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Kramer & Brownlee, LLC

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Fennimore, Wisconsin 53809

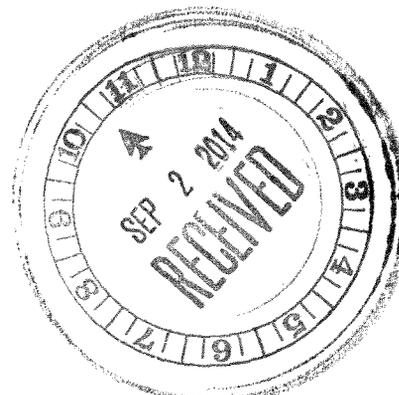
EILEEN A. BROWNLEE
ATTORNEY AT LAW

JOHN N. KRAMER (1912-2001)

TELEPHONE: (608) 822-3251 FAX: (608) 822-2014 EMAIL: ebrownle@tds.net

August 28, 2014

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



**BY CERTIFIED MAIL; RETURN
RECEIPT REQUESTED**

**RE: STB Finance Docket No. 35843
Wisconsin-River Rail Transit Commission-Petition for Declaratory Order-Rail Line in
Dane, Green and Rock Counties, WI**

**Wisconsin-River Rail Transit Commission-Petition for Declaratory Order-Rail Line in
Dane, Green and Rock Counties, WI—Petition for Fee Waiver**

Dear Ms. Brown:

On behalf of the Wisconsin River Rail Transit Commission, I am submitting for filing a Petition for Declaratory Order together with ten (10) copies of the Petition.

I also submit a Petition for Fee Waiver with ten (10) copies in this matter. My firm check for the fees is included, subject to return if waived.

Sincerely,

**FILED
September 2, 2014
SURFACE
TRANSPORTATION BOARD**

Eileen A. Brownlee, State Bar No. 1019382
Attorney for the Wisconsin River Rail Transit Commission

Enclosures

**FEE RECEIVED
September 2, 2014
SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35843



WISCONSIN RIVER RAIL TRANSIT COMMISSION
--PETITION FOR DECLARATORY ORDER--
RAIL LINE IN DANE, GREEN AND ROCK COUNTIES, WI

Eileen A. Brownlee
Kramer & Brownlee, LLC
1038 Lincoln Avenue
P. O. Box 87
Fennimore, WI 53809
Telephone 608-822-3251
State Bar I.D. No. 1019382
Attorney for Petitioner

Dated: August 28, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35843

WISCONSIN RIVER RAIL TRANSIT COMMISSION
--PETITION FOR DECLARATORY ORDER--
RAIL LINE IN DANE, GREEN AND ROCK COUNTIES, WI

INTRODUCTION

The Wisconsin River Rail Transit Commission (“WRRTC”) is a governmental entity representing a consortium of nine Wisconsin counties and which was created pursuant to the provisions of Wisconsin Statute sections 66.0301 and 59.58(2). The WRRTC is authorized by these statutes to acquire transportation systems and to lease the system or otherwise contract for the operation of a transportation system, including a freight rail system. The WRRTC has negotiated an agreement with City of Fitchburg, Wisconsin, and the Village of Oregon, municipal corporations located in Dane County, Wisconsin, (the “Municipalities”) to purchase rail track and the underlying right of way from the Municipalities (the “Line Sale”). The line extends from railroad milepost 119.0 near Evansville, Wisconsin, to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company (“WSOR”) near Madison, Wisconsin, known as the “Evansville Line.”

The WRRTC hereby petitions the Surface Transportation Board (“the Board”) to issue a declaratory order stating that no Board authority is required for the WRRTC’s proposed acquisition of the Evansville Line from the Municipalities because the parties have intentionally and specifically structured the transaction to comport with the terms and conditions of Maine DOT-Acquisition Exemption, Maine Central Railroad Company, 8 I. C. C. 2d 835 (1991) (“*State of Maine*”), State of Georgia, DOT - Acquisition Exemption - Georgia Southwestern Railroad, Inc, STB Finance Docket No. 33876 (STB served July 7, 2000) (“*State of Georgia*”), and State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 35455 (STB served November 10, 2011) (“*State of Wisconsin – Barron County*”); and State of Wisconsin Department of Transportation – Petition for Declaratory Order, STB Finance Docket No. 35401 (STB served August 15, 2012) (“*State of Wisconsin – Gibson Line*”).

