

MEMO TO: Honorable Judge Cynthia Brown & Decision Makers at STB
MEMO FROM: William P. Breitsprecher
DATE: August 12, 2014
SUBJECT: Misrepresentations by Wisconsin Department of Transportation
 Attorney Kathleen Chung [Docket #FD_35854_0]

Mailed To Atty. Kathleen Chung,
WI DOI, August 12, 2014

The record will show that in 2011, under docket number FD 35573 over the Christmas Holidays of 2011, Attorney Kathleen Chung, serial criminal and money launderer Bill Gardner, and WATCO abused the fast-track approval process to materially misrepresent the sale of Gardner's controlling interests in Wisconsin & Southern Railroad (WSOR) to the largest privately-held transportation holding company in the world. The timing of the deal and the fast-track approval at STB served no legitimate purpose other than to ensure:

1. There would be no fact-finding and Bill Gardner's illegal use of WSOR's operations to launder illegal campaign to Atty. Chung's boss, Gov. Scott Walker, would not be part of the public record.
2. Despite the fact that there were objections to this sale and each and every weekday these objections were on public display in the Capitol Rotunda in Madison, Wisconsin, Atty. Chung not only omitted material facts related to Gardner's criminality & how more than \$50,000 was illegally laundered through the railroad to Friends of Scott Walker, she falsely stated that there were no concerns about this sale. I have it directly from Transit Authority Secretary Charles Anderson that there were indeed concerns about Gardner's crimes and that there were discussion on how this serial criminality directly arising from WSOR operations impacted Bill Gardner's rights to maintain exclusive operating agreements which specifically preclude these types of crimes.

Since the documentation I am submitting demonstrates that the 2011 decision is not valid due to material omissions and misrepresentations, there can be no approval for any requests to pave the way for additional line sales to the State of Wisconsin for the stated purpose of subsidizing and expanding the operations of WATCO. A Petition to Revoke is being prepared – no just and fair decision to enable WATCO & WI DOT to exploit the approval process at STB to compound their errors, negligence, and breaches of duties is justifiable.

Atty. Chung surely knows better to cite previous cases as precedence in her August 7, 2014, Petition For Declaratory Order, ID 236416. As I will demonstrate – WSOR was criminally used to fund Gov. Scott Walker's gubernatorial candidacy in 2006 & 2010. Governor Scott Walker is under criminal investigation at this very moment. Governor Scott Walker has been under criminal investigation for the entire term of his Governorship (source: <http://talkingpointsmemo.com/livewire/scott-walker-criminal-scheme-allegation>).

WSOR played a key role in this criminality – it was used to illegally launder money at least 15 times between 2005-2010. No one knows how many times similar crimes were committed via WSOR's operations prior to that – convicted felon & former owner Bill Gardner had opportunities to perpetrate this type of criminality many times since he took control of WSOR in 1988.

Prosecutors describe described Gov. Walker as being at the center of a "criminal scheme" to skirt state election laws. None of the other railroad approvals that Atty. Chung cites as supporting her Petition For

Declaratory Order (ID 236416) were criminal enterprises, yet in 2011; WSOR met the FBI's definition of a criminal enterprise (source: <http://www.fbi.gov/about-us/investigate/organizedcrime/glossary>) "[...] a group of individuals with an identified hierarchy, or comparable structure, engaged in significant criminal activity.

None of the railroads involved with decisions cited by Atty. Kathleen Chung were illegally laundering tens-of-thousands-of-dollars in pay-to-play bribes and excessive campaign donations. This alone should be enough for Surface Transportation Board to immediately deny Wisconsin DOT's petition ID 236416.

We are back in the era of robber barons if Surface Transportation Board negligently rubber-stamps absurd assertions – the criminal abuse of WSOR's operations, Wisconsin DOT & transit authorities refusal to enforce basic contract law as well as specific and clear language in "Representations, Warranties, and Covenants" in operating agreements, and the fraudulent transfer of these breached operating agreements mean no credible claims can be made that any transaction involving WSOR and WATCO is comparable cases cited by Atty. Chung.

But it is not just because Atty. Chung is falsely citing precedents that simply cannot be applied due to serial criminality that she has enabled and concealed. Atty. Chung cannot be allowed to again fool STB – she cannot have it both way:

1. If operating agreements contain "Representations, Warranties, and Covenants" that prevent criminal activity from WSOR's operations were violated by Bill Gardner's serial use of his railroad to illegally launder money, DOT and transit authorities had a duty to act on these violations and had a duty to put them on the record at Surface Transportation Board when Gardner transferred these breached agreements to WATCO.
2. If the operating agreements that were transferred to WATCO in 2011 allow WSOR to be repeatedly used to criminally launder money, then they are entirely inadequate and negligently written to potentially enable more illegal campaign donations and pay-to-play. Atty. Chung cannot be allowed to impose the same negligent contractual language in the proposed operating agreement identified as an exhibit in this filing:

<http://breitlinks.com/pdfFilesSTB/petitionForDeclaratoryOrder8-2014compressed.pdf>

This, on its face, should cause STB to immediately deny Atty. Chung's recent filings. I pray that a travesty of justice is not be allowed to continue. I pray that STB will send all parties a strong message – publically subsidized rail cannot be a piggy bank to illegally launder money for politicians like Scott Walker nor can they be used to secure grants and subsidies with pay-for-play bribes. When there are – operating agreements must be revoked transferred in an orderly, open process.

If STB does not immediately refuse Atty. Chung's materially misleading petition, then the Federal Government is a party to codifying crimes against the citizens of our Great Nation and of The Badger State, Wisconsin. STB will need to revisit Honorable Cynthia Brown's 2011 approval of the WATCO/WSOR sale and consider a Petition to Revoke, but before that can happen, STB must deny any and all petitions, waivers, demands, and filings to enrich WATCO at taxpayer's expense and make it virtually impossible to overturn the injustice and harm done in 2011.

The rule of law demands that criminals pay the full price of their crimes – instead, Bill Gardner parlayed his serial felonies into multimillions of dollars. When crimes violate clear and simple stipulations in contracts and agreements, there is a need to enforce said agreements. Atty. Chung

knows exactly how WSOR's operations were abused. She has told me directly that she is fine with them. She falsely claims they are allowed under operating agreements. She has no right to hide these issues from STB. She has a duty to set the record straight in this filing and in the false statements given to STB in December 2011.

In order to set the record straight in her 2014 filings, it is imperative that WI DOT, Transit Authorities, WI DNR, and Friends of Wisconsin State Parks & Friends of Devils Lake State Park all comply with legal, just, and necessary open records request. In an email dated Tuesday, August 12, 2014 10:18 am; Daniel A Graff, DOT Attorney (Daniel.Graff@dot.wi.gov) has acknowledged he is working on each request that DOT can fulfill. Atty. Chung knows that requests are pending – she cannot be given any credibility for demanding petitions, waivers, and exemptions while this is happening.

I have also made open records requests to those transit commission board members I can identify, DNR, Friends of Wisconsin State Parks, and Friends of Devils Lake State Park. Not a single party at a transit board has complied. I must demand that STB refuse to issue any decisions, waivers, and exemptions until the docket is complete, meaning all open records requests are resolved and all material information is on the docket.

Peter Biermeier, Recreational Planning And Development Chief, Wisconsin State Parks, (608-264-6136, email peter.biermeier@wisc.gov) confirmed to me that absolutely no information about rail development through Devils Lake State Park has been communicated to those with responsibility to protect these parks and the public that uses them. This, on its face, proves that Atty. Chung's statements that there is no opposition are blatantly false – she knows better – her department refuses to inform the public and other stakeholders of plans that she now seeks waivers, exemptions, and approvals for.

Given that material information is not available, is being withheld, and that there are many parties that need to put objective facts on the record, it is not likely that resolutions to open records requests will happen within 90 days. I pray that STB will acknowledge that there are problems with Atty. Chung's August 7, 2014, filings and even more problems with her 2011 filings made over the Christmas Holiday Season in an illegitimately fast-tracked procedure that fraudulently transferred operating agreements that Bill Gardner should not have been allowed to keep after repeatedly using WSOR operations for criminal purposes.

It is also absurd that Atty. Chung is demanding a waiver of any fees. I was not allowed to even submit such a request to Honorable Judge Cynthia Brown when I sought to resolve all issues still hanging over continued subsidies of WSOR/WATCO and the fraudulent transfer of operating agreements. The State of Wisconsin and especially Department of Transportation certainly can and does have a duty to pay any and all costs associated with ongoing subsidies, tens-of-millions of dollars this year alone, to the largest privately held transportation holding company in the world.

I was told that Honorable Judge Cynthia Brown would summarily dismiss my request for a waiver without detailed financial statements – disingenuous on the part of the Rail Assistant team, because it was simple to document my financial position without balance sheets and income statements, etc. Even if Wisconsin DOT can put together charts and statements that misrepresent The State of Wisconsin and DOT as being unable to pay fees, Atty. Chung's request for a fee waiver needs to be laughed out of the hearing room. If Atty. Chung's position is that The State of Wisconsin cannot

accept responsibility for the costs of a proposed rail purchase, then DOT needs to promptly withdraw from the deal and not lie about a need for a fee waiver.

The following summarizes each point of contention that this filing is meant to place on the docket and before all decision makers. I am providing indisputable evidence – DOT Atty. Kathleen Chung is again filing misrepresentations with STB.

I pray that this time, unlike 2011, the process works. Please don't allow Atty. Chung to get away with misrepresenting the criminality at WSOR as the equivalent to each and every other decision she cites as reference & precedence. These other STB petitions, waivers, exemptions, and decisions did not sanctify and codify great crimes against our democracy. Atty. Chung is seeking to engrain potential criminality permanently into the process here in Wisconsin and at STB.

Respectfully,

William P. Breitsprecher

**Case to Deny Wisconsin DOT's Purchase of Reedsburg-Madison Rail Line
NOTE: Sourcing links below each section)**

Bill Gardner's Criminal Use of WSOR Operations: State of Wisconsin vs. William Gardner (Criminal Complaint). This document reveals that Bill Gardner, former owner of WSOR, illegally laundered more than \$60,000 through Wisconsin and Southern Railroad's operations between 2005 and 2010 (see Exhibit A, page 13). Gardner had owned WSOR since 1988. It is not known if he used the railroad to illegally launder money prior to 2005 as it appears that, for whatever reason, Government Accountability Board did not choose to investigate any criminal use of WSOR's operations prior to 2010. Note that on page 13 of document (link below), the contributor who was complicit with illegally laundering money from WSOR's operations on 12/16/2009 is redacted. Who colluded with Bill Gardner to donate \$10,000 to Friends of Scott Walker on that date?

Also significant, on page 2, the criminal complaint describes Gardner's criminality as "*a continuing pattern of railroad employees [...] who were reimbursed – with either Gardner's personal funds or the funds of Wisconsin and Southern Railroad – for contributions made to political candidates.*" The complaint discloses that the railroad receives "*millions of dollars in grants and loans from the State of Wisconsin*". This document cites the corporate chief financial officer as describing public subsidies as "*essential*" to the operation of the railroad.

Curiously, one criminal conspirator, **Ken Lucht**, is identified as a "*government liaison*" whose job description has 75% "*of his time with contacts on tasks involving government contacts, mostly with the State of Wisconsin.*" This document proves that WSOR is not only entirely dependent of public subsidies to turn profits, but that the railroad itself is structured to keep public monies flowing into the operation. Lucht's job description identifies the other 25% of his time as "*Lobby our State and Federal lawmakers for railroad-friendly legislation*" and "*Lobby our State and Federal Lawmakers for track & structures upgrades*" (pg. 2-3). Not only were revenues from WSOR's freight operations used to influence key Wisconsin elections, but the railroad uses criminal campaign contributions as a pay-to-play.

http://breitlinks.com/pdfFilesSTB/qabDocuments/gardner_criminal_complaint_pdf_10789.pdf

Milwaukee District Attorneys Plea Offer to Bill Gardner. Even though Gardner was discovered to have criminally laundered money through WSOR 15 times since May 30, 2005 and made multiple illegal and excessive political donations, a plea deal only charged him with 2 felonies: (1). *Excessive Political Donations – Party to a Crime* (2). *Unlawful Political Contributions – Party to a Crime*. Each charge, a Class I felony where the defendant may be fined not more than \$10,000, or imprisoned not more than 3.5 years or both.

http://breitlinks.com/pdfFilesSTB/qabDocuments/gardner_settlement_agreement_letter_pdf_17085.pdf

Settlement Agreement, State of Wisconsin vs William Gardner. In hindsight, this plea resulted in a slap on the wrist to Gardner and 7 co-conspirators that worked for WSOR. This document demonstrates that Gardner's criminality was largely centered and enabled around the freight operations of WSOR. Gardner, the railroad's President and as essentially the sole owner, accepted a forfeiture of \$166,800 for illegally laundering 11 political contributions totaling \$53,800.

One of the criminal conspirators identified in this document is Ken Lucht, who not only is still employed by WSOR, but currently is identified as Director of Government Relations at Watco Companies (www.zoominfo.com/p/Ken-Lucht/222611226) and at the WATCO website (http://www.watcocompanies.com/Railroads/WSOR/WSOR_contacts.htm). This document proves that, beyond any doubt, WSOR freight operations were criminally used and the primary beneficiary of these crimes was Friends of Scott Walker.

http://breitlinks.com/pdfFilesSTB/qabDocuments/gardner_wsor_settlement_agreements_pdf_50963.pdf

Government Accountability Board (GAB) Press Release, April 4, 2011: G.A.B. and Milwaukee County District Attorney Announce Resolution of Significant Campaign Finance Investigation. While a fairly detailed summary of Bill Gardner's criminal use of WSOR's operations to illegally fund Scott Walker, this document minimizes the larger crimes that the initial investigation uncovered and downplays the significant ways that WSOR's operations were used to commit serial crimes against the State of Wisconsin, owners of virtually all rail lines that Bill Gardner had operating agreements for maintenance & subsidized upkeep and exclusive freight operations on state-owned railroad tracks

http://breitlinks.com/pdfFilesSTB/qabDocuments/nr_gab_moda_gardner_04_11_2011_pdf_80636.pdf

Wisconsin Department of Transportation (DOT) Top Attorney Lies About Operating Agreements and Refuses to Release Them Under Open Records Law. Using WSOR's operations for criminal activities is specifically precluded in all of its operating agreements. Remarkably, when asked about this in January 2011, DOT Attorney Kathleen Chung directly stated that nothing in these operating agreements (essentially leases) prevents WSOR's freight operations from being used for criminal purposes – Atty. Chung knows better. When asked, under Wisconsin's Open Records Laws to produce operating agreements that bind Bill Gardner and WSOR, Atty. Chung lied, stating that there were

hundreds of miles of tracks and therefor providing all of the operating agreements would be hundreds of documents.

<http://breitlinks.com/pdfFilesSTB/letterKathleenChungDOT.pdf>

DOT Attorney Chung Lies About Open Records Request for Copies of Operating Agreements.

Lawyers in Wisconsin are prohibited from intentionally lying and Atty. Chung knows this. It was only after a complaint was filed to Wisconsin Supreme Court Division of Lawyer Regulation and Ethics that operating agreements were produced. This demonstrates that Atty. Chung has problems with ethics and her integrity is questionable. There were not “hundreds of documents” in this request at all and Atty. Chung knew this.

<http://breitlinks.com/pdfFilesSTB/chungComplaintLawerRegSupCourt.pdf>

Bill Gardner’s Operating Agreements Preclude the Crimes He Admits Committing. Each operating agreement has a boiler-plate section titled “Representations, Warranties, and Covenants” which states

in plain and simple language that the criminal use of WSOR’s freight operations nullifies the operating agreement. This is a necessary and common practice in commercial leases – leases are generally not allowed to commit crimes against lessors.

If Wisconsin DOT or transit authorities did not include protections like these in operating agreements, those agreements would be seriously deficient and negligently so. The attorneys that drafted, approved, and implemented these agreements had fiduciary duties to protect the public. Atty. Kathleen Chung has no credibility when she asserts that these leases actually enable criminal money laundering, excessive political contributions, and pay-for-play.

See Article 9, page 26: <http://breitlinks.com/pdfFilesSTB/EWCRC-WSOROperatingAg20081.pdf>

Atty. Kathleen Chung cannot have it both ways:

3. If operating agreements contain “Representations, Warranties, and Covenants” that prevent criminal activity from WSOR’s operations were violated by Bill Gardner’s serial use of his railroad to illegally launder money, the DOT and transit authorities had a duty to act on these violations and had a duty to put them on the record at Surface Transportation Board when Gardner transferred these breached agreements to WATCO.
4. If the operating agreements that were transferred to WATCO in 2011 allow WSOR to be repeatedly used to criminally launder money, then they are entirely inadequate and negligently written to enable more illegal campaign donations and pay-to-play. She cannot be allowed to impose the same negligent contractual language in the proposed operating agreement identified as an exhibit in this filing: <http://breitlinks.com/pdfFilesSTB/petitionForDeclaratoryOrder8-2014compressed.pdf>

Bill Gardner Transfers Operating Agreements He Had Violated to WATCO, the Largest Privately-Held Transportation Holding Company in the World. Over the Christmas Holiday Season, Bill Gardner suddenly, with virtually no public awareness or media coverage, announced that he would sell his majority ownership in WSOR, reportedly 90%, to a transportation holding company out of Wichita Kansas. Not only was this deal structure to coincide with the holiday season when it was assured relative anonymity, but it was fast-tracked through the Surface Transportation Board (STB) with only a 1-week window for material facts to be placed on the docket for Honorable Judge Cynthia Brown to consider in her decision. This served no legitimate purpose other than to prevent any questions from being asked and make it impossible for material facts to be part of the process.

Only Gardner, WATCO, and WIDOT were allowed to provide information. All references to Bill Gardner's serial criminality and use of WSOR's operations to illegally launder money were omitted, constituting material misrepresentations on the part of all parties because the operating agreements that Bill Gardner was transferring should have been deemed null-and-void. Bill Gardner should have had no right to parlay his serial criminality through WSOR's operations into a multimillion dollar payday. Preventing these material facts from being part of the docket and avoiding any scrutiny reasonably appear to be the only reason the Gardner/WATCO deal was structured through STB in this manner. Wisconsin DOT Lead Attorney, Kathleen Chung, collaborated with this scheme.

DOT/Atty. Kathleen Chung's Statements to Surface Transportation Board in support of Gardner/WATCO sale, Docket FD 35573,

<http://breitlinks.com/pdfFilesSTB/wiDeptTransportationWSORletterChung.pdf>

WATCO's Comments to STB in Support of Purchase of Controlling Interests in WSOR from

<http://breitlinks.com/pdfFilesSTB/watcoCommentsToSTB12-2011.pdf>

WATCO's Motion for Protective Order to the STB

<http://breitlinks.com/pdfFilesSTB/watcoComments2ToSTB12-2011.pdf>

Judge Cynthia Brown's Approval [Docket No. FD 35573] Watco Holdings, Inc. and Watco Transportation Services, L.L.C. – Acquisition of Control Exemption – Wisconsin & Southern Railroad, L.L.C.

<http://breitlinks.com/pdfFilesSTB/watcoApproval.pdf>

Letter from State Legislatures Requesting 60 day hold on fast-track approval, Docket FD 35573,

<http://breitlinks.com/pdfFilesSTB/hulseyletterSTB.pdf>

WATCO's Attorneys Reply to Request for Hold. The fast-track process over the Christmas Holiday was used to prevent material facts from being discovered and put on the record,

http://breitlinks.com/pdfFilesSTB/watcoSTBfilingDec29_2011.pdf

Senator Tim Cullen's Request to Reconsider the Fast-Tracked Approval of Gardner/WATCO deal, <http://breitlinks.com/pdfFilesSTB/timCullensLetterToSTB.pdf>

WATCO's Attorneys Reply to Sen. Cullen's Request to Reconsider,

<http://breitlinks.com/pdfFilesSTB/watcoReplyToSenCullen.pdf>

January 24, 2012, Purchase Agreement Filed with STB. As this electronic copy downloaded from STB website demonstrates, WATCO not only heavily reacted many details of this agreement, but the copy submitted to Honorable Judge Cynthia Brown is entirely unreadable! There is no legitimate

excuse for this – what is WATCO trying to hide?
<http://breitlinks.com/pdfFilesSTB/watcoGardnerPurchaseAgreement.pdf>

For all filings or the 2011 fast-track approval are online. Search by docket number FD 35573.

