits shall be securely covered when not in actual use and at all times when The Track is being switched. Doors shall be firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when The Track is being switched. During installation and when using and repairing these facilities, Industry shall exercise utmost and extraordinary diligence to prevent damage to property of Santa Fe or injury to its agents or employees.

(d) In the event there are any existing facilities as enumerated in paragraph (b) of this Section 6 or Industry places such facilities along, across, over or under that portion of The Track located on Santa Fe's property, Industry shall be responsible for and bear all cost for removal of said facilities, as well as bear the cost of making any changes in said facilities or relocation thereof in the event Santa Fe desires to make any other use of its property during the term hereof. If Industry fails within thirty days after receiving written request by Santa Fe to make such changes or fails to make proper removal within thirty days of termination of this Agreement, Santa Fe may make such changes or removal at Industry's expense.

(e) Vertical and horizontal clearances from The Track at entrances to buildings, and such clearances from The Track for the facilities referred to in paragraph (b) of this Section 6, shall conform with those specified in the Order authorizing such reduced clearances along The Track.

(f) Notwithstanding any provision of Section 5, Article I of this Agreement, Industry shall indemnify and save harmless the Santa Fe for any and all claims, loss, damage, expense, injury and death arising or growing out of loss of or damage to property, including without limitation, the facilities described in paragraph (b) of this Section 6, and injury to or death of persons, including without limitation, employees and agents of Santa Fe, resulting in any manner from the construction, installation, maintenance, use, state of repair, presence or removal of such facilities along, under, across and adjacent to The Track, regardless of whether such loss, damage, injury or death be caused or contributed to by the negligence or alleged negligence of the Santa Fe, its agents, or employees, or otherwise; and Industry shall, promptly upon receipt of bill, pay to Santa Fe the full amount of any loss or damage that Santa Fe may sustain, incur or become liable for, and all sums which Santa Fe may pay or be compelled to pay in settlement of any claims on account thereof.

Section 7. Notwithstanding any other provisions of this Agreement, Industry shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by any federal, state or local governmental body or agency established thereby (hereinafter referred to as "Authority"), relating to Industry's use of The Track. In its use of The Track, Industry shall at all times be in full compliance with all Standards, present or future, set by any authority, including, but not limited to, Standards concerning air quality, water quality, noise, hazardous substances and hazardous waste. In the event Industry fails to be in full compliance with Standards set by any Authority, Santa Fe may, after giving reasonable notice of the failure to Industry, and Industry, within thirty (30) days of such notice, fails either to correct such non-compliance or to give written notice to Santa Fe of its intent to contest the allegation of non-compliance before the Authority establishing the Standard or in any other proper forum, take whatever action is necessary to bring The Track into compliance. Industry shall reimburse the Santa Fe for all costs (including, but not limited to, consulting, engineering, clean-up and disposal costs, and legal costs) incurred by the Santa Fe in complying with such Standards, and also such costs incurred by the Santa Fe in abating a violation of such Standards, protecting against a threatened violation of such Standards, redesigning or reconstructing The Track to comply with any Standard, and installing any device necessary to comply with any Standard, defending any claim of violation of such Standards in any proceeding before any Authority or court, and paying any fines or penalties imposed for such violations. Industry shall assume liability for and shall save and hold harmless the Santa Fe from any claim of a violation of such Standards regardless of the nature thereof or the Authority or person asserting such claim, which results from Industry's use of The Track, whether such claim arises in whole or in part from the negligence or alleged negligence of the Santa Fe or otherwise. Industry, at its cost, shall assume the defense of all such claims regardless of whether they are asserted against Industry or Santa Fe.

Section 8. (a) In addition to the rights and obligations of Industry and Santa Fe provided in Section 7, Article I of this Agreement, relating to Industry's compliance with Standards issued by any Authority concerning hazardous substances and hazardous waste and notwithstanding Industry's other indemnity obligations described elsewhere in this Agreement, Industry agrees that, with respect to its use of The Track, it shall periodically furnish Santa Fe with proof, satisfactory to Santa Fe, that Industry is in full compliance with Standards issued by any Authority concerning hazardous substances and/or hazardous waste. Should Industry fail to comply with such Standards concerning hazardous substances and/or hazardous waste, notwithstanding any other provision of this Agreement and in addition to and not exclusive of any other rights of the Santa Fe, Santa Fe may at its option terminate this Agreement upon reasonable notice; however, any waiver by Santa Fe of any breach of Industry's obligations shall not constitute a waiver of the right to terminate this Agreement for any subsequent breach which may occur or to enforce any other provision of this Agreement. Further, regardless of any negligence or alleged negligence of the Santa Fe, Industry shall assume liability for and save and hold harmless the Santa Fe from and against all injuries to any person and damage to any property, including without limitation, employees and property of Industry and Santa Fe, together with all related expenses, including without limitation attorneys' fees, investigators' fees, and litigation expenses, resulting in whole or in part from Industry's failure to comply with any Standard issued by any Authority concerning hazardous substances and/or hazardous waste.