The WRRTC respectfully requests that the Board issue a decision within 90 days of the filing date of this Petition that is effective upon service so that it may close this transaction as soon as possible.

BACKGROUND

The Evansville Line is 15 miles in length and was previously owned by Union Pacific Railroad (“UP”), which had not provided service over the rail line for many years. At railroad milepost 134.0 near "MX", the Evansville Line

extends and connects to a crossing and active rail line near Madison, Wisconsin.¹ In 1999, UP desired to abandon the line. At that time, the Municipalities determined that it was in their interest to acquire the Evansville Line and the Municipalities, by virtue of a quit claim deed from UP dated February 3, 1999, acquired both the Evansville Line and the common carrier obligation to provide service on the line (*See* Attachment 1, “Quit Claim Deed”). The WRRTC intends to acquire the Evansville Line subject to the grant to WSOR of a permanent exclusive operating easement pursuant to which WSOR will provide common carrier rail freight service to those industries needing rail service.

The Municipalities and the WRRTC have agreed to execute a contract whereby the Municipalities agree to sell and the WRRTC agrees to purchase the Evansville Line. This contract (*See* Attachment 2, “Line Sale Contract”)² will be executed upon a favorable ruling from the Board.

Because the WRRTC does not wish to assume common carrier obligations, WSOR has negotiated with the Municipalities to acquire the common

¹ The active rail line to which the Evansville Line extends is currently owned by UP. The State of Wisconsin is in the process of acquiring this active rail line, subject to UP’s retention of a permanent, exclusive operating easement to provide rail service. *See* STB Finance Docket No. 35854 Wisconsin Department Of Transportation-- Petition For Declaratory Order--Reedsburg Line Near Madison, WI. WSOR, which already possesses a lease to operate the active rail line over UP’s active rail line, is seeking to acquire the permanent, exclusive operating easement and common carrier rights from UP and has filed a petition requesting that the Board exempt WSOR from the prior approval requirement of the proposed acquisition. *See Wisconsin & Southern Railroad Co. – Lease and Operation – Union Pacific Railroad Company* (not printed), served October 30, 1996; STB Finance Docket No. 35848 Wisconsin & Southern Railroad L.L.C.-- Acquisition And Operation Exemption--Union Pacific Railroad Company Petition For Exemption.

² The Line Sale Contract, Attachment 2, consists of the contract itself as well as a number of Exhibits, specifically, Exhibit A, Print/Map of the Corridor; Exhibit A-1, Property Excluded From Sale; Exhibit B, Quit Claim Deed To Property; Exhibit C, Quit Claim Bill Of Sale; Exhibit D, Assignment And Assumption Agreement; Exhibit E, List Of Agreements To Be Assigned And Assumed; and Exhibit F, Freight Easement Deed.

carrier obligation directly, and has filed a petition with the Board for operating authority. *See* Wisconsin & Southern Railroad Company - Acquisition and Operation Exemption –City of Fitchburg and Village of Oregon, Wisconsin, STB Finance Docket No. 35838 (Attachment 3). In addition to the Line Sale Contract referenced above, WSOR has entered into an Operating Agreement with the WRRTC under which WSOR will provide common carrier rail freight service and conduct all rail operation on the Evansville Line (*See* Attachment 4, “Operating Agreement”). The WRRTC has also entered into a Grant Agreement with the Wisconsin Department of Transportation (“WisDOT”) for the purpose of assuming the rights and obligations of the Municipalities under the Grant Agreement currently in force between WisDOT and the Municipalities (*See* Attachments 5 and 6, respectively, “Grant Agreement dated January 27, 1999” and “Grant Agreement dated August 2014”). These documents, collectively, are the “Transaction Agreement Documents.”

The WRRTC now submits to the Board this Petition for Declaratory Order (the “Petition”) requesting the Board’s ruling that no Board authority is required for the WRRTC’s proposed acquisition of the Evansville Line as set forth in the Transaction Agreement Documents.