These are the results returned on 8/8/2014

<http://www.stb.dot.gov/filings/all.nsf/%28search-66.202.121.178-36664%29?OpenView&Count=5000>

Attempt to File Petition to Revoke. In 2012, I attempted to correct the record while any and all legal issues related to Bill Gardner’s fraudulent transfer of exclusive operating agreements were resolved. I began to work on a Petition to Revoke based on material misrepresentations by omission and commission by Gardner, WATCO, and WI DOT. I was advised by STB Rail Assistance Program that this would cost \$250 and that if I sought to have that fee waive, Honorable Judge Cynthia Brown would consider that request. I was advised by STB Rail Assistance Program to do this before I actually filed the Petition to Revoke.

I prepared a request that (1). Identified why I could not afford to pay the \$250 fee to correct errors in judgment and fiduciary duties by the attorneys for WI DOT and WATCO. (2). Outlined the case that Bill Gardner illegally and repeatedly used WSOR’s freight operations to launder cash for political purposes and pay-to-play. These crimes violated his operating agreements.

Those contractual agreements needed to be resolved by WI DOT and transit authorities before Bill Gardner could transfer those agreements. Wisconsin DOT certainly knew of these issues – I has spoken directly to Atty. Kathleen Chung (and she lied to me). WATCO most-likely knew of these issues. Gardner knew of these issues. In July of 2014, I was able to confirm through the secretary of one transit commission, Charles Anderson, that they certainly knew of Gardner’s criminality and that it was legitimate to consider operating agreements breached – Gardner’s serial crimes were actionable under the operating leases.

I submitted a request (file below) and STB Rail Assistance Program contacted me. They stated that without financial statements, they felt it was not appropriate to give my requests to Honorable Cynthia Brown. They stated that if she turned my petition down because it lacked financial statements, I would not be able to refile my petition. They also told me that any and all statements and documents I submitted would be part of the public record. It was not in my best-interest to have detailed financial statements online. These types of documents get abused.

Wisconsin has an ugly and divisive political climate. Scott Walker recall positions, for example, are still posted online years after the June 2012 election. Those that signed petitions are harassed, denies employment or appointments, or are slandered as being biased in any and all matters related to objective facts surrounding Wisconsin’s economy and politics. In January 2012, an Attorney for WATCO, having learned I was filing documents with STB, made an unsolicited phone call to me and swore directly at me in a harassing telephone conversation, calling me an “asshole”. I declined to file personal financial statements and my request to begin the process of filing a Petition to Revoke was never presented to Honorable Judge Cynthia Brown.

STB Document on Waiver of Fees

<http://breitlinks.com/pdfFilesSTB/waiverOfFeeSTB.pdf>

2012 Request to Waive Fee for Petition to Revoke

<http://breitlinks.com/pdfFilesSTB/waiveRevocatoinFilingFeel.pdf>

STATE OF WISCONSIN CRIMINAL COMPLAINT

Plaintiff,
vs.

DA Case No.: _____ **FILED**

Gardner, William E.
[REDACTED]
DOB: [REDACTED]

Complaining Witness:
Dean Nickel

APR 11 2011
CLERK OF CIRCUIT COURT
WASHINGTON CO., WI 53085

Defendant, Court Case No.:

THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN, ON INFORMATION AND BELIEF STATES THAT:

COUNT 1: EXCESSIVE POLITICAL CONTRIBUTIONS – PARTY TO A CRIME

The above-named defendant, between about November 1, 2009 and April 30, 2010, at 5300 North 33rd Street, Milwaukee, did, as party to a crime, make contributions to a candidate for election to the Office of Governor, to wit: Scott Walker, exceeding \$10,000 during the campaign period, by an amount greater than \$100, contrary to Wis. Stats. §§11.26(1), 11.61(1)(b) and 939.05.

COUNT 2: UNLAWFUL POLITICAL CONTRIBUTIONS – PARTY TO A CRIME

The above-named defendant, between about November 1, 2009 and April 30, 2010, at 5300 North 33rd Street, Milwaukee, did, as party to a crime, furnish funds to other persons for the purpose of making contributions in other persons' names, contrary to Wis. Stats. §§11.24(1), 11.61(1)(a) and 939.05.

AS TO COUNTS 1 & 2:

Upon conviction of these offenses, Class I felonies, as to each Count, the defendant may be fined not more than \$10,000, or imprisoned not more than 3.5 years or both.

Introduction / Origination of Investigation

Complainant states that he is a retired certified law enforcement officer working under contract as an investigator with the Government Accountability Board (GAB). I have over 30 years of law enforcement experience in the State of Wisconsin. I was employed from May 1976 until March 1980 with the City of Brodhead (Wisconsin) Police Department. I was employed for over 26 years (1980-2006) with the Wisconsin Department of Justice, Division of Criminal Investigation (DCI). During that time period, I investigated and supervised investigation in numerous financial crimes, including money laundering, embezzlement, price fixing and other forms of financial misconduct. From 2001 until 2006, I supervised the Financial Crimes and Public Integrity Units of DCI. I have received training in financial crimes investigation from the Drug Enforcement Administration, International Association of Financial Crime Investigators and the U.S. Treasury Department.

Based upon my work in this investigation, I know that William Gardner, the defendant, is the owner of the Wisconsin and Southern Railroad (hereinafter referred to as "the Railroad" or "WSOR"). Having obtained a Search Warrant for computer and other digital information at the corporate headquarters and having gathered that information with the consent and cooperation of the Railroad, I know the Railroad is headquartered in Milwaukee, Wisconsin. The corporate offices are located at 5300 North 33rd Street, Milwaukee, Wisconsin. Financial operations for the corporation are conducted from that address.

This investigation was formally initiated on May 10, 2010 by the Government Accountability Board. It was based upon a complaint by a former woman friend of William Gardner. Described in greater detail below, on April 19, 2010, the former friend contacted Attorney Michael Haas of the Government Accountability Board. She said an unnamed individual was supporting a candidate who was "for" the individual's business, and that he (the unnamed man) had asked her (the friend) to make a contribution to the candidate using the unnamed man's funds. She is not identified by name in this complaint at her request.

Although the friend did not identify William Gardner by name, based upon information that she did share, Attorney Haas was able to identify the person as William Gardner and the business as the Wisconsin & Southern Railroad.

Jurisdiction & Venue

William Gardner is a resident of Hartford, Wisconsin having an address of [REDACTED]. By operation of law, notwithstanding the fact that all transactional events took place in the City and County of Milwaukee, the County of Washington is the proper jurisdiction and venue for the prosecution of these crimes. See Wis. Stats. §§11.61(2) and 971.19(12).

On May 18, 2010, William Gardner, through his attorneys, contacted the Government Accountability Board. Gardner thereafter provided information in the form of Exhibit A. His disclosure reflects a continuing pattern of railroad employees (and his daughter Stephanie Schladweiler) who were reimbursed – with either Gardner's personal funds or the funds of the Wisconsin and Southern Railroad – for contributions made to political candidates.

In May 2010, the Government Accountability Board consulted with Milwaukee County Assistant District Attorney Bruce J. Landgraf, whose office had the responsibility to investigate the corporation inasmuch as Railroad is headquartered in Milwaukee County. Subsequently, Assistant District Attorney Landgraf, as the designee of Milwaukee County District Attorney John Chisholm, was appointed to serve as a Special Prosecutor for Washington County, thereby allowing him to handle issues involving both jurisdictions.

This investigation was thereafter conducted under the auspices of an ongoing Milwaukee County John Doe investigation, Milwaukee County Case No. 10JD000007. The Honorable Neal Nettessheim presides over this John Doe proceeding. The John Doe is subject to a Secrecy Order. To the extent that the John Doe investigation relates to William Gardner and the Wisconsin and Southern Railroad, Judge Nettessheim has authorized the release of information necessary for the prosecution of William Gardner, the Railroad and all railroad employees.

At all relevant times for purposes of this complaint, I know that Scott Walker was a candidate for the Office of Governor. Having received the nomination of his party, Mr. Walker was elected Governor in November 2010.

Summary of the Investigation

As developed during the course of this investigation, William Gardner and the Wisconsin and Southern Railroad have cultivated an ongoing relationship with the State of Wisconsin, local governments and their policy makers. Based upon testimony and documentary evidence gathered in this John Doe investigation, I know that the Railroad receives millions of dollars in grants and loans from the State of Wisconsin. Indeed, the corporate chief financial officer described this revenue source as "essential" to the operation of the Railroad. To this end, the Railroad employs Ken Lucht to function as a government liaison. For example, according to his 2009 job description, he spent more than 75% of his time on tasks involving contact with government agencies, especially the State government. Specifically, 25% of his job was described as "Lobby our state and federal lawmakers for railroad-

friendly legislation," and "Lobby our state and federal lawmakers for increased funding for track & structure upgrades."

On or about November 15, 2005, GAB records reflect that Mr. Gardner paid a \$1,000 forfeiture to the State of Wisconsin Ethics Board for a violation of campaign finance laws. He made a \$5,000 contribution in July of 2005 during a period while he was acting as a lobbyist. At the time of the contribution, Gardner, as a registered lobbyist, was prohibited from making such a contribution. Gardner was reimbursed by the Friends of Scott Walker for this contribution on November 17, 2005. See Exhibit A. As reflected on Exhibit A (provided to the investigation by William Gardner), Gardner "donated back" the same amount to the Friends of Scott Walker through his daughter, Stephanie Schladweiler, on the same day, November 17, 2005.

On November 19, 2009, during the recent election cycle, Gardner made a \$5,000 contribution to the Friends of Scott Walker. A Subpoena for Documents was issued for the Wells Fargo Bank account of William Gardner and bank records indicate that Check No. 4007 was issued to, and negotiated by, the Friends of Scott Walker (also referred to hereinafter as "FOSW"). See Figure 1.

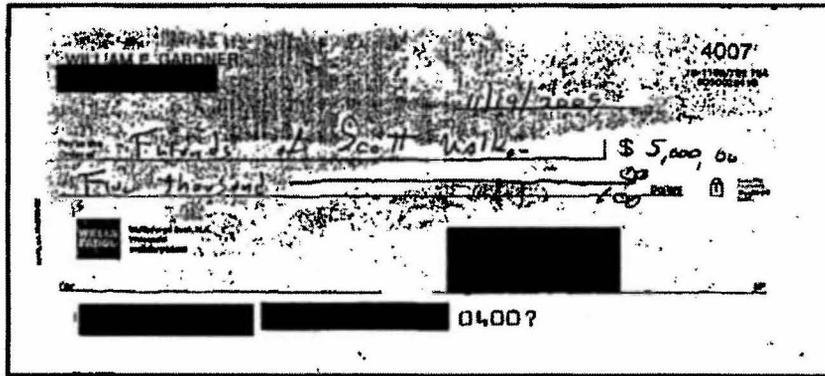


Figure 1

On November 19, 2009, e-mails exchanged by FOSW staffers Luke Fuller and Joe Fadness reflect that: "I (Fuller) just spoke with Bill Gardner, he said he is going to mail a check for \$5,000 today. He would like Scott to give him a call also. His cell is . . . " [REDACTED].

On or about November 20, 2009, based upon my review of WSOR documents provided to the investigation by William Gardner, Gardner submitted an expense statement to the Railroad that included an expense for "Friends of Scott Walker" "Contribution for Governor" in the amount of \$5,000. Gardner's Wells Fargo Bank records reflect that a WSOR corporate expense check in an amount matching the November 20, 2009 expense statement was deposited into his account on November 23, 2009.

In November 2009, Gardner also wrote checks to Representative Mike Sheridan and the Assembly Democratic Campaign Committee in amounts of \$2,000 each. A State Assemblyperson is limited by law to a maximum donation of \$500 per election cycle. Mr. Gardner ultimately issued checks in the amount of \$500 to Representative Sheridan and \$3,500 to the ADCC. This gives rise to the fair inference that Mr. Gardner was informed as to the law of campaign contribution limits. Indeed, in his testimony before John Doe Judge Neal Nettesheim, lobbyist Ken Lucht testified that he did research and "very well could have" created a document that digested the limits that could be contributed to a candidate in the races for Governor, Assembly and Senate. The document (see Figure 2 below) was recovered as part of the Search Warrant executed on June 24, 2010 at the Railroad for digital evidence

Campaign Finance Rules	
For anyone giving money to candidate:	
Gubernatorial Race	\$10,000 aggregate limit Per Election Cycle
Assembly Race	\$500.00 aggregate limit per election cycle
Senate Race	\$1,000 aggregate limit per election cycle

Figure 2

in the form of e-mails and network files. The "meta-data" for the Microsoft WORD file shown in Figure 2 lists Lucht as the "Author" of the document. The document specifically identifies \$10,000 as the maximum sum which could be contributed to a gubernatorial candidate in an election cycle. Concerning this document, Lucht testified as follows:

- Q. My first question would be, what were the circumstances as best you recall that led to the research that's represented by this document?
- A. Bill Gardner had asked some questions. He asked me questions about how much he could contribute towards a candidate or candidates. I did not have the answers that he was looking for, so I did some research.

Lucht further testified that he shared his research with Gardner. The "Last Modified" date of this document was January 28, 2010, as reflected in the "meta-data" for the WORD file.

On December 10, 2009, FOSW staffer Joe Fadness wrote to William Gardner in an e-mail, "This is confirmation of your breakfast meeting with County Executive Scott Walker on Monday, December 21."

On December 14, 2009, Railroad employee Steven Beske donated to the Friends of Scott Walker. In his John Doe testimony, Steven Beske stated that he is the Superintendent of Transportation for the Railroad. Beske testified that he contributed \$5,000 to the Friends of Scott Walker "because Bill Gardner asked me (Beske) to." Beske was asked the following question and gave the answer set forth below:

- Q. Okay. And tell me what you recall about that conversation that you had with Mr. Gardner.
- A. It was very brief. Just could you write out a check for \$5,000 to the Scott Walker campaign. I'll get you the exact name to put on the check and I'll get you an address of where to send it. And then fill out an expense form for reimbursement and give that to Gibby. And then don't send in your check until you get the check from WSOR, so your account isn't overdrawn or you're having problems of that nature.

"Gibby" is identified as Gilbert Loberg. He works in the Accounting Division of the Railroad and he processes expense reimbursement requests. Beske testified that he wrote out a contribution check payable to the Friends of Scott Walker dated December 14, 2009. The John Doe Judge issued a Subpoena Duces Tecum for the bank records of Mr. Beske at Chase Bank. Those records confirm the deposit of a Railroad check in the amount of \$5,000, posted on December 17, 2009. Further these bank records indicate that on December 18, 2009, Chase Bank processed a check payable to, and endorsed by, the Friends of Scott Walker in the amount of \$5,000.

On December 14, 2009, the same day that Mr. Beske wrote out his contribution check, Gardner's former friend made out a check payable to the Friends of Scott Walker in the amount of \$10,000. She has told GAB attorneys and investigators that William Gardner directed her to do this. She further stated that she received a personal check from William Gardner in the amount of \$10,000 to fund this contribution. Her bank records, obtained by order of the John Doe Judge from Chase Bank, confirm her statements. The friend also stated that she left William Gardner during an argument in December 2009. After the break-up, but before the \$10,000 check cleared the bank, she learned from a friend, Gregory Edminster, that this activity was probably illegal. She stopped payment on the \$10,000 check to the Friends of Scott Walker and thereafter returned the money to Gardner. These facts are also confirmed by an examination of her Chase Bank records.

A dispute ensued concerning personal property. The dispute concerned both items given to the friend and items belonging to the friend but retained by Gardner. This dispute ultimately led to the contact between the friend and the Government Accountability Board on April 19, 2010 described below.

WSOR corporate records provided to the investigation by the Railroad, as well as Wells Fargo Bank records obtained by court order, indicate that Gardner was issued a check by the Railroad for a sum including the \$10,000 contribution by the friend. See Exhibit A. The reimbursement check was issued on or about December 17, 2009 and was deposited into Mr. Gardner's account on December 18, 2009.

On December 14, 2009, William Gardner wrote out a second check to the Friends of Scott Walker in the amount of \$5,000. Gardner received the sum of \$5,000 in the form of reimbursement from the

corporation. See Exhibit A. The check was cashed by the campaign committee. Wells Fargo Bank records confirm these facts.

On December 15, 2010, James Lombard wrote a check out to the Friends of Scott Walker in the amount of \$5,000. In his John Doe testimony, Mr. Lombard testified that he is the Vice-President of Marketing and Sales for the Railroad. Lombard testified that he contributed \$5,000 to the Friends of Scott Walker at the request of William Gardner. He further testified that he submitted an expense reimbursement request for \$5,000 and thereafter he received and cashed a check in that amount issued by the corporation. Mr. Lombard's bank records confirm his testimony.

On December 21, 2009, FOSW staffer Joe Fadness wrote in an e-mail (produced by the campaign to the GAB investigators) the following concerning William Gardner:

Bill Gardner pledged to raise \$30K by 12/31/09. To that end, please be on the lookout for the money listed below. It should be categorized as follows - Category type: Misc; Category: Finance Committee (2010). Please put "Bill Gardner Commitment" in the internal memo.

The FOSW campaign provided records indicating that William Gardner met with the candidate Scott Walker on December 21, 2009 at the Crowne Plaza and Suites in Milwaukee.

On January 5, 2010, based upon my examination of e-mails exchanged between Gardner and his ex-friend, Gardner learned from the FOSW campaign committee that a "Stop Payment" on the friend's \$10,000 contribution check had been issued. Except as otherwise noted in this paragraph, there is no indication in e-mail evidence or otherwise that the illegal character of the reimbursed contributions was discussed with Gardner until April. Likewise, it appears that the friend did not explain the reason for the Stop Payment to the campaign. However, I did conduct an interview of Gregory Edminster, the person who told the friend that the practice of reimbursing political campaign contributions was likely illegal. He stated that he contacted the campaign and he was assured by a campaign committee management staff member that the campaign "had methods to detect illegal contributions and that they were confident that there were no illegal contributions coming into the Walker campaign."

In February 2010, Ken Lucht, the Governmental Relations person for the Railroad, was solicited by William Gardner to contribute \$5,000 to the Friends of Scott Walker. He was in fact "reimbursed" by the Railroad for that amount and this is confirmed by a review of Lucht's Summit Credit Union financial records. However, as Lucht stated in his John Doe testimony, he did not forward this contribution to the Walker campaign. He kept the money, he testified, because he did not think it was "right" to contribute the money. He returned the money to the WSOR corporation in May of 2010 after William Gardner publicly disclosed his conduct in violation of the campaign finance laws.

In February 2010, Bernard Meighan contributed to the Scott Walker campaign. Mr. Meighan testified at the John Doe proceeding that he is the Superintendent for Maintenance for the Railroad. He further stated that he was asked by William Gardner to make a \$5,000 contribution to the Friends of Scott Walker under circumstances like those described above by other employees. Namely, he expected to submit an expense form to the corporation and be reimbursed for the contribution. He forwarded a personal check dated February 3, 2010 in the amount of \$5,000 to the Friends of Scott Walker. An examination of his bank records, subpoenaed by the John Doe Judge from the Horizon Bank, confirm that on February 16, 2010 a WSOR check in the amount of \$5,000 was deposited into Meighan's personal bank account. Bank records further reflect that on February 24, 2010 a check payable to, and endorsed by, the Friends of Scott Walker was posted to, and paid out of, Meighan's personal account.

On March 16, 2010, based upon a review of e-mails provided by the campaign committee, Gardner wrote to Walker fundraiser Dan Morse telling him that he (Gardner) had "rounded up" two others for \$5,000 each, referring to Lucht and Meighan.

Based upon e-mails developed through the execution of the Search Warrant at the Railroad for digital evidence from the WSOR network and e-mail system, the e-mail represented by Figure 3 was discovered. On March 2, 2010, Gardner wrote to FOSW fundraiser Dan Morse, "Do I need to buy a ticket for the dinner on Monday?????????????" a reference to a fundraiser dinner featuring Jeb Bush. Morse wrote back to Gardner (as shown in Figure 3) that he was "maxxed out," meaning he could not legally contribute more to the Friends of Scott Walker.

From: Dan Morse [REDACTED]
Sent: Tuesday, March 02, 2010 4:36 PM
To: Bill Gardner
Subject: RE: Dinner with Jeb Bush

Let me put you in touch with Mary Stitt, the person in charge of the event. Since you are maxxed out, that will not be a problem.

Please let me know if you do not hear from her in the next 24 hours.

Thanks
Dan

Figure 3

Morse then immediately contacted Mary Stitt, another campaign fundraiser, indicating that Gardner was raising \$100,000 for Scott Walker and needed a seat at the Jeb Bush dinner.