(b) It is understood and agreed that an Industry who does not now, or in the future, generate, handle, transport, treat, store, or dispose of hazardous waste or hazardous substances, as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state or local governmental agency or body, is not subject to the provisions of this Section 8.

Section 9. Upon written notice from Santa Fe, Industry agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Santa Fe by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which Industry has an obligation to assume liability for and/or save and hold harmless the Santa Fe. Industry shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this Section 9 including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.

ARTICLE II

Section 1. Subject to the provisions of Sections 2 and 3 of Article I hereof, Santa Fe agrees to maintain The

Track during the term of this Agreement, unless its obligation so to maintain it may be sooner terminated as herein provided, and to transfer cars, loaded or empty, over The Track to and from the Plant subject to any lawful charges that may be imposed by Santa Fe for such transfer.

Section 2. All operations by Santa Fe over The Track and all maintenance and construction work on The Track shall be in compliance with all statutes, ordinances, rules, orders, decisions and other actions of all governmental bodies having jurisdiction over the conduct of Santa Fe's railroad business. Santa Fe's obligations under this Agreement are expressly subject to such statutes, ordinances, rules, orders, decisions and other actions.

Section 3. Industry shall promptly report to Santa Fe any conditions or activities upon The Track which create an unreasonable risk of harm to persons or property and shall take whatever action is reasonably necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Industry's reporting to Santa Fe shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement.

ARTICLE III

Section 1. The title to The Track and to all property furnished in the maintenance thereof shall be in Santa Fe. Santa Fe shall have the right to use The Track for other than the express purpose of serving the Plant.

Section 2. (a) If the Industry shall fail for a period of eight months in any period of twelve months to operate the Plant or shall fail or refuse to comply with or carry out any of the covenants or agreements herein contained, Santa Fe may, at its option, expressed in writing, terminate this Agreement. With the exception of the notice requirement, the provisions of Section 3, Article III shall apply to such termination.

(b) No termination shall release Industry from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination.

Section 3. Unless earlier terminated as herein provided, this Agreement shall be in force for the term of ONE MONTH from its date and thereafter until terminated by either party giving to the other ten (10) days' written notice of its desire to terminate the same. Upon such or any other termination, Santa Fe shall pay to the Industry the salvage value of the materials, less cost of removal, in 1,481.9 feet of The Track designated as Track No. 6 on said Exhibit A as shall have been paid for by Industry's predecessor under the terms of an agreement dated July 15, 1931 (Santa Fe's Secretary's Contract No. PSF-6319), such salvage to be based on value at the date of termination, or the amount originally paid the Santa Fe for such materials by the Industry's predecessor, whichever is less, and the Santa Fe shall have the right to remove The Track and every part thereof. This Agreement shall also terminate forthwith in the event Santa Fe shall be dispossessed of the right to operate over any privately owned track of which The Track or any part thereof is an extension.

Section 4. Any notice to be given by Santa Fe to Industry hereunder, and any notice to be given by Industry to Santa Fe hereunder, shall be deemed to be properly served if it be deposited with the United States Postal Service, or its successor, postage prepaid, addressed to the other party or parties hereto, at the addresses shown on the signature page of this Agreement.

Section 5. In the event that Industry embraces two or more persons, corporations or entities, all the covenants and agreements of Industry herein shall be the joint and several covenants and agreements of such persons, corporations or entities.

Section 6. All the covenants and provisions of this Agreement shall be binding upon the successors, heirs, legal representatives and assigns of Industry to the same extent and effect as the same are binding upon Industry, and each and every covenant herein shall inure in favor of and run to the successors and assigns of Santa Fe and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the railroad of the Santa Fe 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 the Santa Fe; provided, however, no assignment hereof by Industry, its successors, heirs, legal representatives or assigns, or any subsequent assignee, shall be binding upon the Santa Fe without the written consent of Santa Fe in each instance.

Section 7. All questions arising under this Agreement shall be decided according to the laws of the State in which The Track is located.

Section 8. This Agreement represents the full and complete agreement of Santa Fe and Industry with respect to all matters relating to the maintenance and operation of The Track and supersedes all other agreements, contracts, understandings, and negotiations between the parties relating to the maintenance and operation of The Track.

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Address: P. O. Box 1738, Topeka, Kansas 66628

By *B. J. Heath*

Its Assistant General Manager

ATTEBURY GRAIN, INC.

Address: P. O. Box 2707, Amarillo, Texas 79105

By *Ed. Lane*

Its Vice - President

APPROVED AS TO FORM

[Signature]
General Attorney - Kansas