ARGUMENT

Sections 5 U.S.C. 554(e) and 49 U.S.C. 721, give the Board discretion to issue a declaratory order to terminate a controversy or remove uncertainty, specifically whether the WRRTC’s acquisition of the Evansville Line will render

the WRRTC a rail carrier under section 10102(5) of the I.C.C. Termination Act, (ICCTA), 49 U.S.C. 10102(5), and subject to prior Board authorization under section 10901 of the ICCTA. The Board has previously granted declaratory petitions seeking a ruling that its acquisition of rail lines under similar circumstances is not subject to Board approval and will not render it a common carrier under the ICCTA. *See* State of Wisconsin – Barron County; State of Wisconsin - Gibson Line. The WRRTC asserts that this transaction has met that test because the WRRTC has carefully and specifically constructed it and the controlling agreements to comport with the terms and conditions of *State of Maine* lines of cases, including the recent Wisconsin decisions.

The WRRTC has acquired a number of rail lines, primarily during the course of the bankruptcy proceedings involving the Chicago, Milwaukee, St Paul and Pacific Railroad Company. Generally, the rail lines currently owned by the WRRTC were acquired after they had been authorized for abandonment by the Interstate Commerce Commission and/or Surface Transportation Board. The Commission does not provide, nor is it equipped to provide, common carrier, “for-hire” rail freight service. It has always been the WRRTC’s intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and the WRRTC has attempted to fashion its previous rail line transactions to avoid the imposition of this obligation. In the instant case, WSOR will operate the Evansville Line subject to the terms and conditions of the Transaction Agreement Documents so that any such common carrier liabilities

shall reside with WSOR after the exercise of the WRRTC's purchase and the recording of the Transaction Agreement Documents.

The WRRTC has designed this transaction to ensure that it does not assume any common carrier obligation by contracting for railroad operations with WSOR. As a result, the conveyance of the Evansville Line to the WRRTC is not the acquisition of a "railroad line" within the intent and meaning of 49 U.S.C. 10901, and thus does not require Board approval. The terms and conditions of the Transaction Agreement Documents specifically provide that the WRRTC will acquire the Evansville Line from the Municipalities, as set forth in the legal description of the Quit Claim Deed from the Municipalities to the WRRTC, and that the Municipalities reserve a permanent exclusive operating easement, which is subject only to the Board's authority. *See* Attachment 2, Exhibit B.

Pursuant to the terms and conditions of the Transaction Agreement Documents, WSOR will operate the Evansville line subject to the terms and conditions of the Transaction Agreement Documents so that the common carrier obligation will, upon Board approval, reside with WSOR.

Grant Agreement

Under the terms and conditions of the Line Sale Contract, the WRRTC has agreed to assume the rights and obligations of the Municipalities under the terms of a Grant Agreement between the Municipalities and WisDOT. *See* Attachment 2, Exhibit D, Assignment And Assumption Agreement; Exhibit E, List Of Agreements To Be Assigned And Assumed.

The WRRTC and WisDOT recognized that the Grant Agreement, which was executed in 1999, contained certain provisions that created compliance concerns under *State of Maine*. See, e.g. Attachment 5, Section 6.2 (granting either party the unconditional right to terminate the Grant Agreement). In order to address these concerns, the WRRTC and WisDOT entered into a successor Grant Agreement which will immediately become effective upon the consummation of the transfer of the Evansville Line from the Municipalities to the Commission. See Attachment 6 at page 1. The successor Grant Agreement, at section 6.6, expressly provides that STB authority is required for discontinuance of rail operations. Further, Section 9.11 expressly states the intent of the parties that the Grant Agreement comport with *State of Maine*.

Operating Agreement

Under Section 2.1(a) of the Operating Agreement between the WRRTC and WSOR, WSOR shall operate the line to permit it to carry out its common carrier obligation. See The Port of Seattle - Acquisition Exemption - Certain Assets of BNSF Railway Company, STB Finance Docket No. 35128, (STB served October 27, 2008) (“Port of Seattle”). WSOR has been granted the exclusive right and license to use the Line for the purpose of providing freight rail service and all purposes necessary to that end, including the right to participate in negotiations for possible passenger rail service, as provided in Section 2.2(j), and subject to existing utility easements as provided in Section 2.2(f). See Attachment 4.