From: Dan Morse [REDACTED]
Sent: Tuesday, March 02, 2010 4:36 PM
To: 'Mary Stitt'
Subject: FW: Dinner with Jeb Bush

Can you please email Bill Gardner? He maxxed out already and is in the middle of raising \$100,000 for Scott. Can we take care of him at the Roundtable and whatever else he wants?

I told him you would call or email him.

Dan

Figure 4

On the same day, March 2, 2010, David Hackbarth was solicited by Gardner to make a contribution to the Friends of Scott Walker. David Hackbarth testified at the John Doe proceedings that he is the Chief Mechanical Officer for the Railroad. He identified a copy of a check, No. 4333, dated March 22, 2010 payable to the Friends of Scott Walker in the amount of \$4,900. Like the other employees identified earlier in this complaint, he stated he was reimbursed for this contribution by the Railroad.

At the same time that David Hackbarth was solicited to make a contribution, on March 2, 2010, Dale Thomas was also solicited. At the John Doe hearings, Thomas testified that he is the Chief Mechanical Officer / Cars for the Railroad. He too confirmed that he was solicited by Gardner to make a contribution to the Friends of Scott Walker in the amount of \$4,900, that he made the contribution and that he was reimbursed by the Railroad in that amount. An examination of Thomas' M&I Bank records, subpoenaed by the John Doe Judge, confirms these statements by Thomas.

Moreover, Thomas testified to the following series of e-mails (Figure 5 to Figure 8 below).

From: Bill Gardner
Sent: Tuesday, March 02, 2010 14:43
To: Dale Thomas
Subject: Scott Walker

Dale,

In the next week turn in an expense report showing that you paid to Scott Walker (Friends of Scott Walker) a check for \$4,900.00.

Once Gibby give you the check deposit it in your checking account. Once that is done then write a check to Scott Walker from your own personally account for the sum of \$4,900.00 and send the Check to

Friends of Scott Walker
Post Office Box 100828
Wauwatosa, WI 53210

Keep me posted on this and when the check is sent.....

bg

Figure 5

From: Dale Thomas
Sent: Tuesday, March 02, 2010 5:07 PM
To: Bill Gardner
Subject: RE: Scott Walker

Will Do.

Dale

Figure 6

From: Bill Gardner
Sent: Tuesday, March 02, 2010 17:30
To: Dale Thomas
Subject: RE: Scott Walker

And lets not blab this around.....

bg

Figure 7

From: Dale Thomas
Sent: Tuesday, March 02, 2010 5:54 PM
To: Bill Gardner
Subject: RE: Scott Walker

I kinda figure that, my lips are sealed.

Dale

Figure 8

When asked to explain his "my lips are sealed" response, Thomas stated that he "wondered" if it was illegal and that he "found it all to be quite odd:"

Q. And if I'm reading this correctly, you replied to him, I kind of figured that, my lips are sealed; correct?

A. Yes.

Q. What did you mean by that?

A. I wasn't going to take this outside of the company or to somebody that was not at a management level.

Q. Okay. Did you believe when you read it -- when you made that reply that this process might be illegal?

A. I'm sure I wondered it, because as I stated before, I found it all to be quite odd.

Concerning the foregoing series of e-mails, Mr. Gardner's attorneys have stated that Gardner solicited Thomas' silence out of a concern for lavish political spending during tight economic times requiring Railroad wage cuts.

Based upon my review of documents that were released to the investigation by the campaign, William Gardner had another meeting with Scott Walker on April 13, 2010 at Noodles & Company in Madison.

Recovered from the WSOR e-mail system on June 24, 2010, Figure 9 is an e-mail exchange in the days following the April 13, 2010 meeting between the candidate Scott Walker and William Gardner. It provides a record of the matters that Gardner discussed with the gubernatorial candidate.

From: [REDACTED]@scottwalker.org
Sent: Saturday, April 17, 2010 7:19 PM
To: Bill Gardner
Subject: Re: thanks for meeting me at Noodles this week.....

Thanks a million!

Sent from my Verizon Wireless BlackBerry

From: "Bill Gardner" [REDACTED] >
Date: Thu, 15 Apr 2010 11:37:50 -0500
To: [REDACTED]@scottwalker.org>
Subject: thanks for meeting me at Noodles this week.....

Dear Scott,

Again thanks for taking the time to meet with me this week at Noodles. I know you have a busy schedule again of your successful run for Wisconsin Governorship.

As I said, I hope you pick a Secretary of Transportation that understands that the State of Wisconsin owns about 700 miles of RR in the state of WI. that I currently operate for the state. I have take off the WI. roadways 250,000 trucks each year and will continue to do the same as long as I get support in upgrading this old warn out rail system that I currently operate on for the State of WI..

With all the necessary tools provided by State Government, including adequate funding for capital upgrades to the state-owned freight railroad system, the Wisconsin & Southern Railroad Co. will continue to spur economic development throughout the state and do what we do best – bring good high-paying jobs to Wisconsin by providing an alternative mode of transportation for Wisconsin Communities and Businesses.

As for me, I enjoy coming to work each day and working with existing customers building new additions to their existing facilities or working with new customers that build new facilities on the WSOR system which brings new jobs and new tax dollars to the State of WI. and local communities.

Keep up the good work and I will do everything I can do to get you in the Governors Mansion.....

bg

Figure 9

Several days later, Gardner's former friend contacted the GAB in an apparent attempt to force Gardner to return her personal property to her. Figure 10 is a re-print of the e-mail exchanged between William Gardner, his attorney and his former friend on the same day that the GAB was initially contacted concerning this violation of campaign finance laws, April 19, 2010. Attorney Brian Baird, who was mediating the property dispute between Gardner and his ex-friend, was the original recipient of the friend's e-mail, with a copy being sent to William Gardner.

Subject: RE: I think you should know
From: "Bill Gardner" [REDACTED]
Date: Mon, 19 Apr 2010 13:05:19 -0500
To: "S [REDACTED], <bbaire [REDACTED]>
S [REDACTED]

Knock yourself out. I did nothing wrong and have broken no law.....

bg

From: S [REDACTED]
Sent: Mon 4/19/2010 11:24 AM
To: bbaire [REDACTED]
Cc: Bill Gardner
Subject: Re: I think you should know

Brian,

I am writing this e-mail letting u know that I have been speaking with the attorney (Michael Haas), for the State of Wisconsin Department of Elections Accountability Board, located in Madison, WI. Attorney Mike Haas is very receptive to the information I have given to him so far, the only part I have left out is the name of the individual and the business concerned. Which I will do, and we have all the necessary documents to go further with this, If I do not receive all of my belongings, and I mean **everything** belonging to me, by the 30th of April, 2010. That gives you 10 bussiness days to have them delivered to me. I think I have been quite patient concerning this matter, and it is illegal to hold them any longer period. (ie: legal documents included)

I do not think Bill, The WSOR, or any other parties or individuals concerned in any of his business dealings would like any legal problems, or the public embarrassment that this will cause.

Sincerely, S [REDACTED]

Figure 10

At the end of April 2010, Gardner solicited other Railroad employees for contributions. Based upon my interviews of two additional employees, Ken Clemmons and Kathleen Sackett, I know William Gardner continued to solicit Railroad employees to contribute to the Friends of Scott Walker after April 19, 2010. On April 25, 2010, Gardner asked Clemmons and Sackett to make contributions to the Scott Walker campaign and then submit expense forms for reimbursement from the Railroad. The sum of \$4,900 was specified. Ms. Sackett states she refused to make the contribution. Mr. Clemmons states that the legality of the practice was questioned when he and Sackett travelled from their offices in Madison to Milwaukee during the first part of the business week in the days following the April 25 e-mail. Gardner was not present for the meeting; he was vacationing out of state. The attorneys for William Gardner state that it was this exchange between Sackett and other Railroad employees that led to the decision to publicly admit these campaign finance violations.

On May 10, 2010, the Government Accountability Board formally commenced its investigation based upon the April 19, 2010 information provided by the former friend.

On May 18, 2010, attorneys representing William Gardner contacted the Government Accountability Board and disclosed the violations recounted in this complaint and other violations as well. See Exhibit A. Further, at about that same time, Gardner released a public statement accepting responsibility for these violations.

In all instances, except as reflected on Exhibit A, the Friends of Scott Walker confirmed the receipt of the contributions described in this complaint. These contributions were returned by the campaign to the nominal contributors in May 2010.

Mr. Gardner's attorneys state that all returned contributions have been donated to charity.

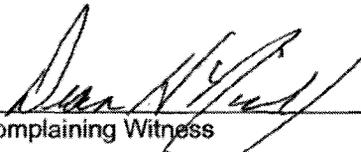
In addition to the employees identified on Exhibit A, the John Doe investigation identified an additional illegal transaction in early 2006, at about the same time as the Lombard, Meighan and Schladweiler transactions set forth in Exhibit A. Based upon a review of the Wells Fargo Bank records of William Gardner, the Fond du lac Credit Union records of Suzanne and Craig Immel, and the John Doe testimony of Suzanne Immel, I know that Suzanne Immel was reimbursed for a \$500 contribution that her husband Craig made to the Friends of Scott Walker in February 2006.

Both Mr. Gardner and the FOSW campaign committee haven been cooperative with the GAB in its investigation of this matter.

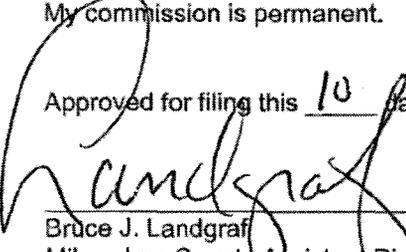
****End of Complaint****

By authority of §9(8.01(3))
Subscribed and sworn to before me
at Milwaukee, Wisconsin on
this 1 day of APRIL 2011.

15/ Bruce J. Landgraf
Notary Public, Milwaukee County
State of Wisconsin
My commission is permanent.


Complaining Witness

Approved for filing this 10 day of April, 2011.


Bruce J. Landgraf
Milwaukee County Assistant District Attorney
& Washington County Special Prosecutor
State Bar Number 01009407

Supplement to William Gardner's Self-Reporting Information to GAB

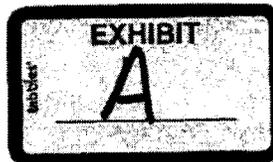
5/28/2010

CONTRIBUTIONS REIMBURSED BY WSOR						
Contributor	Reimb. Date	Recipient	Contribution		Notes	Returned by Campaign
			Date	Amount		
Lucht, Ken	5/30/2005	Friends of Alberta Darling	5/9/2003	\$500		No
Gardner, William	4/4/2005	Ted Kanavas for Senate	3/7/2005	\$500		No
Lucht, Ken	6/22/2005	Friends of Scott Walker	6/11/2005	\$1,000	\$500 returned by Walker in 2005	\$500 - Oct. 2005
Gardner, William	7/14/2005	Friends of Scott Walker	6/10/2005	\$5,000	Returned by Walker in 2005	Yes - Oct. 2005
Gardner, William	8/31/2005	Doyle for Wisconsin	8/30/2005	\$5,000		No
Gardner, William	11/23/2009	ADCC	11/19/2009	\$2,000	Orig. contribution rewritten for \$3,500	Donated by ADCC
Gardner, William	11/23/2009	Friends of Mike Sheridan	11/19/2009	\$2,000	Orig. contribution rewritten for \$500	?
Gardner, William	11/23/2009	Friends of Scott Walker	11/19/2009	\$5,000		Yes - May 2010
Gardner, William	12/16/2009	Friends of Scott Walker	12/14/2009	\$5,000		Yes - May 2010
	12/16/2009	Friends of Scott Walker	12/14/2009	\$10,000	WSOR reimb to Gardner; Long stopped payment on check and returned funds to Gardner	n/a
Beske, Steve	12/16/2009	Friends of Scott Walker	12/14/2009	\$5,000		Yes - May 2010
Lombard, James	12/16/2009	Friends of Scott Walker	12/15/2009	\$5,000		Yes - May 2010
Meighan, Bernard	2/1/2010	Friends of Scott Walker	2/3/2010	\$5,000		Yes - May 2010
Thomas, Dale	3/15/10 (est.)	Friends of Scott Walker	3/8/2010	\$4,900		Yes - May 2010
Hackbarth, David	4/22/2010	Friends of Scott Walker	3/22/2010	\$4,900		Yes - May 2010
				<u>\$60,800</u>		

CONTRIBUTIONS REIMBURSED BY WILLIAM GARDNER						
Contributor	Reimb. Date	Recipient	Contribution		Notes	Returned by Campaign
			Date	Amount		
Schladweiler, Stephanie	11/17/2005	Friends of Scott Walker	11/17/2005	\$5,000	Stephanie is Bill Gardner's daughter	\$5,000 returned May 2010;
Schladweiler, Stephanie	1/23/2006	Friends of Scott Walker	1/23/2006	\$5,000		unknown which contrib.
Lombard, Jim	2/28/2006	Friends of Scott Walker	2/28/2006	\$1,000		No
Meighan, Bernard	2/28/2006	Friends of Scott Walker	2/28/2006	\$1,000		No
				<u>\$12,000</u>		

WSOR REIMBURSEMENTS FOR WHICH NO CONTRIBUTION ULTIMATELY MADE						
Contributor	Reimb. Date	Intended Recipient	Contribution		Notes	Returned by Campaign
			Date	Amount		
Lucht, Ken	8/7/2006	Unknown	n/a	\$1,000	Unclear what this relates to	n/a
Lucht, Ken	2/3/2010	Friends of Scott Walker	n/a	\$5,000	Contribution never sent	n/a
				<u>\$6,000</u>		

CONTRIBUTIONS BY WILLIAM GARDNER FOR WHICH NO REIMBURSEMENT MADE						
Contributor	Reimb. Date	Recipient	Contribution		Notes	Returned by Campaign
			Date	Amount		
Gardner, William	n/a	Friends of Alberta Darling	5/15/2003	\$500		n/a
Gardner, William	n/a	Friends of Alberta Darling	4/23/2007	\$500		n/a





OFFICE OF THE DISTRICT ATTORNEY
Milwaukee County

JOHN T. CHISHOLM · District Attorney

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- Walter D. Loeb
- Edin Karsan
- Lucy Krenfurst
- Michael J. Lonski
- Paul M. Heuer
- Sara Beth Lewis
- Aaron E. Hall
- Jacob Spies
- David H. Siegel
- Amanda Kilmanski
- Benjamin Wesson
- Renee Fleming
- Xian P. Hayes
- Jessica Zolter
- Ho'ly L. Burch
- Jacob A. Mahan
- Heather M. Mazak
- Magin M. Williamson
- Devery B. Martin
- Sarah Esler
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- Kristen Srimabuka
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- Andrew A. Holt
- Nicolas J. Hellman
- Chad Wozniak
- Estee E. Hart
- Wright M. Schmak
- Cherie E. Timmoco
- Francesca G. Mevo
- Jane Christoffersen
- Tyrona M. St. Junior
- Hanna R. Kolberg
- Joselyn H. Mathey
- Joan G. Krag

March 18, 2011

VIA U.S. MAIL & ELECTRONIC MAIL

Attorney Dean A. Strang
Hurley, Burish & Stanton S.C.
33 East Main Street, Ste. 400
P.O. Box 1528
Madison, WI 53701-1528

FILED
APR 11 2011

CLERK OF CIRCUIT COURT
WASHINGTON CO., WI 53095

Re: State of Wisconsin vs. William Gardner

Dear Mr. Strang:

Please accept this correspondence as the State's Offer of Settlement. As I have advised you, I act under the terms of an appointment as a Special Prosecutor on behalf of Washington County.

Mr. Gardner is the subject of a John Doe investigation and the scope of this investigation includes within it Mr. Gardner's contributions to political candidates generally and to the Friends of Scott Walker specifically. As it relates to Mr. Gardner, the John Doe investigation has focused on the laundering of campaign contributions in violation of Wisconsin Statutes §§11.24(1) and 11.61(1)(a) and gubernatorial campaign contributions in excess of the \$10,000 limit in violation of Wisconsin Statutes §§11.26(1) and 11.61(1)(b). Each of these crimes is a Class I felony punishable by a term of imprisonment of forty-two (42) months, comprised of eighteen (18) months Initial Confinement and twenty-four (24) months Extended Supervision.

Mr. Gardner has expressed an interest in bringing this matter to an efficient close. To this end, we have met to discuss the possibility of a negotiated issuance of criminal charges followed upon by a guilty plea and sentencing proceeding. Our pre-charging settlement discussion has been specifically authorized by the terms of the John Doe judge's Thirteenth Addendum to the Secrecy Order entered in that proceeding.

In exchange for Mr. Gardner's plea to one count each of the charges of Campaign Money Laundering in violation of Wisconsin Statutes §§11.24(1) and 11.61(1)(a) and Exceeding Campaign Contribution Limits in violation of Wisconsin Statutes §§11.26(1) and 11.61(1)(b), the State will recommend that Mr. Gardner be sentenced to concurrent terms of thirty months imprisonment (fifteen (15) months Initial Confinement plus fifteen (15) months Extended Supervision) on each count. I will further recommend that this sentence be stayed and that Mr. Gardner be placed on a twenty-four (24) month term of probation. I will recommend to the court that this be a period of straight probation without confinement conditions. I find that this recommendation is justified on the basis of Mr. Gardner's conduct since the commencement of the Government Accountability Board investigation, including his acceptance of responsibility for these criminal law violations at the beginning of this investigation, the donation of the illegal contribution money to charity after these funds were returned by various political committees,

and the filing of amended tax returns adjusted by contribution amounts which were previously claimed as corporate expenses and offsets to corporate income. The State will be otherwise free to argue for terms and conditions of the disposition except it will not request any monetary fine.

In connection with this disposition, I will ask Mr. Gardner to provide satisfactory proof in the form of an Affidavit setting forth the fact that he has made the charitable donations and filed the amended tax returns as described in the previous paragraph.

This agreement is intended as a full and final settlement of all criminal charges that will be brought and that could be brought by the State of Wisconsin against Mr. Gardner as a result of the information contained in the criminal complaint. The information contained in the attached Exhibit A, together with details regarding a 2006 reimbursed campaign contribution of Ms. Suzanne Inmel to the Friends of Scott Walker, will be included in any criminal complaint filed against Mr. Gardner. Upon Mr. Gardner's plea of guilty to the charged crimes, the State of Wisconsin will institute no further criminal proceedings against him. Except as to proceedings instituted by the Government Accountability Board, the State of Wisconsin will initiate no further civil forfeiture proceedings against Mr. Gardner. Mr. Gardner understands and agrees that, in exchange for these promises, the court will be free to consider the totality of the violations alleged in the complaint and that the court may consider such violations, including uncharged violations, in sentencing him.

Mr. Gardner has expressed his wish that criminal responsibility for these illegal campaign contributions fall exclusively to him. Having taken the statements of the railroad employees involved in laundered contributions during the course of the John Doe investigation, and in light of all of the evidence gathered, I agree that responsibility lies with Mr. Gardner and criminal proceedings are not appropriate for the employees. Mindful that the Government Accountability Board will institute proceedings involving the railroad employees, the State of Wisconsin will not commence criminal proceedings against any employee named in the criminal complaint. To this end, prior to the initiation of criminal proceedings, I will obtain a commitment to this effect from other state prosecutors who have jurisdiction over those employees residing outside of Milwaukee and Washington Counties.

Mr. Gardner is, for all practical purposes, the sole shareholder of the Wisconsin & Southern Railroad Co. The corporation is headquartered in Milwaukee, Wisconsin. Recognizing that the Government Accountability Board will institute proceedings involving the corporation, the Milwaukee County District Attorney's Office, as the office with the sole responsibility for the prosecution of the corporation under Chapter 11 of the Wisconsin Statutes, will not commence criminal or civil forfeiture proceedings against the corporation.

Mr. Gardner represents that he is a full-time resident of Washington County. Washington County is therefore the proper venue for the litigation of violations of Wisconsin Statutes §§ 11.24(1) and 11.26(1), as required by Wisconsin Statutes § 971.19(12).

As part of this overall settlement agreement, Mr. Gardner agrees to cooperate in a booking procedure. I will make reasonable efforts to accommodate a booking procedure in Washington County.

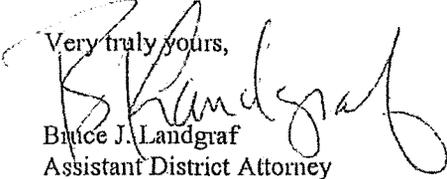
In addition, this offer is based upon the following terms and conditions:

1. Mr. Gardner agrees to appear at all court proceedings in connection with any criminal prosecution commenced in connection with this agreement.

2. Mr. Gardner agrees he will abide by all conditions of his bail ordered in connection with any criminal prosecution commenced in connection with this agreement.
3. Mr. Gardner agrees that he has not been and will not become involved in any further criminal conduct. For purposes of this paragraph, "criminal conduct" is defined as any activity in contravention of a criminal statute that rises to the level of probable cause supporting the issuance of a criminal complaint. It is immaterial whether or not criminal charges are actually filed.
4. Mr. Gardner represents that he has no criminal record. This offer is made in reliance upon this representation. The State's obligation to make the recommendations contained in this settlement offer is conditioned upon the accuracy of this representation.
5. The State and Mr. Gardner agree that restitution is not due and owing for this crime. Noted above, Mr. Gardner will provide acceptable proof of the fact that monies returned to him as illegal campaign contributions have been donated to charity.
6. Acceptance of this Settlement Offer is accomplished by virtue of the entry of guilty pleas to the crimes charged. Mr. Gardner must plead guilty promptly before the trial court on a date no later than ninety days after the filing of the criminal complaint.
7. In the event that there is a breach of this agreement by Mr. Gardner under paragraphs 1, 2 or 3 above, which breach occurs after he has entered a plea of guilty but before sentencing, the State of Wisconsin shall be relieved of its obligations to make the recommendations set forth in this letter and will be free to argue for any disposition that it sees fit.

If you have questions about this offer, kindly contact me at 278-2178. Thank you for your attention to this matter.

Very truly yours,


Bruce J. Landgraf
Assistant District Attorney

BJL/bl

Supplement to William Gardner's Self-Reporting Information to GAB

5/28/2010

CONTRIBUTIONS REIMBURSED BY WSOR						
Contributor	Reimb. Date	Recipient	Date	Amount	Notes	Returned by Campaign
Lucht, Ken	5/30/2005	Friends of Alberta Darling	5/9/2003	\$500		No
Gardner, William	4/4/2005	Ted Kanevas for Senate	3/7/2005	\$500		No
Lucht, Ken	6/22/2005	Friends of Scott Walker	6/11/2005	\$1,000	\$500 returned by Walker in 2005	\$500 - Oct. 2005
Gardner, William	7/14/2005	Friends of Scott Walker	6/10/2005	\$5,000	Returned by Walker in 2005	Yes - Oct. 2005
Gardner, William	8/31/2005	Doyle for Wisconsin	8/30/2005	\$5,000		No
Gardner, William	11/23/2009	ADCC	11/19/2009	\$2,000	Orig. contribution rewritten for \$3,500	Donated by ADCC
Gardner, William	11/23/2009	Friends of Mike Sheridan	11/19/2009	\$2,000	Orig. contribution rewritten for \$500	?
Gardner, William	11/23/2009	Friends of Scott Walker	11/19/2009	\$5,000		Yes - May 2010
Gardner, William	12/16/2009	Friends of Scott Walker	12/14/2009	\$5,000		Yes - May 2010
	12/16/2009	Friends of Scott Walker	12/14/2009	\$10,000	WSOR reimb to Gardner; Long stopped payment on check and returned funds to Gardner	n/a
Beske, Steve	12/16/2009	Friends of Scott Walker	12/14/2009	\$5,000		Yes - May 2010
Lombard, James	12/16/2009	Friends of Scott Walker	12/15/2009	\$5,000		Yes - May 2010
Meighan, Bernard	2/1/2010	Friends of Scott Walker	2/3/2010	\$5,000		Yes - May 2010
Thomas, Dale	3/15/10 (est.)	Friends of Scott Walker	3/8/2010	\$4,900		Yes - May 2010
Hackbarth, David	4/22/2010	Friends of Scott Walker	3/22/2010	\$4,900		Yes - May 2010
				<u>\$60,800</u>		

CONTRIBUTIONS REIMBURSED BY WILLIAM GARDNER						
Contributor	Reimb. Date	Recipient	Date	Amount	Notes	Returned by Campaign
Schladweiler, Stephanie	11/17/2005	Friends of Scott Walker	11/17/2005	\$5,000	Stephanie is Bill Gardner's daughter	\$5,000 returned May 2010;
Schladweiler, Stephanie	1/23/2006	Friends of Scott Walker	1/23/2006	\$5,000		unknown which contrib.
Lombard, Jim	2/28/2006	Friends of Scott Walker	2/28/2006	\$1,000		No
Meighan, Bernard	2/28/2006	Friends of Scott Walker	2/28/2006	\$1,000		No
				<u>\$12,000</u>		

WSOR REIMBURSEMENTS FOR WHICH NO CONTRIBUTION ULTIMATELY MADE						
Contributor	Reimb. Date	Intended Recipient	Date	Amount	Notes	Returned by Campaign
Lucht, Ken	8/7/2006	Unknown	n/a	\$1,000	Unclear what this relates to	n/a
Lucht, Ken	2/3/2010	Friends of Scott Walker	n/a	\$5,000	Contribution never sent	n/a
				<u>\$5,000</u>		

CONTRIBUTIONS BY WILLIAM GARDNER FOR WHICH NO REIMBURSEMENT MADE						
Contributor	Reimb. Date	Recipient	Date	Amount	Notes	Returned by Campaign
Gardner, William	n/a	Friends of Alberta Darling	5/15/2003	\$500		n/a
Gardner, William	n/a	Friends of Alberta Darling	4/23/2007	\$500		n/a



000126

State of Wisconsin

Government Accountability Board

In the Matter of

)

SETTLEMENT AGREEMENT

)

William Gardner

)

GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Wisconsin & Southern Railroad Co. is a corporation doing business in Wisconsin.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Co.
3. That from December 2009 through April 2010 Mr. Gardner requested a number of company employees to make campaign contributions to Friends of Scott Walker in the amount of either \$4,900 or \$5,000. Mr. Gardner told these employees that Wisconsin & Southern Railroad Co. would reimburse them for the contributions.
4. That in November 2009 Mr. Gardner made contributions to Friends of Mike Sheridan and the Assembly Democratic Campaign Committee totaling \$4,000.
5. That in November and December 2009 Mr. Gardner made two \$5,000 campaign contributions to friends of Scott Walker.
6. That in December 2009 Mr. Gardner requested a friend to make a \$10,000 contribution to Friends of Scott Walker, which Mr. Gardner reimbursed.
7. That from November 2009 through April 2010 Wisconsin & Southern Railroad Co. reimbursed Mr. Gardner and the company employees for these contributions.
8. That Wisconsin & Southern Railroad Co. reimbursed 11 political contributions made by individuals totaling \$53,800.
9. That §11.24 (1), *Wisconsin Statutes*, provides that no person may, directly or indirectly, furnish funds to another person for the purpose of making a contribution in other than the person's own name.
10. That §11.38 (1), *Wisconsin Statutes*, provides that no corporation may make any contribution, directly or indirectly, to any candidate or committee, other than to promote or defeat a referendum.

State of Wisconsin	Government Accountability Board
In the Matter of)
	) SETTLEMENT AGREEMENT
)
William Gardner	) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Bernard Meighan is an employee of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in February 2010 Mr. Gardner requested Mr. Meighan to make a campaign contribution to Friends of Scott Walker in the amount of \$5,000. Mr. Gardner told Mr. Meighan that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Meighan made a \$5,000 contribution to Friends of Scott Walker on February 3, 2010.
5. That Wisconsin & Southern Railroad Company paid this amount to Mr. Meighan on February 1, 2010.
6. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, make any campaign contribution other than from funds belonging to that individual.
7. That Mr. Meighan violated this statute by making a contribution of \$5,000 to Friends of Scott Walker for which contribution he received full reimbursement from Wisconsin & Southern Railroad Company.
8. That Bernard Meighan has agreed to pay a civil forfeiture of \$250 in settlement of this matter.

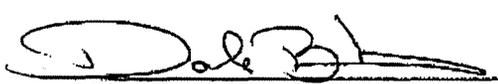
Bernard M Meighan April 8, 2011
 _____ Date

Kevin J Kennedy 4/11/11
 _____ Date
 STATE OF WISCONSIN
 GOVERNMENT ACCOUNTABILITY BOARD
 By: Kevin J. Kennedy
 Director and General Counsel

State of Wisconsin	Government Accountability Board
In the Matter of)
	) SETTLEMENT AGREEMENT
)
William Gardner	) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Dale Thomas is an employee of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in March 2010 Mr. Gardner requested Mr. Thomas to make a campaign contribution to Friends of Scott Walker in the amount of \$4,900. Mr. Gardner told Mr. Thomas that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Thomas made a \$4,900 contribution to Friends of Scott Walker on March 8, 2010.
5. That Wisconsin & Southern Railroad Company reimbursed this amount to Mr. Thomas on or about March 15, 2010.
6. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, make any campaign contribution other than from funds belonging to that individual.
7. That Mr. Thomas violated this statute by making a contribution of \$4,900 to Friends of Scott Walker for which contribution he received full reimbursement from Wisconsin & Southern Railroad Company.
8. That Dale Thomas has agreed to pay a civil forfeiture of \$250 in settlement of this matter.


 DALE THOMAS 4/8/11
Date


 STATE OF WISCONSIN 4/11/11
Date
 GOVERNMENT ACCOUNTABILITY BOARD
 By: Kevin J. Kennedy
 Director and General Counsel

State of Wisconsin	Government Accountability Board
In the Matter of)
)
	) SETTLEMENT AGREEMENT
William Gardner	) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Steve Beske is an employee of Wisconsin Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in December 2009 Mr. Gardner requested Mr. Beske to make a campaign contribution to Friends of Scott Walker in the amount of \$5,000. Mr. Gardner told Mr. Beske that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Beske made a \$5,000 contribution to Friends of Scott Walker on December 14, 2009.
5. That Wisconsin & Southern Railroad Company reimbursed this amount to Mr. Beske on December 16, 2009.
6. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, make any campaign contribution other than from funds belonging to that individual.
7. That Mr. Beske violated this statute by making a contribution of \$5,000 to Friends of Scott Walker for which contribution he received full reimbursement from Wisconsin & Southern Railroad Company.
8. That Steve Beske has agreed to pay a civil forfeiture of \$250 in settlement of this matter.


 STEVE BESKE April 8, 2011
Date


 STATE OF WISCONSIN 4/11/11
 GOVERNMENT ACCOUNTABILITY BOARD Date
 By: Kevin J. Kennedy
 Director and General Counsel

State of Wisconsin	Government Accountability Board
In the Matter of)
)
William Gardner)
	SETTLEMENT AGREEMENT
	GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That James Lombard is an employee of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in December 2009 Mr. Gardner requested Mr. Lombard to make a campaign contribution to Friends of Scott Walker in the amount of \$5,000. Mr. Gardner told Mr. Lombard that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Lombard made a \$5,000 contribution to Friends of Scott Walker on December 15, 2009.
5. That Wisconsin & Southern Railroad Company reimbursed this amount to Mr. Lombard on December 16, 2009.
6. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, make any campaign contribution other than from funds belonging to that individual.
7. That Mr. Lombard violated this statute by making a contribution of \$5,000 to Friends of Scott Walker for which contribution he received full reimbursement from Wisconsin & Southern Railroad Company.
8. That James Lombard has agreed to pay a civil forfeiture of \$250 in settlement of this matter.


 JAMES LOMBARD 4-8-11
Date


 STATE OF WISCONSIN 4/11/11
Date
 GOVERNMENT ACCOUNTABILITY BOARD
 By: Kevin J. Kennedy
 Director and General Counsel

State of Wisconsin	Government Accountability Board
In the Matter of)
)
	) SETTLEMENT AGREEMENT
)
William Gardner	) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That David Hackbarth is an employee of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in March 2010 Mr. Gardner requested Mr. Hackbarth to make a campaign contribution to Friends of Scott Walker in the amount of \$4,900. Mr. Gardner told Mr. Hackbarth that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Hackbarth made a \$4,900 contribution to Friends of Scott Walker on March 22, 2010.
5. That Wisconsin & Southern Railroad Company reimbursed this amount to Mr. Hackbarth on April 22, 2010.
6. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, make any campaign contribution other than from funds belonging to that individual.
7. That Mr. Hackbarth violated this statute by making a contribution of \$4,900 to Friends of Scott Walker for which contribution he received full reimbursement from Wisconsin & Southern Railroad Company.
8. That David Hackbarth has agreed to pay a civil forfeiture of \$250 in settlement of this matter.


4-8-11

 DAVID HACKBARTH Date


4/11/11

 STATE OF WISCONSIN Date
 GOVERNMENT ACCOUNTABILITY BOARD
 By: Kevin J. Kennedy
 Director and General Counsel

HAND DELIVERED

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State of Wisconsin 11 APR -8 PM 12:48 Government Accountability Board

In the Matter of GOVERNMENT ACCOUNTABILITY BOARD SETTLEMENT AGREEMENT
William Gardner) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Ken Lucht is an employee of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That in February 2010 Mr. Gardner requested Mr. Lucht to make a campaign contribution to Friends of Scott Walker in the amount of \$5,000. Mr. Gardner told Mr. Lucht that Wisconsin & Southern Railroad Company would reimburse him for the contribution.
4. That Mr. Lucht accepted \$5,000 from Wisconsin & Southern Railroad Company to make a political contribution to Friends of Scott Walker, although he did not make such contribution.
5. That §11.25 (1), *Wisconsin Statutes*, provides that no individual may intentionally accept or receive anything of value for a political purpose contrary to law.
6. That Mr. Lucht violated this statute by accepting \$5,000 from Wisconsin & Southern Railroad Company in order to make a contribution to Friends of Scott Walker.
7. That Ken Lucht has agreed to pay a civil forfeiture of \$250 in settlement of this matter.

Ken Lucht 4/8/11
KEN LUCHT Date

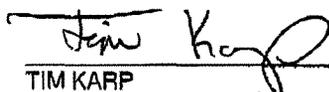
Kevin J. Kennedy 4/8/11
STATE OF WISCONSIN Date
GOVERNMENT ACCOUNTABILITY BOARD
By: Kevin J. Kennedy
Director and General Counsel

2010-04-08 10:48:48 AM

State of Wisconsin	Government Accountability Board
In the Matter of)
	) SETTLEMENT AGREEMENT
William Gardner	) GAB Case #2010-05

This agreement is entered into pursuant to the authority granted in §5.05 (1) (c), *Wisconsin Statutes*, for the purpose of settling a potential action for a violation of subch. III, Ch.13, *Wisconsin Statutes*. The parties hereto acknowledge and agree as follows:

1. That Tim Karp is the Chief Financial Officer of Wisconsin & Southern Railroad Company.
2. That William Gardner is the President and owner of Wisconsin & Southern Railroad Company.
3. That from December 2009 through March 2010 Mr. Gardner requested a number of company employees to make campaign contributions to Friends of Scott Walker in the amount of either \$4,900 or \$5,000. Mr. Gardner told these employees that Wisconsin & Southern Railroad Company would reimburse them for the contributions.
4. That Mr. Karp signed a number of checks from Wisconsin & Southern Railroad Company's checking account to reimburse these employees.
5. That §11.24 (1), *Wisconsin Statutes*, provides that no individual may, directly or indirectly, furnish funds to another person for the purpose of making a contribution in other than the individual's own name.
6. That Mr. Karp violated this statute by signing checks from Wisconsin & Southern Railroad Company in order to reimburse employees for making political contributions to Friends of Scott Walker.
7. That Tim Karp has agreed to pay a civil forfeiture of \$250 in settlement of this matter.

 4/7/11
 _____ Date
 TIM KARP

 4/11/11
 _____ Date
 STATE OF WISCONSIN
 GOVERNMENT ACCOUNTABILITY BOARD
 By: Kevin J. Kennedy
 Director and General Counsel

Government Accountability Board

State of Wisconsin

212 E. Washington Ave., Third Floor • Madison, WI 53703 • gab@wi.gov • (608) 266-8005 • Help Desk (608) 261-2028 • http://gab.wi.gov

FOR IMMEDIATE RELEASE:
April 11, 2011

FOR MORE INFORMATION, CONTACT:
Reid Magney, 608-267-7887

G.A.B. and Milwaukee County District Attorney Announce Resolution of Significant Campaign Finance Investigation

William Gardner to Plead Guilty to Two Felonies and Wisconsin & Southern Railroad to Pay \$166,900 Forfeiture in Campaign Money Laundering Scheme

MADISON – Today, the state’s Government Accountability Board and the Milwaukee County District Attorney’s Office announced the conclusion of a months-long joint investigation into money laundering allegations involving campaign contributions by William Gardner and the Wisconsin & Southern Railroad Company (WSOR). Mr. Gardner has agreed to plead guilty to two felony counts, and the corporation has paid a civil forfeiture of \$166,900. Seven employees of WSOR will also pay forfeitures of \$250 each.

The investigation found that Mr. Gardner, the owner and president of Wisconsin & Southern Railroad, directed the railroad company to reimburse 11 political contributions totaling \$53,800 from himself, a number of railroad employees, an acquaintance of Mr. Gardner, and his daughter. The investigation also found that Mr. Gardner specifically directed or requested the individuals to make the contributions. The contributions and reimbursements were made from November 2009 through April 2010. Except for two contributions totaling \$4,000 to former Assembly Speaker Mike Sheridan and the Assembly Democratic Campaign Committee, the remaining contributions were made to the Friends of Scott Walker committee.

Wisconsin law prohibits any person from furnishing funds to another for the purpose of making a political contribution or disbursement in another person’s name. It also prohibits anyone from accepting funds for the purpose of making a contribution. §§11.24, 11.25, *Wisconsin Statutes*.

Wisconsin law also prohibits a corporation from making a political contribution. 11.38,

Wisconsin Statutes.

The investigation uncovered no evidence that any individual connected with Friends of Scott Walker had any knowledge of the illegality of the contributions. The Walker campaign returned the illegal contributions to the individuals who sent them.

The Milwaukee County District Attorney's office filed a criminal complaint today in Washington County, Mr. Gardner's county of residence. Mr. Gardner has agreed to plead guilty to one felony count each of making excessive political contributions and making unlawful political contributions as a party to a crime. The District Attorney is not recommending any incarceration but is asking for two years of probation. State law will prohibit Mr. Gardner from voting while serving probation.

"Because Mr. Gardner attempted to corrupt the political process, it is appropriate that he be deprived of the right to vote for a significant period of time," said John Chisholm, the Milwaukee County District Attorney. "He will also have two felony convictions on his record. Our sentencing recommendation also takes into consideration the significant cooperation of Mr. Gardner and the railroad with the investigation."

Wisconsin & Southern Railroad Company has signed a Settlement Agreement with the Government Accountability Board admitting to violating the law and agreeing to pay a civil forfeiture of \$166,900. Seven employees of the railroad have also signed Settlement Agreements acknowledging violating the law, and each will pay a civil forfeiture of \$250.

"The forfeiture paid by the railroad is the single largest forfeiture ever paid to the Government Accountability Board or to either of its predecessor agencies, the State Elections Board or the State Ethics Board," said Kevin J. Kennedy, Director & General Counsel of the Government Accountability Board. "The forfeiture reflects the size and scope of the money laundering scheme engineered by Mr. Gardner. The railroad's employees, while violating the law, had little

choice after Mr. Gardner personally asked them to make the contributions with a promise of reimbursement.”

Ethics and Accountability Division Administrator Jonathan Becker said the outcome of the investigation sends a strong signal to other corporations, political contributors, and the public that illegal contributions will be aggressively investigated and prosecuted. “It is no secret that Wisconsin Statutes prohibit corporations from making direct political contributions,” Becker said. “In addition, employees of corporations should not be pressured into making political contributions, and the laws protect their right to say no to illegal schemes of this sort. We appreciate that some individuals declined to participate in Mr. Gardner’s efforts to launder campaign contributions, and assisted in our investigative efforts.”

The Government Accountability Board began its investigation in April 2010 based upon a complaint by a former woman friend of Mr. Gardner who had been asked to participate in the scheme. The Board subsequently contacted the Milwaukee County District Attorney’s Office and the two agencies worked closely together over the past year to complete a John Doe investigation before Judge Neal Nettesheim. The investigation involved obtaining and reviewing hundreds of digital documents and e-mails from WSOR, bank records, and the testimony of over a dozen witnesses.

A copy of the criminal complaint, including a list of the contributions that were reimbursed, as well as copies of the Board’s settlement agreements with WSOR and its employees, is available on the Board’s website: <http://gab.wi.gov/news>.