The Operating Agreement, at Section 5.1, requires WSOR to obtain common carrier authority from the Board and maintain its permanent operating easement “to provide exclusive originating and terminating freight rail service . . . including line-haul and switching services to shippers.” Section 7 of the Operating Agreement addresses termination, and prohibits the WRRTC from evicting WSOR from the premises without permission from the Board for discontinuance or adverse authority. *Id.*

In fact, each Transaction Document now explicitly states the intent of the parties that the documents comport with *State of Maine*, and recognize the Board’s authority to assign common carrier obligation to the Operator, and Operator’s exclusive permanent, operating easement. Each transaction document contains this specific provision to resolve relevant ambiguities in accordance with the Board’s State of Maine line of precedents. *See* Section 9.11 of the Grant Agreement (Attachment 6) and Section 13.2 of the Operating Agreement (Attachment 4).

Finally, these agreements are stand alone agreements, not subject to any master agreement or lease. Thus, the terms and provisions contained in these transaction documents reflect the totality of the transaction.

EXPEDITED HANDLING REQUESTED

The WRRTC also requests that the Board issue its decision within 90 days of filing this Petition effective upon service so that it may close this transaction as soon as possible. The WRRTC believes that a 90-day schedule is consistent with

the processing time the Board has utilized in deciding similar State of Maine declaratory relief cases.

All parties hope to complete the transaction as soon as possible. The WRRTC does not anticipate that this request will pose any new or unique policy issues for the Board.

CONCLUSION

For the above stated reasons, and based upon the above cited authorities, specifically, State of Maine, State of Georgia, State of Wisconsin and Port of Seattle; the WRRTC hereby respectfully requests that the Board issue a Declaratory Order stating that Board approval is not required for this transaction and that the WRRTC will not become a common rail carrier as a result of this transaction.

Respectfully submitted,


Attorney Eileen A. Brownlee

Dated: August 28, 2014

ATTORNEY CERTIFICATION OF SERVICE

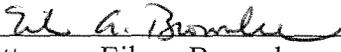
I, Eileen A. Brownlee, an attorney-at-law of the State of Wisconsin, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following parties by regular mail on August 28, 2014:

Attorney Kathleen Chung
Assistant General Counsel
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4802 Sheboygan Avenue, Room 115B
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ebrownle@tds.net

Dated: August 28, 2014

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RECORDED

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K. RANDAL LEYES
REGISTER OF DEEDS
ROCK CO WI 53545

Document Number

QUITCLAIM DEED

COVER SHEET
FOR
RECORDATION
OF
QUITCLAIM DEED
FROM
UNION PACIFIC RAILROAD COMPANY
TO
CITY OF FITCHBURG AND VILLAGE OF
OREGON, WISCONSIN

Recording Area

Name and Return Address

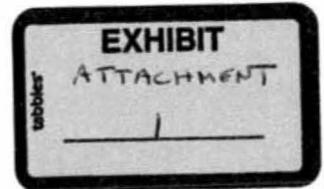
Bryan C. Esch
DeWitt Ross & Stevens SC
8000 Excelsior Drive, Suite 401
Madison, WI 53717-1914

18.00

78

CODE
W-7
EXCLUSION

FEE
3
EXEMPT



QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (which through merger, with the Chicago and North Western Railway Company became successor in interest to the real property described herein), Grantor, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto the City of Fitchburg and Village of Oregon, each an undivided one-half interest as tenants-in-common, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate and track structure including the rails, ties, ballast, track materials, bridges, switches, culverts, signals and all other non-land property of the railroad line (hereinafter the "Property") as described in Exhibit A, hereto attached and hereby made a part hereof, along with the common carrier obligation to provide service on the Property.

This quitclaim deed is made subject to the rights of third parties in all recorded leases, easements, and other interests in the real estate including, but not limited to, those for pipe, telephone, and fiber optic lines, and any recorded right of renewals and extensions of the same.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee.