###

The Government Accountability Board (G.A.B.) is responsible for administration and enforcement of campaign finance, elections, ethics and lobbying laws in Wisconsin. The G.A.B. is made up of six non-partisan, former judges and is supported by an agency of non-partisan staff members.

January 2, 2012

Kathleen Chung, Attorney
Wisconsin Department of Transportation
Office of General Counsel
4802 Sheboygan Avenue, Room II5B
P.O. Box 7910
Madison, WI 53707-7910

As an attorney, you likely know that the FBI defines a criminal enterprise as: *a group of individuals with an identified hierarchy, or comparable structure, engaged in significant criminal activity.*

Sadly, in 2010 Wisconsin's shortline railroad, WSOR, fully met this definition. The May 5, 2011 edition of the Milwaukee Journal-Sentinel reported:

Madison - A Wisconsin railroad magnate pleaded guilty Thursday to making illegal political contributions.

Prosecutors charged Wisconsin & Southern Railroad Company chief executive William Gardner last month with one count of excessive political contributions and one count of unlawful political contribution, both felonies.

They accused him of asking his employees to make tens of thousands of dollars in political contributions, including donations to Gov. Scott Walker, and then reimbursing his workers.

Gardner struck a plea deal calling for him to plead guilty to both counts in exchange for prosecutors' recommendation that he serve two years on probation. His sentencing has been set for July 7 in Washington County.

On July 7, 2012, the Journal Sentinel followed up with the following information:

William Gardner, president and chief executive officer of Wisconsin & Southern Railroad Co. and a major donor to Gov. Scott Walker, was sentenced Thursday to two years of probation for violating state campaign finance laws.

The letter you sent to Chief Cynthia Brown at the *Surface Transportation Board*, dated December 22, 2011, is unjust, improper, and misleading; fully ignoring the best-interest of Wisconsin residents. You have made a grave error in judgment by essentially supporting an illegal sale of exclusive access to state-owned trackage by WSOR, an enterprise that has literally committed high crimes against our democracy, Wisconsin citizens and our Great Nation. It is reasonable to assume that Wisconsin has higher expectations for attorney's practicing here.

You must know the story of how this railroad "bundled" \$70,000 for the anti-high speed rail candidate. William Gardner is a convicted felon (2 counts) and on probation. Unfortunately; his partners in crime, other WSOR employees, are getting a "free pass". It appears virtually the entire railroad may have been involved with the federal crimes Gardner has been convicted of.

This is outrageous - Mr. Gardner's admitted acts and the collusion of his employees directly or indirectly violated any agreement to operate on publicly owned right of ways. **He does not have the right to transfer agreements/leases/contracts to operate state owned tracks when he/WSOR has fully breached directly or indirectly imposed duties.**

Given objective facts here, it is not in the best interest of Wisconsin to allow any sale of such exclusive access to state-owned assets which WSOR has forfeited. A "secret" sweetheart deal with Watco Transportation Services (subsidiary of WATCO Companies) is certainly not in anyone's best interest. It is shameful that any public official would state otherwise.

A common criminal is not allowed to profit from his/her crimes, but it appears that in Scott Walker's Wisconsin, railroad magnates prosper and thrive on their criminality. It is wholly unjust for the sale of WSOR to be conducted in secret and out of the public's eye. You must stand against this sale. Advocating its consummation is dereliction of duty at best.

I demand that you retract your comments to the *Surface Transportation Board* which wholly-misrepresent the situation. While Gardner/WSOR has a right to sell assets he/it directly owns (trade name, locos, cars, etc...) **WSOR does not have the right to sell access to public trackage on which WSOR operates given the serious crimes that have been committed.**

I demand that you do your duty as a representative of the *Wisconsin Department of Transportation* and as an attorney in-good-standing with Wisconsin's Bar Association. Stand up against this illegal sale. You have a legally imposed duty to work in the public's best interest and disseminate truth and facts related to this transfer of ownership.

Any lease/agreement to operate on public trackage must be openly sold to the "highest bidder" in an open and transparent process. The criminal nature of William Gardner and his railroad demands this. The public, which owns said track, has a right to expect better from you.

The state must re-evaluate the monies that come into general revenue from private entities operating on public infrastructure. It is unjust, unfair, and wrong for the *State of Wisconsin* to subsidize what has literally become a criminal enterprise, WSOR. It is even worse to let WSOR profit from selling itself in a closed process, passing profits of its illegal activities along to former owners and a third party. I demand a prompt reply with a statement addressing:

1. Your intentions to stand up for the public's good and withdraw the "comments" that wholly ignore the most relevant and salient issues at hand, perhaps even in a flagrant disregard for the truth and duties imposed on you.
2. Any and all information related to how citizens, interest groups, and others with direct/indirect stake in this illegal sale can work to STOP this travesty of justice and the resulting harm it is inflicting on taxpayers, shippers, and citizens; while benefiting criminals and well-connected political insiders.

You do not have a right to misrepresent basic facts to the *Surface Transportation Board*, cover up WSOR's criminality, and allow an illegal sale wholly-hidden from the public to proceed for whatever purpose is currently motivating you to do so.

Time is of an essence here; your cooperation is demanded and expected. Please do not stand down while valuable state assets, including exclusive access to public right-of-ways, are sold out-from-under taxpayers in an illegal and fraudulent manner for the benefit of felons.

William P. Breitsprecher
1202 Williamson Street
Lower Level
Madison, WI 53703
608.556.2062

- c. Sen. Mark Miller
Sen. Fred Risser
Rep. Brett Hulsey
Rep. Louis Molepske
Rep. Kelda Helen Roys
Rep. Fred Clark
Rep. Terese Beceau
Chief Cynthia T. Brown
Committee for Fair Rail Access
Wisconsin Passenger Association
Wisconsin DOT: Office of Public Affairs
Wisconsin Supreme Court: Office of Lawyer Regulation

(submitted to Wisconsin Supreme Court: Office of Lawyer Regulation on 1/5/2012)

It is an historical fact that Wisconsin's second largest railroad, Wisconsin & Southern, illegally promoted the anti-high speed rail candidate with "bundled" contributions from employees. According to the media, this crime was uncovered by a secret John Doe investigation into the current Governor's administration.

It appears that WSOR wanted to "kill" high speed rail because this administration assumed that many millions of dollars in left-over transportation funds would be available for investment in other transportation needs – perhaps even the trackage that WSOR current leases or new trackage that WSOR was hoping to operate on.

It is critical to point out that not only are WSOR's operations fully subsidized by the State of Wisconsin and other perhaps transportation authorities, but the agreements to give WSOR exclusive access to said rail lines literally represents a state-sanctioned monopoly on certain transportation services.

While the railroad's CEO "took the rap", in reality, it appears virtually every important employee on WSOR participated in these crimes. By committing and being convicted of 2 felony convictions for William Gardner, CEO, this rail operation fully the FBI defines a criminal enterprise: *a group of individuals with an identified hierarchy, or comparable structure, engaged in significant criminal activity.*

On December 22, evidently the absolute last day for comments to be brought to the Surface Transportation Board's attention, Attorney Kathleen Chung wrote what appears to be a misleading letter of "comments" to Chief Cynthia Brown at the *Surface Transportation Board*, dated December 22, 2011, is unjust, improper, and misleading; fully ignoring the best-interest of Wisconsin residents.

At best, she made a grave error in judgment by essentially supporting an illegal sale of exclusive access to state-owned trackage by WSOR, an enterprise that has literally committed high crimes against our democracy, Wisconsin citizens and our Great Nation. The letter attorney Chung sent makes absolutely no mention of critical details that should have been brought forth to STB.

It is reasonable to assume that Wisconsin has higher expectations for attorney's practicing here.

Here actions here, misleading STB as if there were absolutely no concerns/issues related to WSOR's felonies is outrageous - Mr. Gardner's admitted acts and the collusion of his employees directly or indirectly violated any agreement to operate on publicly owned right of ways. **He does not have the right to transfer agreements/leases/contracts to operate state owned tracks when he/WSOR has fully breached directly or indirectly imposed duties.**

Given objective facts here, it is not in the best interest of Wisconsin to allow any sale of such exclusive access to state-owned assets which WSOR has forfeited. A “secret” sweetheart deal with Watco Transportation Services (subsidiary of WATCO Companies) is certainly not in anyone’s best interest. It is shameful that any public official would state otherwise.

A common criminal is not allowed to profit from his/her crimes, but it appears that in Scott Walker's Wisconsin, railroad magnates prosper and thrive on their criminality. It is wholly unjust for the sale of WSOR to be conducted in secret and out of the public's eye. Advocating its consummation while deliberately withholding material information is dereliction of duty at best.

WSOR does not have the right to sell access to public trackage on which WSOR operates given the serious crimes that have been committed.

While many parties have been harmed by the crimes WSOR committed and it would be reasonable to state these crimes directly or indirectly cost the state untold millions of dollars, standing down while WSOR and Gardner potentially reap untold millions in profits off their crimes represents much larger damage to Wisconsin and our Great Nation.

It is unjust, unfair, and wrong for the *State of Wisconsin* to subsidize what has literally become a criminal enterprise, WSOR. It is even worse to let WSOR profit from selling itself in a closed process, passing profits of its illegal activities along to former owners and a third party. Attorney Chung's actions have directly contributed to a terrible situation and it appears that little or nothing can actually be done to overturn a decision that it is reasonable to conclude was based on misleading information – “comments” that attorney Chung is wholly responsible for.

It is reasonable to assume that attorney Chung did not have a right to misrepresent basic facts to the *Surface Transportation Board*, cover up WSOR's criminality, and allow an illegal sale wholly-hidden from the public to proceed for whatever purpose is currently motivating you to do so.

Attached is a copy of a letter I hand delivered to WI DOT for Ms. Chung. I have sought to directly remedy this situation. It appears that after filing inappropriate comments that intentionally hide material facts, Ms. Chung may have taken a vacation, perhaps to more-fully ensure that said proceedings “fly under the radar”.

In the meantime, a great injustice has occurred.

OPERATING AGREEMENT

FOR RAIL SERVICE CONTINUATION

BY AND BETWEEN

EAST WISCONSIN COUNTIES RAILROAD CONSORTIUM

AND

WISCONSIN & SOUTHERN RAILROAD CO.

AGREEMENT NO. 0490-40-50(F-1)

MARCH 28, 2008

ATTACHMENT 2
II-1

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OPERATING AGREEMENT

This Agreement made and entered into this 28th day of March, 2008, by and between East Wisconsin Counties Railroad Consortium, established in accordance with Sec. 66.0301 (formerly Sec. 66.30) Wis. Stats., having its principal office at Dodge County Administration Building, 127 E. Oak Street, City of Juneau, County of Dodge, State of Wisconsin, ("Commission") and Wisconsin & Southern Railroad Co., a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, State of Wisconsin ("Operator").

WITNESSETH

WHEREAS, this Agreement supersedes Agreement No. 0490-40-50(F), dated July 1, 1990, and Agreement No. 0490-40-50(G) dated January 12, 2005; and,

WHEREAS, certain rail facilities in Columbia, Dodge, Fond du Lac, Green Lake, Manitowoc, Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha and Winnebago Counties, Wisconsin, have been abandoned, or have been threatened with abandonment, and have been purchased by the Wisconsin Department of Transportation (hereinafter referred to as WisDOT); and,

WHEREAS, Commission is currently comprised of the counties of Columbia, Dodge, Fond du Lac, Green Lake, Ozaukee, Sheboygan, Washington and Winnebago, and Commission may accept additional member counties in the future; and,

WHEREAS, Commission was created for the purpose of providing for the continuance of rail service to its member counties with authority to acquire the use of the Rail Line by purchase, lease or otherwise and to provide for the operation of freight rail service thereon by contract or otherwise; and,

WHEREAS, WisDOT has acquired ownership of the Principal Line Segments in the State of Wisconsin as defined under Section 1.0(q) of this Agreement; and,

WHEREAS, WisDOT owns the Principal Line Segments in Wisconsin, and the Commission owns the Improved Property, or has been granted use of the Improved Property of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Grant Agreement and Land Use Agreement identified in Section 1.0(i) and (m) respectively; and,

WHEREAS, Operator is also operating over the tracks of the Wisconsin River Transit Commission d/b/a Wisconsin River Rail Transit Commission and Pecatonica Rail Transit Commission under similar Operating Agreements; and

WHEREAS, the parties hereto have negotiated and agreed to a long-term operating agreement which is this instrument; and,

WHEREAS, Operator has been furnished copies of and reviewed the Land Use Agreement by and between Commission and WisDOT dated March 28, 2008, and the Operating Agreement for Rail Service Continuation By and Between the Commission and WisDOT dated March 28, 2008; and,

WHEREAS, Operator has inspected the Rail Line and is knowledgeable as to its needed repairs, maintenance and possible rehabilitation and is making certain financial commitments relating thereto which are hereinafter set forth in this Agreement; and,

NOW THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties hereto covenant and agree as follows:

ARTICLE 1.0 - DEFINITIONS.

As used in this Agreement and also, unless otherwise more particularly defined, in other instruments referred to herein:

- a. "AREMA" means American Railway Engineering and Maintenance-of-Way Association.
- b. "Building" means any structure built to stand more or less permanently with columns or walls and designed to support a roof, and constructed as either an addition which increases the outside dimensions of another structure, or as a detached entity which is not physically connected to another structure and which was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- c. "Commencement Date" means the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement.
- d. "Commission" means the East Wisconsin Counties Railroad Consortium.
- e. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- f. "CN" means the Canadian National Railroad D/B/A the Wisconsin and Central Railroad Co. and its successors, if any.
- g. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- h. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

- i. "Grant Agreement" means the Operating Agreement For Rail Service Continuation No. 0490-40-50(B-2) By And Between The East Wisconsin Counties Railroad Consortium And Wisconsin Department Of Transportation, dated March 28, 2008, and any amendments thereto.
- j. "Gross Operating Revenues" means all income produced from operations on the rail line which shall include freight bill revenues from complete on-line hauls, freight bill revenues retained by Operator under a division of revenues with other rail lines, shipper contract charges, surcharges, net equipment per diem, demurrage, and equipment storage. Specifically excluded is income received from contract car repair, building of or scrapping of rail equipment, and excursion trains. Gross Operating Revenues shall be computed on an accrual basis.
- k. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- l. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage that is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.
- m. "Land Use Agreement" means the Land Use Agreement No. 0490-40-50(A-1) by and between the East Wisconsin Counties Railroad Consortium and the Wisconsin Department of Transportation, dated March 28, 2008, and any amendments thereto.
- n. "Operator" means the Wisconsin & Southern Railroad Company, and its successors, if any.
- o. "PRTC" means Pecatonica Rail Transit Commission.
- p. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- q. "Principal Line Segment" means one of the following as defined by their beginning and end points:
 - (1) North Milwaukee, Milepost 93.4 to Horicon, Milepost 139.1.
 - (2) Horicon, Milepost 139.1 to Cambria, Milepost 165.2.
 - (3) Beaver Dam, Milepost 154.5 to Fox Lake, Milepost 156.7.
 - (4) Horicon, Milepost 139.1 to Ripon, Milepost 168.9, including the Peachey Bros. Spur at Burnett.
 - (5) Ripon, Milepost 168.9 to Oshkosh, Milepost 188.3.
 - (6) Iron Ridge, Milepost 132.91 to Mayville, Milepost 141.6.
 - (7) Markesan, Milepost 172.6 to Brandon, Milepost 161.1.
 - (8) Saukville, Milepost 114.8 to Kiel, Milepost 151.8.
 - (9) Kohler, Milepost 4.0 to Plymouth, Milepost 14.95.

- r. "Rail Line" means the Principal Line Segments in aggregate.
- s. "RHS" means Railroads and Harbors Section of the WisDOT.
- t. "South Central" means South Central Wisconsin Rail Transit Commission.
- u. "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.
- v. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other non-Land property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations. This term does not include Land.
- w. "UP" means the Union Pacific Railroad and its successors, if any.
- x. "WisDOT" means the Wisconsin Department of Transportation.
- y. "WRRTC" means the Wisconsin River Transit Commission D/B/A the Wisconsin River Rail Transit Commission.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) Commission hereby leases to Operator the Improved Property and grants to Operator an exclusive right and license to use the Land for the purpose of providing freight rail service and for all other purposes necessary to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and subject to the uses and reservations set forth in the governing Land Use and Grant Agreements. Operator agrees to cooperate with Commission to allow supplemental freight rail service to be provided by Commission on Principal Line Segments identified in subsections 1(q) (1) – (7) of this Agreement in situations where Operator cannot justify and is unable to provide a desired level of freight rail service, provided that Commission indemnifies Operator in all respects under this Agreement and that Commission and WisDOT release in writing Operator from any obligation or liability which would be incurred if Operator were performing the service provided by Commission. The written release shall specify the terms and conditions under which the release is issued. This provision does not apply to the Principal Line Segments between Saukville, Milepost 114.8 to Kiel, Milepost 151.8 identified in subsection 1(q)(8) and between Kohler, Milepost 4.0 to Plymouth, Milepost 14.95 identified in subsection 1(q)(9).

(b) This Agreement is to be executed upon authorization of the Board of Directors of the Commission, and the Sole Director of WSOR. This Agreement shall be effective upon the "Commencement Date", and shall end at 12:01 A.M. December 31, 2047; provided, however, that either party may terminate this Agreement under Article 7.0.

(c) Operator shall have the right to renew this Agreement for successive additional ten (10) year periods. Each option to renew shall be for a period of ten (10) years and shall be exercised at least one (1) year but no more than two (2) years prior to the expiration of the then current term, said renewal notice to be exercised in writing to the Commission with a copy of the notice to WisDOT. All terms and conditions of this Agreement shall apply to the renewal periods unless amended by mutual agreement.

Section 2.2 - Reservation.

The Land and Improved Property involved in this Agreement are the Land and Improved Property obtained by Commission from WisDOT through the agreements defined in Section 1.0(i) and (m) herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

Land and Improved Property used predominantly in generating income not included within Gross Operating Revenues shall be deemed not used for railroad purposes. Partial use of the line by Operator for future Commuter Passenger Service is possible if first authorized under a separate operating agreement in the manner set forth in Section 2.2(g). During the term of this Agreement some consolidation of yards, interchanges and terminal facilities of the various railroads serving the particular area may require relocation of Improved Property and other facilities which could affect portions of the Rail Line. WisDOT may, upon request from Commission, Operator or others, determine that the use of the Rail Line for railroad purposes is such that the width of the Land at particular points also permits recreational or scenic uses. Commission hereby makes this lease subject to the following conditions:

(a) Subject to Section 2.2(b) below, the right is retained for WisDOT to sell or lease Land, Improved Property or both that WisDOT determines is not needed for the continuation of freight rail service. Such determination shall be made after consultation with Commission and Operator. When notified of a pending sale by WisDOT, Commission shall forthwith notify Operator.

(b) In the event WisDOT determines certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Commission and to other state and local government units under the provisions of Section 85.09, Wis. Stats. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Section 85.09, Wis. Stats., and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within 33 feet of the center line of the

main track without Operator approval if the parcel to be sold is unoccupied by permanent structures, or is to be sold to an owner of property abutting the main track. Operator approval is not required for Commission's consent to a WisDOT sale or lease of Land and Improved Property within 33 feet of the center line of the main track when the Land and Improved Property are subject to a lease and are occupied by a permanent structure legally existing on the date of the Grant Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser agrees in writing to indemnify Operator against loss or disruption to Operator's business caused by such lessee's or purchaser's use of the Land or Improved Property so acquired.

(c) Commission retains the right to retake or retain possession of any of the Rail Line under lease to third parties for itself or for WisDOT, subject to the right of the Operator to provide service. In the Land Use Agreement, WisDOT presently retains the right to approve all leasing of Improved Property and to conduct all the leasing of Land. If there presently are sidetracks on any of the Land leased to third parties, Commission shall provide Operator with the right of continued use of the sidetrack and Land 16.5 feet from the center line on each side of the side track.

(d) The right to lease Land, which is not under license and lease to Operator or not presently leased to third parties, is retained for WisDOT. If requested by Operator, Commission will attempt to exercise such rights as it may have to obtain a lease or sale of the property to a party or parties who will use the property or improve the property for a use that will involve freight rail transportation.

(e) Any building or other structure presently on the Land being used for railroad purposes or previously built for railroad purposes, except as may be specifically excluded elsewhere herein or in an existing lease or by law, will be available for use by Operator. If any such building or buildings are not needed by Operator for its operation, Commission reserves the right to lease any such building or buildings to third parties for periods not to exceed two (2) years. In some instances, this might involve leasing a portion of the building with Operator using the other portion. Commission agrees to consult with Operator in making such leases.

(f) The transfer of use of the Land to Operator is subject to existing utility easements, street and highway easements, and other existing easements, permits or licenses of grant or use. Commission retains the right of WisDOT or Commission to grant future utility easements and public or private highway or road crossing authorizations. Commission retains to itself or WisDOT all easement and right-of-way rental, purchase price, or other easement, right-of-way or property transfer payments.

(g) Commission reserves the right to contract for the use of the Rail Line or portions thereof for Commuter Passenger Service. Such contract may be with Operator or a governmental unit or Commission may provide that service itself; provided, however, that Commission may alternatively contract, directly or indirectly, with an entity other than Operator or a governmental unit if it notifies Operator, in writing, of its intention to do so and offers Operator an option to provide the same service on the rail line portion proposed to be operated over by such other entity, upon the same terms and conditions, which option may be exercised by Operator within thirty (30) days following receipt of the foregoing notice. Neither Operator nor any other operator may provide Commuter Passenger Service over any portion of the rail line without first entering into a separate agreement authorizing that service. Before Commuter Passenger Service may begin, Commission must sign the authorizing agreement, and WisDOT must approve it. Further, it is a condition of

this reservation that Commission may contract with a third party respecting the provision of Commuter Passenger Service only if reasonable advance notice is given to Operator and Operator is afforded the opportunity of participation in the negotiating and establishing of the conditions of the co-use of these facilities. The granting of such co-use is on the further condition that any upgrading or changing of the Rail Line or other facilities to accommodate the co-use shall be first approved by WisDOT in accordance with Commission's obligations under the Land Use Agreement and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not unreasonably restrict the use of the particular facilities by Operator. This joint use may involve testing or trial operations as well as permanent operations.

(h) As to the planning operations and the changes which might occur because of planning operations, Commission reserves to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. It is a condition of this Agreement that Commission reserves the right to negotiate the contract as to such matters to itself and WisDOT on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator: Operator agrees that it will cooperate in implementing any agreements made by Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator; and, that any major costs of the changes are not imposed on Operator. No change shall interfere with Operator's duty to provide service unless Operator and Commission agree to such change.

(i) It is understood that no lease money or sale receipts are to accrue to Operator in the event of any sales or leases of Land or Improved Property.

(j) The purpose of this section is to merely require Operator to receive a written permit from WisDOT before Operator itself provides passenger rail service. This section does not limit Operator's ability to provide freight services. If Operator proposes to operate or allow the operation of any train over any portion of the Rail Line which is to carry any person paying a fee for carriage, Operator shall first apply for and receive a written permit from WisDOT for the passenger operation on the Rail Line. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below, trackage condition, proposed speed of operation, preparations for crowd control, parking and clean-up, and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, or if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

(a) Each year Operator shall pay rent to Commission for use of the Land and Improved Property, and all other rights and privileges under this Agreement, due and payable quarterly. The amount of rent which Operator shall pay to Commission each year shall be an amount equal to the amount calculated by multiplying the Rate Per Mile (hereinafter denoted the "RPM") by the number of miles of track operated, excluding yard, passing and side tracks.

(b) The RPM is hereby established as follows:

(i) The RPM in effect during the calendar years of 2009 through 2013, both inclusive, shall be \$100.00 (One hundred dollars).

(ii) The RPMs in effect during the calendar years after 2013 shall be RPMs which shall have been adjusted according to the provisions of this Article 3.0 which are set forth below.

(iii) The RPM shall be adjusted beginning in January of the year 2014 and shall be adjusted again every fifth year thereafter.

(c) When an adjustment to the RPM is to be made, it shall be made in the month of January, the adjustment to the RPM shall be calculated by increasing or decreasing the RPM which was in effect during the previous calendar year in proportion to the change in the CPI-U over the five year period ending on December 31 of the previous calendar year.

(d) CPI-U means the US Department of Labor, Bureau of Statistics, Consumer Price Index for the United States, All Urban Consumers, All Items, unadjusted index.

(e) Adjustments to the RPM shall be calculated by the following process:

(i) Subtract the CPI-U for the month of December of the year which is six years prior to the current year from the CPI-U for the month of December of the immediately preceding calendar year. The difference between these two CPI-U numbers is the Index Point Change over the preceding five year period.

(ii) Divide the Index Point Change by the CPI-U for the month of December of the year which is six years prior to the current year, and add one to the quotient, and round the sum to the third decimal place, to establish the RPM Adjustment Multiplier.

(iii) Determine the adjusted RPM by multiplying the RPM in effect during the previous calendar year by the RPM Adjustment Multiplier to establish the new RPM.

(f) In addition to any rental due under Section 3.0(a) of this Agreement, Operator shall pay Commission 10% of its gross receipts in excess of \$100,000 per year from excursion trains permitted by WisDOT and operated on the Land and Improved Property.

(g) For calendar year 2008, Operator shall pay rent in the amount of \$15,250 to Commission for use of the Land and Improved Property, and all other rights and privileges under this Agreement, due and payable in one lump sum on September 30, 2008.

ARTICLE 4.0 - REVENUE DIVISIONS, TRACKAGE RIGHTS, INTERCHANGES AND COORDINATION WITH OTHER LINES.

Section 4.1 - Division of Revenues.

Operator has represented to Commission that it has made necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Operator obligates itself to make arrangements for division of revenues as are needed if there are other interchange points needed for proper operation of the Rail Line and to furnish Commission documented evidence of such divisions after being obtained.

Section 4.2 - Trackage Rights.

(a) Operator and Commission have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Operator and Commission shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. This section shall not be construed to require Commission to expend funds, or acquire property or rights. Operator shall file all trackage rights agreements with the STB as may be required by law.

(b) Operator shall furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over:

- (i) CN property from Rugby Jct. to Waukesha.
- (ii) CN property from Saukville to Canco.
- (iii) UP property from Kohler to Sheboygan.
- (iv) Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the CN, CPR and UP in various locations to facilitate the service to the Rail Line. Operator agrees to supply Commission and WisDOT with documented evidence of the interchange agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

(a) Operator shall adhere to and comply with the interline accounting rules of the Association of American Railroads in dividing revenues, under through rates, among participating carriers. Operator covenants and agrees to make such divisions at the time and in the manner provided herein.

(b) Operator shall remain current on its financial obligations to connecting railroad companies. In the event that any or all connecting railroad companies place Operator on a "junction settlement" basis, or any modification thereto, except by voluntary written agreement between Operator and connecting railroad, Commission may, at its option, declare Operator in default of this Agreement.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Authority to Operate.

(a) Operator has obtained the requisite operating authority from the STB for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Commission hereby as a part of this Agreement grants Operator the right to operate over all Principal Line Segments of the Rail Line under Commission jurisdiction as a common carrier railroad providing exclusive originating and terminating freight rail service on the Rail Line, including line-haul and switching services to shippers on the Principal Line Segments over which it is operating as a freight rail carrier. In such operation, Operator shall have the power and authority to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it is operating as a freight rail carrier. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Rail Line, subject to the approval of Commission if approval is otherwise required by other provisions in this Agreement, the Land Use Agreement or Grant Agreement, other applicable agreements or by law. Commission grants Operator the right to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property, provided any such rules affecting freight rail service which differ from the General Code of Operating Rules adopted by Burlington Northern Santa Fe Railway, CP Railway, and Union Pacific Railroad, effective April 3, 2005, or as subsequently revised, shall be lawful under Federal and state statutes and regulations governing such service and shall have been approved by WisDOT within 180 days of the issuance of the order adopting or promulgating such rules and provided any such rules are consistent with this Agreement.

Section 5.2 - Agreement of Operator to Operate and Agreements and Covenants as to Operator.

Operator hereby agrees to operate a railroad on the Rail Line licensed and leased to it as set forth above. As part of this Agreement, Operator hereby covenants and agrees to do the following things and to perform in the following manner:

(a) Service. Operator agrees to provide revenue freight rail service to current and future shippers and receivers connected to or on the Rail Line. This is freight rail service including provision of rail cars, switching, line haul and other related services and includes bridge traffic. Operator is required and hereby agrees to provide the current and future shippers and receivers connected to or on the Rail Line freight rail services upon the same terms and conditions as such service is provided to other shippers and receivers served by Operator, or as otherwise agreed between Operator and any shipper or receiver. Failure to provide minimum service required or agreed to hereunder or required under Section 7.10 shall at Commission's option subject Operator to termination for default as hereinafter provided.

(b) Maintenance. Operator shall perform or cause to be performed all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by Operator. Tracks shall be maintained to FRA Class II standards, or to a standard determined by WisDOT after consultation with Operator, as of an inspection date prior to sixty (60) days following the Commencement Date. Upon its completion, a list of line segments that shall be maintained to FRA Class II standards and a list of line segments that shall be maintained to FRA Class I standards shall be included as Attachment 3 to this Agreement. Any Principal Line Segment that has been rehabilitated as part of a WisDOT assisted project after the date of this Agreement shall be maintained to the WisDOT maintenance specifications specified as part of the contract covering WisDOT assistance to that rehabilitation project. In the event of a dispute between Operator and WisDOT as to the condition of the trackage following the inspection referred to above, Operator and WisDOT shall jointly request FRA to determine the FRA track safety classification. Bridges shall be maintained in compliance with Chapter 7, Part 3 of the Manual for Railway Engineering, as amended, published by AREMA. Operator may be declared in default, as hereinafter provided, or in the case of buildings, may lose the right of possession and occupancy, if a deviation from the applicable maintenance standards or local and state building codes remains uncorrected for more than ninety (90) days after notification of the deviation as hereinafter provided or if Operator has not diligently commenced to correct such deviation within the 90 day period. Operator is prohibited from using trackage located in sidetracks, sidings or other locations as maintenance material unless prior written permission to do so is requested from and first granted by WisDOT. Compensation to WisDOT from Operator for materials used with or without permission may be required by Commission and WisDOT. Any costs of trackage installed on or funds expended for maintenance of any portion or component of the Rail Line under the jurisdiction of Commission by grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by Commission or WisDOT upon sale of the Rail Line or transfer of operating rights over the trackage to another agency or operator.

(c) Safety and Other Inspections. Operator agrees to facilitate the inspection of the Rail Line facilities as required by governmental agencies. Operator agrees to inform WisDOT and Commission of the time and place of any inspection requested by a federal or insurance inspector. Operator shall permit representatives of WisDOT authorized by the Secretary of WisDOT or Chief of the Railroads and Harbors Section of WisDOT and representatives of Commission authorized by Commission chairman to accompany the inspector. Operator is required and hereby agrees to provide access to all documents related to any inspection by any governmental or insurance agency. Operator agrees upon reasonable notice during normal business hours to permit inspection of the Rail Line, the rolling stock and maintenance equipment, and the operating and maintenance practices of Operator and Operator's affiliates performing work on the Rail Line, by Commission or WisDOT or their agents. Operator covenants and agrees to furnish Commission and WisDOT with copies of all inspection reports from federal agencies or insurance agencies and safety orders from federal agencies or insurance agencies and to furnish Commission any like reports and orders from WisDOT or the Wisconsin Office of the Commissioner of Railroads.

(d) Equipment. Operator agrees to provide and maintain at its own expense all suitable locomotives, cars and other rail equipment as are necessary in the operation of this freight rail service. Operator shall be solely responsible for and agrees to provide all tools and other equipment necessary to properly maintain the operating equipment, Improved Property, and Land on the Rail Line.

(e) Operating Personnel. Operator agrees to obtain and maintain the necessary personnel for operation and management of its operations over the Rail Line. Said personnel shall be under the sole control and direction of Operator. It is understood and agreed that no personnel of Operator are agents, employees, servants or subcontractors of Commission or WisDOT. All such personnel shall be qualified and properly trained for such service, but this shall be the sole responsibility of Operator.

(f) Accounting Services. Operator agrees to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with this Agreement. Operator is required and hereby agrees to permit access by WisDOT and Commission and their agents to all documents related to the business operation of Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(g) Use of Property. Operator shall have use of all the Land and Improved Property under the ownership or control of Commission, including buildings, which are reasonably required for the operation of the Rail Line. This shall not, however, negate any reservations held or any actions taken by Commission or WisDOT under the reservations set forth in Section 2.2 of this Agreement. Operator covenants and agrees to provide maintenance and upkeep for any such buildings. In the event it becomes desirable to construct buildings or other structures on the Land, the same may be constructed by Operator at its expense, subject to Commission's and WisDOT's approval. Operator has no authority to enter into easements, permits, licenses or leases affecting the Land whether under the use of Operator or outside the use of Operator. Commission is under contract with WisDOT as to leases of Land and Improved Property, and any such lease income shall be income to WisDOT or Commission. Commission agrees, however, to cooperate with Operator in providing leases to businesses or users who would benefit the rail business through operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreement

or Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator covenants and agrees to use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new freight rail business and customers for such services.

(i) Use of Land or Trackage as Collateral. Neither the Land for which a lease and license to use is granted nor the Improved Property leased under this Agreement shall be used by Operator in any form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Operator or as collateral for any other purpose.

(j) Public Order. Operator hereby assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1(b) in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

(k) Fencing. Operator assumes such responsibility as may exist to third parties for providing fencing required under Chapter 90, Wis. Stats., local ordinance or contract.

(l) Vegetation Control. Operator assumes such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

(m) Crossing over Waters and Drainage Systems. Operator assumes full responsibility for the ordinary repair and maintenance of all culverts, trestles and bridge structures on the Rail Line.

(n) Highways and Streets. Operator assumes full responsibility on the Rail Line for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law from Operator.

(o) Private Crossings. Operator may, according to applicable statutory provisions, abrogate any private crossing established by agreement, which interferes substantially with Operator's performance of freight rail services. Operator shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Railroads, prior to permitting any additional private crossings.

(p) Maintenance Plan.

(i) Operator agrees to prepare an annual maintenance plan for the Rail Line. This plan shall be combined with like plans for any and all other Rail Lines provided to Operator by any other rail transit commission existing in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered by Operator to WisDOT for WisDOT review and reasonable approval not later than February 1 of each year. The plan required to be submitted shall include the quantities of materials to be installed during the year in which the plan is submitted, the numbers and types of

personnel to be employed for the proposed maintenance, the numbers and types of machines to be utilized for performing the proposed maintenance, the location of the proposed maintenance and the schedule for performing the proposed maintenance. Estimated prices for materials, labor and machines shall be included as well as the projected rates of production.

(ii) A maintenance plan shall not be eligible for WisDOT approval unless the sum of expenses and the capitalized maintenance expenditures called for in the plan during each calendar year are a minimum of 10 percent of Gross Operating Revenues. Notwithstanding the above, in the event maintenance is required to meet the track classification levels required under Section 5.2(b), sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.

(iii) Operator shall respond to inquiries from WisDOT concerning Operator's implementation of the approved Maintenance Plan. Operator shall provide WisDOT with a revised Maintenance Plan within 10 days following WisDOT's request for revisions following a review in accordance with Section 5.2(b).

(q) Liens Against Rail Line. Operator shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Land or Improved Property or any interest therein. Operator will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

(r) Rail Banked Lines. The obligation of Operator under this and other sections of this Agreement shall not apply to Principal Line Segments classified as rail banked lines.

ARTICLE 6.0 - LIABILITY AND INSURANCE.

Section 6.1 - Hold Harmless.

Except to the extent that the same arises from or is related to co-uses permitted by Commission or WisDOT pursuant to Section 2.2(g) above, Operator shall save and hold Commission, Commission's member counties and WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Operator, or its agents, servants, subcontractors, officers or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about the place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator is performing its work, or (2) during the period this Agreement between Commission and Operator is in effect, or (3) while any of the Operator's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's operations: including, without limiting the generality of the foregoing, all liabilities, damages, losses, claims, demands and actions

on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors or frequenters, or to Commission, its officers, employees, agents, subcontractors or frequenters, or to any other person whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's compensation (except worker's compensation claims by employees or agents of Commission or WisDOT) under Federal or state statutes or having any other code or statutory basis, or based upon administrative laws or other provisions. Without limiting the generality of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. Operator shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action.

Section 6.2 - Insurance.

(a) Required Coverage. During the term of this Agreement, Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$20,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission, and Commission's member counties, and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission, Commission's member counties and WisDOT to the extent of their ownership in any of said properties and to include under such coverage buildings, and trackage owned by Commission and leased to Operator hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

(b) Validation of Coverage and Notice of Cancellation. Upon initial purchase and each renewal of insurance coverage, the insurance carrier shall be subject to approval of WisDOT, such approval shall not be unreasonably withheld, and Operator shall provide to both WisDOT and Commission written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage and within 60 days thereafter a copy of the Comprehensive Railroad Liability Policy and the other policies of insurance aforesaid. In the event of suspended coverage or insurance cancellation by any insurance carrier, both the insurance carrier and the Operator shall provide WisDOT and Commission with notification of such suspension or cancellation no less than 10 days prior to such suspension or cancellation.

(c) Self-Insured Retention. It is understood and agreed that both the Comprehensive Railroad Liability Policy and the Rolling Stock Policy to be obtained and kept in force by Operator may contain a self-insured retention. A Comprehensive Railroad Liability Policy provides coverage for liabilities resulting from railroad operations such as grade crossing incidents, injuries to third parties while on railroad property and injuries to railroad employees under FELA. A Rolling Stock Policy provides coverage for damage to rail equipment, track structure, customer product loss and third party property resulting from a derailment or collision between rail equipment. The Operator shall maintain a self-insured retention of not more than \$250,000 per occurrence for railroad liability, employee injuries under FELA, and rolling stock equipment. If for whatever reason, the Operator determines that maintaining such a level of self-insured retention is either impractical, unavailable or uneconomical, then Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention. It is a condition of this Agreement that, upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), Operator shall provide Commission with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any damage or injury to person or property occurring on the Rail Line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be immediately reported to Commission and WisDOT. Operator shall, within 5 days, provide a written report, which shall also include a brief resume of the facts of the incident and an estimate by the Operator as to the approximate potential claim, which might arise thereunder. If a notice of injury or claim of damage is made to Operator, then Operator shall forthwith furnish Commission and WisDOT with copies thereof. Thereafter, Operator shall provide Commission and WisDOT copies of any further instruments, reports, or records involving such matter and shall periodically, but not less frequently than semi-annually, report to Commission and WisDOT as to further happenings regarding the incident including the final disposition of the matter.

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Commission's counsel, Operator's counsel and WisDOT's counsel. If the counsels are unable to agree, they shall select a fourth party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed

with Commission and WisDOT within 45 days after the end of each quarter, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to terminate this Agreement by fifteen (15) days written notice to Operator. If, upon receipt of such notice of termination, Operator shall desire to continue this Agreement in effect, Commission or Operator shall have the right to do so by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. The coverage limits of Operator's Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT no more than once every twelve months. Modifications to self-insured retention amounts shall be governed by Section 6.2(c) herein. Modifications increasing coverage limits shall be effective upon notice by Commission or WisDOT to Operator. Any modifications decreasing coverage limits may not in any event reduce the requisite insurance coverage below that required under Section 6.2(a) herein and shall be effective only upon WisDOT approval and upon amendment to this Agreement. Review of liability insurance shall be conducted by Commission, Operator, and WisDOT no less than 30 days prior to the expiration date of the policy then in force, except that a special review may be conducted in the event Operator experiences a cancellation of or a modification or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 6.2(f)(iv), (v), and (vi) herein. The following conditions shall apply to the review and modification of Comprehensive Railroad Liability Insurance:

- (i) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's Gross Revenue, as determined under Sections 6.2(f)(ii) and 6.2(f)(iii) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under Section 6.2(a) herein. Operator's decision to obtain insurance beyond that which is required under Section 6.2(a) herein for any aspect of coverage shall not result in Operator purchasing any less insurance coverage for any other aspect of coverage required under Section 6.2(a) herein.
- (ii) A base percentage of Gross Operating Revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's Gross Operating Revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of Gross Operating Revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under this Section 6.2(f) herein be used to reduce the requisite insurance amounts and coverages below that required under Section 6.2(a) herein. Those insurance requirements stated in Section 6.2(a) herein are minimal requirements and shall be met regardless of the base percentage of Gross Operating

Revenue calculation or of the review and modification procedures described in this section.