UNION PACIFIC RAILROAD COMPANY
Rock, Dane, and Green Counties, Wisconsin

EXHIBIT "A"

All right, title, and interest in and to that portion of the 15 mile rail line in Rock, Green, and Dane Counties, extending from railroad milepost 119.0 near Evansville, Wisconsin, to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company near Madison, Wisconsin, known as the Harvard Subdivision of the Union Pacific Railroad Company in, over, and across the following legal subdivisions:

Rock County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
NE $\frac{1}{4}$ NE $\frac{1}{4}$	17	4N.	10E.	4TH
SW $\frac{1}{4}$ SW $\frac{1}{4}$	9	4N.	10E.	4TH
S $\frac{1}{2}$, NW $\frac{1}{4}$	8	4N.	10E.	4TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	7	4N.	10E.	4TH
E $\frac{1}{2}$, NW $\frac{1}{4}$	6	4N.	10E.	4TH

Also, all right, title, and interest in and to that portion of the right of way of said Harvard Subdivision situate in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, Township 4 North, Range 10 East of the Fourth Principal Meridian in Rock County, Wisconsin, that lies between the west line of said Section 16 and a line (Mile Post 119) drawn at right angles through the centerline of the main track of said Harvard Subdivision, as originally constructed and operated, at a point thereon that is 1,180 feet, more or less, distant southeasterly, measured along said centerline of the main track from said west line of Section 16.

Green County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
E $\frac{1}{2}$ NE $\frac{1}{4}$	1	4N.	9E.	4TH

Dane County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
W $\frac{1}{2}$ SW $\frac{1}{4}$	31	5N.	10E.	4TH
E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$	36	5N.	9E.	4TH
W $\frac{1}{2}$	25	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	24	5N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	23	5N.	9E.	4TH
SE $\frac{1}{4}$ SE $\frac{1}{4}$	14	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	13	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	12	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	1	5N.	9E.	4TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	2	5N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	35	6N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	26	6N.	9E.	4TH
E $\frac{1}{2}$	23	6N.	9E.	4TH
ALL	14	6N.	9E.	4TH
S $\frac{1}{2}$	11	6N.	9E.	4TH

Excepting therefrom all of that certain 100 foot wide strip of land situate in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, Township 5 North, Range 9 East of the Fourth Principal Meridian in Dane County, Wisconsin, that lies westerly of a line that is parallel with and 25 feet distant westerly, measured at right angles, to the centerline of the main track of the Harvard Subdivision of the Union Pacific Railroad Company, as originally constructed and operated, said 100 foot wide strip of land being a

portion of that certain parcel of land that was conveyed by Stoddard S. Johnson to the Beloit & Madison Railroad Company (predecessor to Union Pacific Railroad Company) by that certain deed dated September 28, 1864, and recorded on September 29, 1864, in Book 65 at Page 131, Dane County, Wisconsin.

Also excepting therefrom all the right of way of the Union Pacific Railroad Company situate in the $W\frac{1}{2}SW\frac{1}{4}$ of Section 1, Township 5 North, Range 9 East of the Fourth Principal Meridian in Dane County, Wisconsin, that lies easterly of the easterly line of that certain parcel of land conveyed by that certain deed dated September 28, 1864, from Stoddard S. Johnson to the Beloit & Madison Railroad Company (predecessor to Union Pacific Railroad Company) recorded on September 29, 1864, in Book 65 at Page 131, Dane County, Wisconsin, southerly of the south line of Franklin Street projected westerly, westerly of the centerline of Market Street, and northerly of the centerline of Third Street.

Also, all right, title, and interest, in and to that portion of the right of way of the Harvard Subdivision of the Union Pacific Railroad Company situate in the $W\frac{1}{2}NE\frac{1}{4}$ of Section 11, Township 6 North, Range 9 East of the Fourth Principal in Dane County, Wisconsin, that lies between the east and west centerline of said Section 11 and a line (Mile Post 134) drawn at right angles through the centerline of the main track of said Harvard Subdivision, as originally constructed and operated, at a point thereon that is 653 feet distant southwesterly, measured along said centerline of the main track, from the north line of said Section 11.

Office of Real Estate
Omaha, Nebraska
November 23, 1998
Revised: January 22, 1999

Written by: LEF
Harvard.lgl
478-93

LINE SALE CONTRACT

THIS LINE SALE CONTRACT ("Contract") is entered into as of this _____ day of _____, 2014 ("Execution Date"), between the CITY OF FITCHBURG, a Wisconsin municipal corporation and the VILLAGE OF OREGON, a Wisconsin municipal corporation (collectively, "Municipalities"), and THE WISCONSIN RIVER RAIL TRANSIT COMMISSION, a Wisconsin governmental entity ("WRRTC"), and the WISCONSIN & SOUTHERN RAILROAD, L.L.C., a Wisconsin limited liability company ("WSOR"), collectively known as the Parties ("Parties").