- (iii) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(ii). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(ii). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.
- (iv) Operator shall at a minimum expend such amounts as may be required to maintain liability insurance coverage limits no less than that in force at the time of review.
- (v) Commission, WisDOT, and Operator shall establish the coverage level to be obtained by Operator and shall amend this and companion agreements in accordance thereto in the event insurance coverage limits in effect at the time of the review cannot be maintained due to the refusal by insurance carriers to issue a policy of insurance at that coverage limit to Operator.
- (vi) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(v) herein, any one of them may require arbitration in accordance with Section 6.2(f)(iii) herein to determine the required amount of insurance coverage.
- (vii) Notwithstanding any other provision regarding insurance contained herein, Operator shall at a minimum obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and

no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(iii) herein, but in no event shall the coverage limit be less than \$20,000,000 per occurrence, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

(a) Default. A condition of default exists (1) when either party to this Agreement fails to abide by or perform in a material respect any one or more of its terms and conditions, (2) when Operator's insurance coverage lapses, is suspended, is canceled, or fails to satisfy all the terms and conditions of Section 6.2 of this Agreement or any amendment thereto, (3) when Operator files for protection under any bankruptcy statute, or (4) in the option of Operator, when the Land Use Agreement or the Grant Agreement between Commission and WisDOT expires, or is terminated, amended, or revoked without Operator approval.

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 13.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

In the event of any default described in Section 7.1 above, the non-defaulting party shall have the right to and at its option may, after first giving the required notice to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof or concurrent breach, terminate this Agreement, unless the breach is cured within the period set forth in Section 7.3 below, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages whether arising under this Agreement or otherwise.

Section 7.3 - Ability to Cure Default.

(a) Removal of Operator Default. Operator shall have ten (10) calendar days from written notification by Commission of default by Operator or from the date required insurance coverage ceased or from the date Operator filed for bankruptcy, whichever occurs first, to remove the cause

of the default. Such correction shall be completed and available for Commission review within the ten (10) day period. Upon written petition by Operator, Commission may extend the period for removal of a default condition. Such extension shall only be given in writing and may not be unreasonably withheld. If the remedial action is satisfactory, Commission shall provide appropriate written notice to Operator.

(b) Removal by Operator of Commission Default. If for any reason Commission is in default of an agreement with WisDOT, Commission shall so notify Operator, and Operator shall have such time as WisDOT allows in writing from the date of notification of Commission to remove the default on behalf of Commission and shall have the right to quiet enjoyment of the Land and Improved Property within the allowed time period until the condition of default is resolved.

Section 7.4 - Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Operator to Commission to provide freight rail service and to maintain the Land and Improved Property under this Agreement shall cease on the effective date of the termination hereof except as provided for in the following Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have ceased. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Operator's rights as a lessee of the Improved Property and its lease and license to use the Land and Improved Property shall cease immediately subject to Section 7.8.

Section 7.5 - Termination Approvals.

Both parties recognize that the termination of Operator's lease and license may require regulatory agency approval before termination can be effective. Operator and Commission both agree to cooperate in necessary efforts associated with obtaining such approvals and, if action is required by WisDOT, to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

Section 7.6 - Bankruptcy of Operator.

If any proceeding shall be commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or its Operator hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), it may be declared cause for default and said contract may be terminated upon 10 days notice by Commission to Operator. If all the obligations of Operator hereunder shall not have been and shall not continue to be duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Operator, or for its property in connection with any such

proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within ten (10) days after proceedings shall have been commenced, it may be declared cause for default. Arrangements may be made in such event by Commission with the trustee or bankruptcy court for continuation under such terms as agreed to by Commission.

Section 7.7 - Return of Property Upon Bankruptcy Default.

If this Agreement shall terminate pursuant to Section 7.6, Operator shall forthwith deliver possession of the Land and Improved Property to Commission. Land and Improved Property so delivered shall be in the same or better operating order, repair, and condition as when originally delivered to Operator, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Operator's expense any addition, modification, or improvement owned by Operator and for which Commission or WisDOT has not made a specific request for it to remain with the property.

Section 7.8 - Vacating the Rail Property.

Upon determination by Commission that the remedial action has not removed the default condition, it may provide written notice to Operator to vacate the Rail Line, and Operator shall vacate the Rail Line within 10 days of delivery of such notice. Commission shall arrange with Operator for an inventory of the Rail Line to be conducted within this 10 day period. If Operator does not remove any of its equipment within the 10 day period, Commission shall have the option to remove it at Operator's expense.

Section 7.9 - Obligations of Operator in the Event of Termination.

Operator hereby agrees in the event of termination that it will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Operator at the time of termination belonging to Commission or in which Commission has an interest arising out of a rehabilitation program where funds of Commission or WisDOT have been expended to pay for materials or materials otherwise have been paid for by Commission or partially paid for by Commission from its funds or from funds secured from WisDOT, Operator shall set such material aside on property belonging to Commission. In addition to all other obligations in the event of termination, Operator is obligated to remove all cars from the Rail Line of Commission within 10 days following its receipt of a notice to vacate and to deliver all cars to or from shippers on the Rail Line, which are in transit to, or from any source.

Section 7.10 - Service Failure.

Failure to provide freight rail service to any station on a Principal Line Segment of the Rail Line is defined as:

(a) The unavailability of freight rail service for 30 consecutive days to any station on such Principal Line Segment, or

(b) The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or

(c) The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

In the event Operator fails to provide freight rail service, as defined above, (except to the extent contemplated by Section 5.2(a)), on any Principal Line Segment(s), Operator agrees to return possession of such Principal Line Segment or portion of a Principal Line Segment to Commission upon 10 days written notice of demand by Commission. Notwithstanding the foregoing, in the event that Operator, Commission, and WisDOT agree in writing that a Principal Line Segment or Principal Line Segments need not be operated over, or if service is temporarily suspended on a Principal Line Segment or Principal Line Segments pursuant to Sections 7.11 or 7.12 below, lack of service on such Principal Line Segment(s) shall not constitute a failure by Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Upon emergency notice from Commission, RHS, or Division of State Patrol (by telephone and later confirmed in writing), Operator shall immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Operator lapses, is suspended, or is canceled for any reason, or is less comprehensive than is required under Section 6.2 of this Agreement. Operation of trains and motive power by Operator shall remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with FRA safety regulations. At the option of Operator, safety officials of FRA may be called upon to determine the existence or non-existence of any safety hazard cited by WisDOT or Commission as a sufficient reason for suspending operations. When the FRA is called upon, operations shall be suspended until such determination is made by FRA.

Section 7.12 - Force Majeure.

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation, except the unavailability of insurance coverage in full accordance with Section 6.2 of this Agreement or any amendment thereto: acts of God; strikes or other labor troubles; other causes beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism, or malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days

caused by a connecting railroad. Operator shall not be required to operate with liability insurance coverage levels less than those set forth in Section 6.2, but may be declared in default for non-compliance with Section 6.2.

ARTICLE 8.0- DISPOSITION OF PROPERTY AND PROCEEDS.

Section 8.1 - Option to Purchase.

(a) Operator shall have the right to exercise an option to purchase the Land and Improved Property at any time after the start-up of operations under the provisions of s.85.09(4), Wis. Stats. This right shall exist throughout the term of this Agreement and any renewals thereto, so long as Operator is not in default at the time of exercise of said option, or at the time of closing of the intended purchase.

(b) If the option is exercised, it shall be for the entire Rail Line (unless the parties hereto agree otherwise) and the purchase price for the Rail Line shall be at fair market value, which shall be determined by appraisal.

(c) The terms of payment shall be as follows:

(i) At the time of exercise of the option, Operator shall forward to WisDOT a cashier's check in the amount of \$10,000, which shall be considered a good faith deposit and shall be placed in an interest bearing escrow account in favor of the buyer. In the event the Operator defaults in its purchase, the said \$10,000 amount shall be retained as liquidated damages by WisDOT since it would be extremely difficult, if not impossible, to ascertain the actual damages.

(ii) At closing, WisDOT shall be paid in cash or in such other manner as WisDOT shall agree, an amount equal to the remainder of the purchase price less any credit allowed under Section 8.3.

(d) Closing shall be held within 120 days after exercise of option at Madison, Wisconsin or at such other mutually agreed time or place.

(e) All appropriate STB or other governmental approvals must be obtained as a condition precedent to closing.

(f) If the parties cannot agree on one appraiser, then each party shall elect one appraiser and the two selected appraisers shall select a third appraiser within 15 days of their selections. The three appraisers shall then, by majority vote, determine the fair market value of the properties being purchased according to proper appraisal methods then current and approved. If option to purchase is not exercised, the cost of such appraisals shall accrue to the Operator. If option to purchase is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(g) It is understood that title to the Land and Improved Property on certain Principal Line Segments shall be held by WisDOT, and WisDOT shall relinquish said title upon settlement herein. It is further understood that title to the track and other improved facilities on certain Principal Line Segments are with the Commission, and therefore, the Commission shall have the authority to relinquish its property rights upon settlement herein subject to Commission's compliance with its obligation to compensate WisDOT upon sale of the property.

Section 8.2 - Right of First Refusal.

(a) Should WisDOT or Commission as the case may be, propose to sell or otherwise transfer all or any part of the Rail Line to any other person or entity, Operator shall to the extent permitted by law have a right of first refusal for a period of sixty (60) days after written notification of such proposed sale, to substitute itself in place of such proposed bona fide purchaser, subject to all of the terms and conditions of such sale. An exact copy of the agreement under which the bona fide purchaser is intending to purchase, shall be submitted to Operator with the written notification of such proposed sale so that Operator may have an opportunity to review the terms and conditions therein.

(b) Written notice of election to exercise this right of first refusal shall be delivered to the Commission or WisDOT as the case may be, within such 60 day period. Should Operator intend to purchase, it shall purchase under the same terms and conditions as set forth in the agreement executed by the bona fide purchaser, which the WisDOT intends to accept. The bona fide purchaser shall, prior to its executing any agreement, be advised that there exists a prior right of first refusal in the Operator. Should the Operator, in writing fail to respond within such 60 day period with notification of Operator's intent to purchase, under the same terms and conditions, such failure to respond shall be considered as the Operator's desire not to purchase. Thereafter, should the sale be consummated with a third party, other than the Operator, the Operator in that event shall nevertheless have the right to receive from the proceeds of such sale, the proportionate amount of proceeds by which the Operator's contribution of money bears to the entire contribution made by Commission, WisDOT and Operator.

Section 8.3 - Apportionment of Proceeds.

(a) Conceptual Basis. WisDOT, Commission and Operator have invested in the acquisition of the Improved Property. Furthermore, Operator accepts the obligation to physically maintain the Land and Improved Property so as to maintain its value. Over time, three results are possible: (1) Operator invests in maintenance sufficiently to retain the value of the Land and Improved Property, or (2) Operator, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of the Land and Improved Property, or (3) Operator, on their own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of the Land and Improved Property. In the event of liquidation of the Land and Improved Property, WisDOT, Commission and Operator have a claim on the net proceeds of the liquidation in the same proportion as the original acquisition and subsequent, if any, rehabilitation of the Improved Property

(b) Computation. The Investment Basis of WisDOT, Commission and Operator shall be defined as the total financial contributions of each to the cost of acquisition, and rehabilitation of the Improved Property, and the cost of construction of new Improved Property for which grant funds are expended. For the purposes of computing the Investment Basis of the Improved Property, the initial investment of each party is as follows: (1) WisDOT - \$2,746,402; (2) Commission - \$0.00; and, (3) Operator - \$440,018. Subsequent to the initial investment, Operator has increased its investment in the Improved Property to \$686,601. In addition to these amounts, as of March 1, 1990, WisDOT has contributed \$4,937,185 for rehabilitation of the Improved Property and construction of new Improved Property, and Operator has contributed \$1,240,228 for rehabilitation of the Improved Property and the construction of new Improved Property. Expenditures on the Badger loop track are subject to a separate agreement and are not part of these totals. In addition, since March 1, 1990, WisDOT has contributed \$11,337,051, the Commission has contributed \$ 747,700 and the Operator has contributed \$2,086,563 for rehabilitation of the Improved Property and construction of new Improved Property. Therefore, as of April 1, 2007, the Investment Basis for Improved Property for each party is as follows: (1) WisDOT is \$19,020,638; (2) the Commission is \$747,700; and, (3) the Operator is \$4,013,392. Upon termination of the Grant Agreement, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than 60 days following the closing of a sale of any Improved Property by Commission or the failure by Commission or Operator to remove a condition of default, the gross salvage value of the Improved Property on the Rail Line or any portion thereof subject to the default shall be determined in accordance with Section 8.1(f) of this Agreement.

(ii) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.

(iii) WisDOT's, Commission's and Operator's percentage share of the Improved Property shall be determined by dividing each party's respective Investment Basis in the Improved Property by the total Investment Basis.

(iv) Each party's share of any proceeds from the sale of any Improved Property shall be determined by multiplying that party's percentage share of the Improved Property by the net liquidation value of the Improved Property. WisDOT shall receive 100% of the net liquidation value of the Land. Neither Commission nor Operator shall receive funds from the liquidation of the Land inasmuch as neither has invested its own funds in the acquisition.

(v) In the event the property is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps (i) through (iv) except that the estimated costs of liquidation, which include both direct salvage operation costs and WisDOT's administrative costs, shall not be deducted from the net proceeds of the liquidation under step (ii).

(c) Any property installed or funds expended for maintenance of any portion or aspect of Rail Line under the jurisdiction of Commission by permit or grant from WisDOT which is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement

by WisDOT upon sale of the Improved Property or transfer of operating rights on the property to another agency or operator.

Section 8.4 - New Improved Property.

Commission or Operator, or their designees (collectively "Owner"), may acquire or install, at its own expense, additional facilities deemed necessary for railroad service. Installation shall be permitted only after prior receipt of written approval of the installation proposal and plan by Commission and by WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Operator, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and Land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, Commission shall arrange for WisDOT, or the subsequent user of the facilities, to pay, or assume the obligation to pay, if assignable, the fair market value of the needed additional facilities to the owner prior to taking possession of the facility. Should owner produce an executed agreement for such facility from a bona fide purchaser, it shall notify WisDOT, and WisDOT or its nominee shall have the right of first refusal to purchase under the same terms and conditions, but such right must be exercised within forty-five (45) days, and such purchase must be completed within six (6) months of notice by Owner. Property covered under this section does not include property used in maintenance or betterment or replacement of property granted to Commission to be installed by government order or regulation. Property covered under this Section shall include but not be limited to new buildings, new sidings, spurs, or passing tracks. The powers above given to WisDOT are made a part of this Agreement as conditions imposed by WisDOT in its agreement with Commission. Any obligation imposed by WisDOT on Commission relating to performance or to the handling of property or relating to additions to property by Commission or Operator are to be performed and adhered to by Operator, and evidence of such obligations is supplied by incorporation of said agreement herein by reference or by attachment. If the agreements between Commission and WisDOT require approval from WisDOT before improvements are made thereon or extended thereto, then such approval shall be obtained before Operator erects or constructs a building or buildings or other improvements, and Commission hereby agrees to use its best efforts to obtain such approval. The Badger loop track shall be classified as new property subject to this Section.

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 - Operator.

Operator represents and warrants to and covenants with Commission as follows:

(a) Operator has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(b) To the best of its knowledge, the execution of this Agreement and the providing of the freight rail service it is obligated to provide will not violate any statute, rule, regulation, order, writ, injunction or other decree of any court, administrative agency or governmental body.

(c) In the event that termination occurs and Commission requires Operator to do so, Operator will support Commission efforts to provide a replacement freight rail service, without obligation by Operator to expend additional funds to do so.

(d) That all non-federal funding required for completion of the objectives of this Agreement and/or required under the terms of the grant agreement, by and between WisDOT and FRA (rail service continuation subsidy, routine maintenance, accelerated maintenance, rehabilitation or improvement, substitute service and/or construction on these rail facilities) will be provided by the Operator from sources other than federal programs prohibited from use as match for other federal program funds.

Section 9.2 - Commission.

Commission represents and warrants to and covenants with Operator as follows:

(a) Commission was created pursuant to Section 66.0301 (formerly 66.30), Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. As a Section 66.0301, Wis. Stats. Commission, it has full power and authority to enter into an agreement such as this Agreement and to carry out the functions, which it has obligated itself to undertake in this Agreement. This Agreement has been authorized and approved by the Board of Directors of Commission.

(b) To the best knowledge of Commission and its Board of Directors, the entering into and performance of this Agreement on the part of Commission does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency, governmental body, or any other agreement.

(c) In possession of Operator, and hereby made a part of this Agreement by reference, are true and correct copies of the Land Use Agreement and the Grant Agreement, in effect on the date of this Agreement, and the same have not been further amended, terminated or revoked. It is the intention of Commission not to provide for or to agree to any act or procedure or extend any right not permitted to Commission in any of the agreements with WisDOT. To the best knowledge of Commission after due inquiry, nothing in this Agreement conflicts with or is prohibited by the Land Use Agreement or Grant Agreement between Commission and WisDOT as of the date of the execution of this Agreement.

(d) Commission represents and warrants to and covenants with Operator that WisDOT will, during the term of this Agreement, comply with all of the provisions of the Land Use Agreement and the Grant Agreement and will abide by the provisions of this Agreement which refer to or

contemplate action by WisDOT, and Commission shall take actions to attempt to ensure WisDOT's performance as aforesaid.

ARTICLE 10.0 - REPORTS AND ACCOUNTS.

Section 10.1 - Reports.

(a) Upon the request of Commission, which request shall be set forth in a resolution adopted by the Board of Directors of the Commission, at a meeting of the Board of Directors of the Commission, by an affirmative vote of not less than two-thirds of the fixed membership of the Board of Directors of the Commission (notwithstanding whether all members are present at a meeting to vote on such resolution), Operator shall submit the following information to Commission within 45 days after receipt by Operator of such request and for the period of time requested by the Commission:

- (i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- (ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- (iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- (iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including, but not limited to, rail car storage fees, building rent, excursion trains, and car repair revenues. The report shall describe the amounts received and the duration of the period for which the income is received.

(b) Operator shall submit the following information to WisDOT within 45 days after the end of each quarter year for its operations:

- (i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;
- (ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment, and by month;
- (iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment; and
- (iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to rail car storage fees, building rent, excursion trains, car repair revenues, and the like.

The report shall describe the amounts received, the duration of the period for which the income is received and the payer.

(c) Operator shall submit the following reports to WisDOT:

(i) Independently audited financial statements for each year ending December 31, to be submitted on or before June 30 each year;

(ii) A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 6.2 of this Agreement are fully met;

(iii) Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and

(iv) Immediate notice of damage or injury to persons or property as required under Section 6.2 of this Agreement.

Section 10.2 - Accounts.

(a) Operator shall establish and maintain a system of accounts as prescribed by the STB or as determined by WisDOT if the STB no longer prescribes a system of accounts.

(b) Operator shall make available to WisDOT's auditors or agents, or auditors of any other governmental agency having jurisdiction over Operator, the records related to the accounts and reports identified under this Article and shall likewise make those accounts and reports available to Commission.

ARTICLE 11.0 - TAXES.

As of the date of this Agreement, unless waived or abated, Operator shall be responsible for and pay when due, all taxes due as a result of its possession and use of the Rail Line or its assets including possession of real and personal property as well as for all taxes due on property owned by Operator together with taxes, if any, levied or assessed on Commission for Land owned by or in the possession of Commission. Operator agrees to hold Commission and WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 12.0 - OTHER COMMITMENTS.

Section 12.1 - Handicapped.

Operator agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(7)(a) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall,

solely by reason of handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 12.2 - Environmental Protection.

(a) Operator agrees that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to comply with all applicable environmental requirements, and that all operations conducted under this Agreement will be done in compliance with all applicable environmental requirements.

(b) Operator hereby certifies that no facilities, which will be utilized or improved as a part of its operations, are listed on any state or federal list of violating facilities.

(c) Operator stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from a state or federal agency indicating that any facility, which will be utilized or improved as a part of its operations, is under consideration to be included on any state or federal contaminated property list.

(d) It is understood and agreed by Operator that no publicly-owned land from a public park, recreation area, or wildlife or water fowl refuge, as determined by the Federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state or local significance, as so determined by such officials, may be used for operations without the prior concurrence of the administrator of the EPA and the State Historical Preservation Officer.

Section 12.3 - Prohibited Interest in the Proceeds of Operations.

(a) Neither Operator nor any of its subcontractors shall enter into any contract, subcontract, or agreement in connection with a project or operation of any property included or planned to be included in Operator's operations, that constitutes a violation of Section 946.13, Wis. Stats.