RECITALS:

WHEREAS, WRRTC desires to acquire that certain rail right-of-way known as the Evansville to Fitchburg Line from Milepost 119.00 near Evansville, Wisconsin to Milepost 134.00 near "MX;" a crossing of the WSOR near Madison, Wisconsin, known as the Harvard Subdivision consisting of all of Municipalities' interests in the Real Property and Personal Property (both defined below), which collectively make up the Corridor all as hereinafter defined in the Quit Claim Deed to Property or the Quit Claim Bill of Sale, and attached hereto as **Exhibits B** and **C** respectively; and

WHEREAS, this Contract contemplates that WRRTC shall not assume any common carrier obligations to provide freight rail transportation service on the Corridor; and

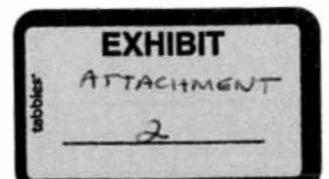
WHEREAS, WSOR, subject to the approval of the Surface Transportation Board ("STB") desires to acquire a permanent exclusive easement for freight railroad purposes upon, over, under, across and through the Corridor for the purpose of providing common carrier rail freight transportation thereon (the "Freight Easement" or "Freight Easement and Agreement") pursuant to an operating agreement with Wisconsin River Rail Transit Commission; and

WHEREAS, the parties hereto desire that Municipalities shall sell and WRRTC shall purchase the Corridor and Municipalities shall grant and WSOR shall accept the Freight Easement Deed and Agreement upon the Closing under this Contract; and

The Parties agree as follows:

Section 1. Purchase and Sale of the Corridor.

Municipalities agree to sell and WRRTC agrees to purchase, on the terms and conditions of this Contract and the Grant Agreement between Municipalities and WRRTC dated January 27, 1999, Municipalities' right, title and interest in and to the Corridor, as shown on the attached print marked **Exhibit A**. The sale of the Corridor shall include both the real property component of the Corridor ("Real Property") and the Personal Property component of the Corridor (the "Personal Property") including but not limited to any rail, ties, ballast, other track materials, signals, switches, bridges, culverts, communications equipment or facilities and other personal property, fixtures (the "Fixtures") and improvements on the Corridor to the extent owned by



Municipalities. The Real Property and the Personal Property are collectively referred to herein as (the "Corridor").

EXCEPTING from this sale and RESERVING to Municipalities, their successors and assigns, forever, the following:

A permanent, exclusive easement for freight railroad purposes upon, over, under, across, and through the Real Property, as more particularly set forth in the Quit Claim Deed to Real Property and the Freight Easement Deed attached hereto as **Exhibit F** and hereby made a part hereof.

Ownership of all Personal Property on the Corridor that are owned by Municipalities, including without limitation, rails, ties, ballast, signals, switches, bridges and culverts and other rail appurtenances to the Corridor, are NOT reserved, and will be transferred to WRRTC at the Closing by the Quit Claim Bill of Sale in the form attached to this Contract as **Exhibit C**.

The conveyances made pursuant to this Contract are subject to all applicable federal, state and local laws, orders, rules and regulations, and all outstanding rights whether or not of record or open and obvious on the ground.

Section 2. Purchase Price.

Consistent with Grant Agreement between Municipalities and WRRTC dated January 27, 1999, the purchase price for the Corridor is Fifty-Nine Thousand One Hundred Forty-Two and 50/100 Dollars (\$59,142.50). The Purchase Price shall be paid by WRRTC to Municipalities at Closing as defined in Section 4(a) by check drawn on a reputable financial institution or by wire transfer of United States funds for immediate credit.

Section 3. Conditions Precedent to Sale.

The sale and purchase of the Corridor are subject to the following conditions precedent:

(a) STB Authority.