(b) The Operator shall insert in all agreements entered into by it in connection with approved projects, or in connection with any property included or planned to be included in any project for which federal assistance may be sought, and shall require its contractors to insert in each of their subcontracts the following provision: "No director, officer, or employee of the East Wisconsin Counties Railroad Consortium and Columbia, Dodge, Fond du Lac, Green Lake, Ozaukee, Sheboygan, Washington, and Winnebago Counties during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(c) The provisions of this subsection shall not be applicable to any agreement between the Commission and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

(d) No member of or delegate to Congress or the Wisconsin Legislature shall be admitted to any share of any benefit that may arise from this Agreement, but this provision shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

Section 12.4 - Nondiscrimination.

(a) In connection with the performance of activities under this contract, Operator agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) Operator agrees to comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors by contractual agreement to similarly comply:

- (i) Title VI of the Civil Rights Act of 1964, 42 USC 2000d, et seq.
- (ii) Subchapter II of Chapter 111, Wis. Stats.
- (iii) Section 16.765, Wis. Stats.

(c) Operator in its procurement process shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts or subcontracts, or to supply materials for procurement connected with the operations provided under this Agreement.

ARTICLE 13.0 - GENERAL PROVISIONS.

Section 13.1 - Choice of Law.

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of any of the counties, which are a part of Commission. When applicable, this Agreement or portions thereof may be enforced through mandamus.

Section 13.2 - Notice.

Any notice required or permitted under this Agreement shall be personally served on or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Chief, Railroads and Harbors Section
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707

Chairman
East Wisconsin Counties Railroad Consortium
Dodge County Administration Building
127 E. Oak Street
Juneau, Wisconsin 53039-1329

President
Wisconsin & Southern Railroad Company
5300 N. 33rd St.
P.O. Box 9229
Milwaukee, Wisconsin 53209

Section 13.3 - Status of Operator.

Operator (including officers, directors, employees, agents or representatives thereof) is an independent contractor, and in no way shall it be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT or Commission.

Section 13.4 - Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Operator's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without Commission's prior written consent and without WisDOT's prior written consent. This Agreement shall not create rights of any sort in Operator to assign, sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporation, including any affiliated corporation, firm or person.

Section 13.5 - Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 13.6 - Amendments, Consents, and Approvals.

No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in

writing signed by both parties to this Agreement and with WisDOT's approval. Consents and approvals required under this instrument and interpretations of this instrument may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 13.7 - Captions.

The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of this Agreement.

Section 13.8 - Compliance by Operator with Agreement.

Operator acknowledges it has reviewed the Land Use Agreement and the Grant Agreement by and between Commission and WisDOT, and will meet any of the covenants and conditions required of Commission therein insofar as the same would be the responsibility of Operator. In the event of additional agreements arising in grant or other aid instruments hereinafter made between Commission and WisDOT, Operator shall review the same and shall comply with the same insofar as it pertains to Operator. Notwithstanding the foregoing, Commission shall not terminate, alter, amend, revoke or modify the Land Use Agreement or the Grant Agreement without the prior written consent of Operator. It is the intent of Commission not to enter into any other agreement without Operator consent, which would adversely affect the rights of Operator hereunder or impose additional expense or obligations on Operator.

Section 13.9 - Additions or Extensions to Present Track.

Additions or extensions to the present Improved Property may be desired by either of the parties hereto or by a user. In that event, such extension or addition shall be constructed at the option and cost of Operator. However, if Commission desires such an extension or addition and this is not concurred in by Operator, then Operator agrees to make such addition or extension but at the cost of Commission. Permits for and disposition of such extensions shall be in compliance with Section 8.4.

Section 13.10 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 8.4.

Section 13.11 - Failure of Commission to Obtain and Retain Right of Possession and Limitations on Commission and Operator.

(a) The title of the Land located in Wisconsin hereby leased and licensed to Operator is held by WisDOT for the State of Wisconsin. The Improved Property is conditionally owned by or granted to Commission but is subject to certain liens and controls by WisDOT, all as set forth in agreements between WisDOT and Commission referred to in Section 13.8 above. The right of Commission to the continued use of the Land and Improved Property is subject to termination in the event of default or certain happenings with a final termination at the end of the term of the Land Use Agreement and Grant Agreement between WisDOT and Commission. It is a condition of this Agreement, that in the event Commission loses its right to possession or use of any of the Land or Improved Property because of conditions imposed by WisDOT or because of future failures or inability of Commission to meet all the requirements for holding and retaining the Land and Improved Property, then this Agreement terminates and ceases, and no liability attaches to Commission for such termination, provided that Commission has fulfilled its obligation herein to offer Operator an opportunity to cure any such default.

(b) References are made in this Agreement to rights of WisDOT to sell and lease portions of the Land acquired by the State and permitted to Commission. It is the position of Commission that all the Land that has been acquired was used for transportation purposes and should be retained for present or future transportation purposes. However, WisDOT retains the right, subject to the provisions of Section 2.2 of this Agreement, to retake and sell portions determined by it not to be needed for transportation purposes on the assumption that future use and experience may indicate there are portions of the Land which might be declared excess for present or future transportation uses or are not needed for preservation of railroad service and therefore should be sold. As to leasing, it is the assumption of Commission that property presently provided to Commission does have or in the future would have a transportation use. Included in this assumption are the notions that portions of the Land immediately accessible to the Rail Line contribute to the transportation use when the lessee is a user or potential user of rail service and the Land should remain available for future rail transportation uses. It is a contention of WisDOT that there are certain portions of the Land, which can be leased for limited co-use purposes to adjacent owners without jeopardizing the use by Operator, or future required full use by Operator. WisDOT has retained the right to make co-use leases in such situations, but it has been the position of Commission as stated to WisDOT that this type of lease should be limited in use and in time. Except as restricted under Section 2.2, present buildings are part of the property conditionally owned or controlled by Commission. Commission is giving the use of buildings to Operator as a part of this lease and license when needed by Operator, but otherwise Commission has retained the right to lease them in accordance with Section 2.2(e). Commission retains the exclusive right to decide conclusively whether these buildings are needed by Operator.

Section 13.12 - Rehabilitation.

(a) In the event Operator determines in the future that application should be made for rehabilitation, Commission agrees to cooperate with Operator in making such an application or applications. In the event rehabilitation grants are obtained, Operator agrees to comply with the Federal and state laws as imposed by any such Grant Agreement and will be subject to and comply

with Federal and state laws as imposed by the Grant Agreement as to handicap restrictions, environmental protection, approved project procurement, prohibited interest in the proceeds, affirmative action requirements and other applicable laws.

(b) All rehabilitation and improvements and substitute service facilities, installed or accomplished using state or federal financial assistance regardless of the ownership of the property on which they are located, when any such property is no longer used for its original approved project purpose, shall be subject to disposition as described by State and Federal regulations. In connection with any rehabilitation or improvement, the Operator shall file on behalf of the owner of such property, in the appropriate land records, a notice reciting that property was improved or installed with Federal assistance and that its use and disposition are subject to the terms of this Agreement. If the Operator's chief legal counsel advises that such notice cannot be filed, the Operator shall so advise the Commission, and shall recommend alternate procedures whereby compliance with the provisions of this Agreement can be achieved.

Section 13.13 – Arbitration.

(a) General. In the event of any unresolved disagreements between the parties concerning the construction of the Agreement or performance by each of the parties hereunder, the parties shall submit such disagreement to arbitration.

(b) Procedure. The party desiring arbitration shall give notice in writing to the other party identifying the matters in issue and designating an individual as their arbitrator. Within ten (10) days thereafter, the other party shall, by written notice to the original party, agree to said arbitrator or appoint a second arbitrator. The two arbitrators so appointed shall, within ten (10) days thereafter, appoint a third arbitrator as mutually agreed, and the three arbitrators shall hold the hearing and commence to determine the matter within thirty (30) days of the appointment of the third arbitrator. If the second arbitrator shall not have been appointed, the first arbitrator shall proceed to commence to determine the matter within thirty (30) days of the failure to so appoint a second arbitrator. If the two arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association. Except as otherwise provided herein, the arbitrators shall arbitrate the issues in accordance with the rules and procedures of the American Arbitration Association, and a determination of the majority of the arbitrators, or of the sole arbitrator as the case may be, shall be final and conclusive between and upon the parties, and judgment upon same may be entered in any court having jurisdiction thereof. The arbitrator(s) shall give written notice of their findings to each party.

Section 13.14 - Specific Performance.

Operator and Commission shall have the right, as provided by law, to require specific performance by the other party of the other party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days from the time Operator or Commission has first notified the other party of the other party's obligation to perform.

Section 13.15 - Approval by WisDOT.

This Agreement to be effective must be approved by WisDOT. This is in compliance with the agreements between WisDOT and Commission and the charter contract of Commission.

Section 13.16 - Execution.

This instrument shall be fully executed in triplicate with a copy being delivered to each party and to WisDOT and in such further counterparts as may be desired by the parties.

Section 13.17 - Entire Agreement.

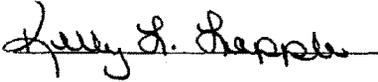
This Agreement together with those documents referred to herein contains the entire agreement of the parties and supersedes any and all prior agreements and draft agreements, or oral understandings between the parties.

Signatures.

IN WITNESS WHEREOF, the East Wisconsin Counties Railroad Consortium, by its Board of Directors, has caused this Agreement to be signed by its duly authorized officers, this 25th day of March, 2008.

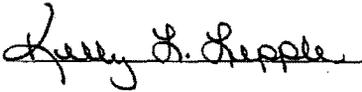
WITNESS:

EAST WISCONSIN COUNTIES RAILROAD
CONSORTIUM





Daniel Goetz, Chair



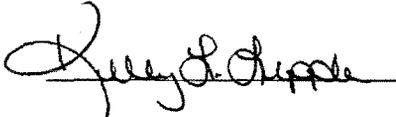


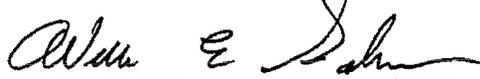
Jef Hall / Secretary

IN WITNESS WHEREOF, the Wisconsin & Southern Railroad Company, by its Sole Director, has caused this Agreement to be signed by its President, this 28th day of March, 2008.

WITNESS:

WISCONSIN & SOUTHERN RAILROAD COMPANY



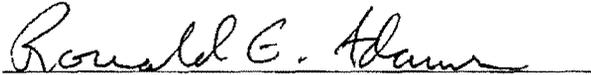


William E. Gardner, President

WisDOT APPROVAL in Accordance with Section 13.15 of this Agreement:

WISCONSIN DEPARTMENT OF TRANSPORTATION

March 28, 2008
Commencement Date



Ronald E. Adams, Chief
Railroads and Harbors Section

ATTACHMENT 3
A LIST OF LINE SEGMENTS THAT SHALL BE MAINTAINED TO FRA CLASS II
STANDARDS AND A LIST OF LINE SEGMENTS THAT SHALL BE MAINTAINED
TO FRA CLASS I STANDARDS



Wisconsin Department of Transportation

www.dot.wisconsin.gov

231552

Scott Walker
Governor

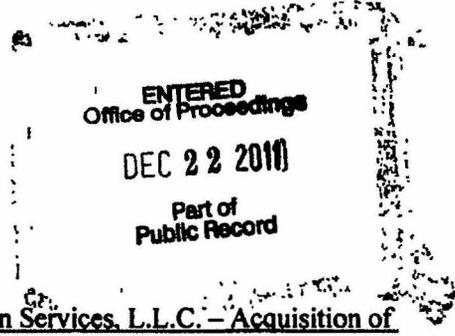
Mark Gottlieb, P.E.
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-8734
E-mail: ogc.exec@dot.wi.gov

December 22, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423



ELECTRONIC FILING

RE: **STB Finance Docket No. 35573**
Watco Holding, Inc. and Watco Transportation Services, L.L.C. – Acquisition of
Control Exemption – Wisconsin & Southern Railroad, L.L.C.

Dear Ms. Brown:

Wisconsin Department of Transportation is the state rail agency. Enclosed for filing is the Comment by the Wisconsin Department of Transportation on the above listed Docket.

Sincerely,

Kathleen Chung
Attorney

cc: Attorney Karl Morell, Ball Janik, LLP, by electronic mail

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35573

**WATCO HOLDINGS, INC. AND WATCO TRANSPORTATION SERVICES, L.L.C.
-- ACQUISITION OF CONTROL EXEMPTION --
WISCONSIN & SOUTHERN RAILROAD, L.L.C.**

**COMMENT BY THE WISCONSIN DEPARTMENT
OF TRANSPORTATION**

**KATHLEEN CHUNG
Assistant General Counsel
Wisconsin Department of
Transportation
4802 Sheboygan Ave.
P.O. Box 7910
Madison, WI 53707-7910**

DECEMBER 22, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35573

**WATCO HOLDINGS, INC. AND WATCO TRANSPORTATION SERVICES, L.L.C.
-- ACQUISITION OF CONTROL EXEMPTION --
WISCONSIN & SOUTHERN RAILROAD, L.L.C.**

Wisconsin Department of Transportation

COMMENT

The Wisconsin Department of Transportation hereby submits its Comment on the above-referenced proceeding. The Wisconsin Department of Transportation (WisDOT) is the designated state agency in rail matters in the State of Wisconsin.¹ WisDOT is responsible for all state and federally-aided highway and airport construction in Wisconsin.² As the state rail agency, WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin, and the authority to administer grants and loans for rail projects to assist in the preservation and improvement of freight rail service in the state.³

As part of its statutory mission, WisDOT has engaged in the purchase of rail property to preserve the line for an Operator with common carrier authority issued by the Surface Transportation Board (the Board) to continue service. The state of Wisconsin currently has over

¹ 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats.

² Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats.

³ Secs. 85.09(2), 85.08(4m) Wis. Stats.

530 miles of publicly-owned rail lines that are jointly owned by the state and a combination of Rail Transit Commissions, Consortia, and/or Transit Authorities (collectively Rail Transit Commissions).” By entering into agreements with WisDOT and the Rail Transit Commissions, the current WSOR operates on several publicly-owned lines, including some on which it operates under a modified certificate in Wisconsin.⁴

The State of Wisconsin made these investments to preserve service on lines where service availability may have been threatened, and desires to protect that mission for the economic benefit of the state.

WisDOT also attaches a map created by the Federal Highway Administration indicating the boundaries of the designated nonattainment areas in southeastern Wisconsin.⁵

WisDOT does not seek to stay these proceedings or interfere with the proposed transactions, and submits these comments in support of the public interest.

Respectfully Submitted,



Kathleen Chung, Attorney
Wisconsin Department of Transportation
Office of General Counsel
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, WI 53707-7910
(608) 266-8810
Fax (608) 267-6734
kathleen.chung@dot.state.wi.us

DATED: December 22, 2011

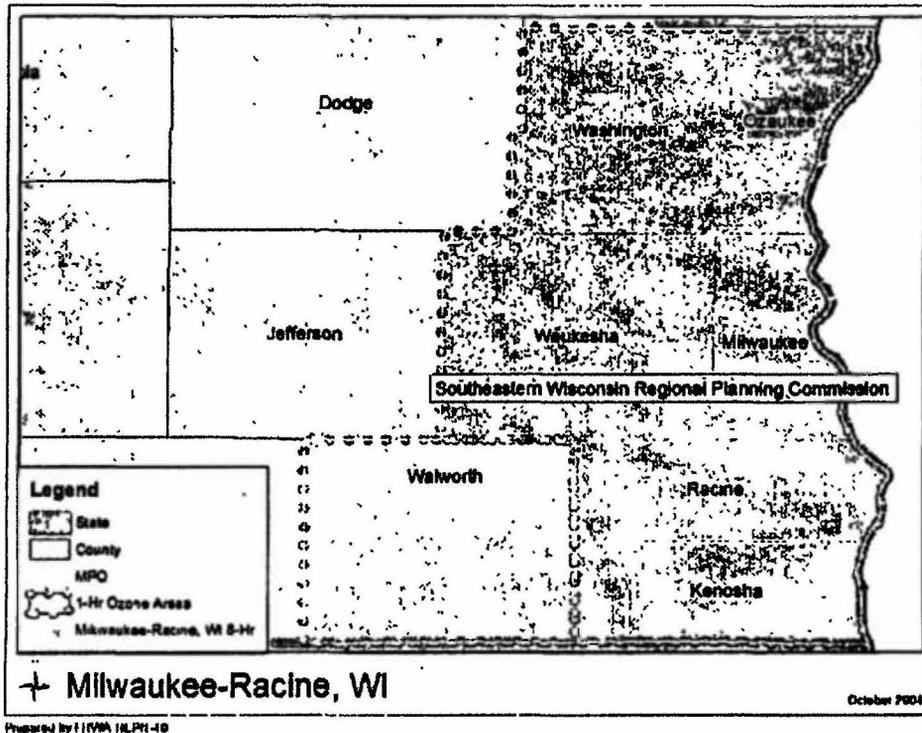
⁴ 49 C.F.R. Subpart C.

⁵ WisDOT interprets the language on page 11 of Watco's Verified Notice of Exemption, filed November 29, 2011 to mean that the any expected increased emissions are within the parameters of the State Implementation Plan.



Exhibit 1
FD35573
WisDOT Comment
12/22/2011

Milwaukee-Racine, WI 8-hour Ozone Nonattainment Area Map



"This map shows the boundaries of the designated Milwaukee-Racine, WI 8-hour ozone nonattainment area. It includes the boundaries of associated 1-hour ozone nonattainment and/or maintenance areas, as well as any associated MPOs. The map is intended to depict the extent of 8-hour ozone nonattainment in this area, and how the boundaries of the 8-hour area, 1-hour area, and the MPO planning area relate to each other."

Milwaukee-Racine, WI 8-hour Ozone Nonattainment Area

- o WISCONSIN
 - Kenosha Co
 - Milwaukee Co
 - Ozaukee Co
 - Racine Co
 - Washington Co
 - Waukesha Co

Milwaukee-Racine, WI 1-hour Ozone Nonattainment Area

- o WISCONSIN
 - Kenosha Co
 - Milwaukee Co
 - Ozaukee Co
 - Racine Co
 - Washington Co
 - Waukesha Co

Southeastern Wisconsin Regional Planning Commission

- o Kenosha Co
- o Milwaukee Co
- o Ozaukee Co
- o Racine Co
- o Walworth Co
- o Washington Co
- o Waukesha Co

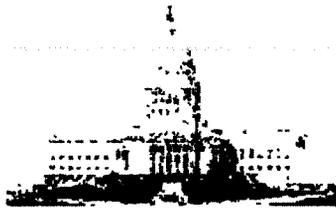
CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comment in regards to **FD35573**, by electronic mail, or regular mail pursuant to 49 C.F.R. §1104.12, this 22nd day of December, 2011, on all parties of record on the service list.

Kathleen Chung

Kathleen Chung, Attorney
State Bar no. 1032802
Wisconsin Department of Transportation
Office of General Counsel

231588



The Wisconsin State Legislature

ENTERED
Office of Proceedings
DEC 28 2011
Part of
Public Record

December 29, 2011

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20024

Re: Docket No. FD 35573, Watco Holdings, Inc. and Watco Transportation Services, LLC Acquisition of Control - Wisconsin & Southern Railroad, LLC

Dear Ms. Brown:

Please refer to the Board's procedural notice in the above proceeding bearing service date of December 15, 2011. This letter is to respectfully request a 60-day delay of the December 29, 2011 effective date of WATCO's acquisition of control of Wisconsin & Southern Railroad, LLC (WSOR).

The requested delay is justified in order to provide representatives of the State of Wisconsin with an adequate opportunity to investigate the effects of loss of WSOR's independence. Accelerated notice of exemption procedure is not appropriate for consideration of the effect of control of a rail carrier, such as WSOR, that has important regional significance. Wisconsin rail shippers experienced severe adverse effects when control of another rail carrier of regional significance, Wisconsin Central, Ltd., was acquired by Canadian National Railway Company several years ago.

On behalf of Wisconsin's rail shippers, the State of Wisconsin should be provided with a reasonable opportunity to investigate whether Wisconsin shippers who rely on WSOR rail service might experience similar adverse effects under WATCO control. Accelerated notice of exemption procedure does not provide that needed opportunity.

The requested delay is in the nature of a request for a housekeeping stay for 60 days to enable adequate State investigation of the proposed control. The short delay in consummation of the control is justified by the need for more reasoned consideration of a transaction of important regional significance.

WHEREFORE, the December 29, 2011 effective date of the proposed control should be extended for 60 days.

Thank you for your consideration.

Respectfully submitted,

Rep. Brett Hulsey, Madison
Rep. Louis Molepske, Stevens Point
Rep. Kelda Helen Roys, Madison
Rep. Fred Clark, Baraboo
Rep. Terese Berceau, Madison