- i. WRRTC, at its sole cost and expense, shall acquire any necessary decision from the STB or its successor agency to acquire the Corridor. WRRTC agrees to make all necessary submittals for such decision to the STB within 30 (thirty) days of the date of this Contract. Conditions, if any, imposed by the STB with regard to this acquisition of the Corridor and the operation of the Corridor by WSOR or any other authorized operator, shall be subject to all Parties' approval, prior to Closing. Such approvals may be withheld at each Party's sole and absolute discretion. Municipalities shall cooperate with WRRTC in connection with any hearings or submittals before the STB to obtain the necessary decision, but shall not be obligated to incur any cost or expense or to support any legal position which is not acceptable to Municipalities. WRRTC's obligation to

purchase the Corridor is dependent on a decision by the STB that WRRTC does not need STB approval to acquire the Corridor without the Freight Easement under the terms and conditions of this Contract. If the STB does not issue such a decision, or if any Party does not approve of the conditions imposed, WRRTC or Municipalities may, at their sole and absolute discretion, decline to purchase or sell the Corridor, and this Contract will terminate without any further obligations due by or to either WRRTC or Municipalities except as otherwise provided in this Contract.

- ii. WRRTC's obligation to purchase the Corridor is dependent on a decision by the STB approving WSOR's assumption of the Municipalities' common carrier obligation. If the STB does not issue an approval, or if any Party does not approve of any conditions that may be imposed on such approval, WRRTC or Municipalities may, at their sole and absolute discretion, decline to purchase or sell the Corridor, and this Contract will terminate without any further obligations due by or to either WRRTC or Municipalities except as otherwise provided in this Contract.

(b) Municipalities' Representations and Warranties. The representations and warranties of Municipalities in Section 6(a) shall be true and correct.

(c) WRRTC's Representations and Warranties. The representations and warranties of WRRTC in Section 6(b) shall be true and correct.

(d) Freight Easement. Concurrent with Closing, Municipalities shall grant at no cost and WSOR shall execute the Freight Easement Deed and Agreement in the form attached as **Exhibit F**.

Section 4. Closing.

(a) The sale and purchase of the Corridor shall close ("Closing") within 30 days after issuance by the STB of the decision by the STB that WRRTC does not need STB approval to acquire the Corridor without the Freight Easement, as described in Section 3(c) and approval by the STB of WSOR's assumption of the Municipalities' common carrier obligation ("Closing Date"). If Closing does not occur during the Closing Date due to failure of a condition precedent in Section 3, then this Contract shall terminate and be without any further force and effect, and without further obligation of either Party to the other. WRRTC shall have no right to occupancy of or entry upon any portion of the Corridor until Closing, except as specifically provided under the terms and conditions of the Land Use and Lease Agreement between the Municipalities and WRRTC dated January 27, 1999.

(b) At Closing, WRRTC shall deliver to Municipalities the Purchase Price and the following documents referenced in Section 4 and 5 as duly executed by WRRTC: Assignment and Assumption Agreement and Quit Claim Bill of Sale. At Closing, Municipalities shall deliver to WRRTC at no cost the following documents referred to in Section 5 as duly executed by Municipalities (and, where appropriate, acknowledged): Quit Claim Deed to Property,

Assignment and Assumption Agreement, and Quit Claim Bill of Sale. At Closing, Municipalities shall deliver to WSOR the Freight Easement Deed and Agreement executed by Municipalities. At Closing, WSOR shall deliver to Municipalities the Freight Easement Deed and Agreement executed by WSOR.

(c) Each party shall bear and pay any and all costs and expenses for document preparation and title expenses required by it.

(d) WRRTC shall bear and pay any and all costs and expenses for any transfer taxes, fees, stamps, charges and all documentary, recording or filing fees, related to acquisition or transfer of the Corridor.

(e) Promptly after Closing, WRRTC shall record the Quit Claim Deed to Property, and give written notice to the other Parties to the agreements assigned to WRRTC under the Assignment and Assumption Agreement. Promptly after Closing, WSOR shall record Freight Easement Deed and Agreement.

Section 5. Transfer and Operating Documents.

Municipalities' right, title and interest in the Corridor shall be transferred by Municipalities to WRRTC by Quit Claim Deed to Property for the Real Property and Fixtures in the form of **Exhibit B** which is attached hereto and hereby made a part hereof; by Quit Claim Bill of Sale for the Personal Property in the form of **Exhibit C** which is attached hereto and hereby made a part hereof; and in the agreements identified in **Exhibit E** which is attached hereto and hereby made a part hereof, to the extent such agreements affect the Corridor, by Assignment and Assumption Agreement in the form of **Exhibit D** which is attached hereto and hereby made a part hereof.

In addition to the exceptions and reservations referenced in Section 1 of this Contract, WRRTC acknowledges that the Corridor may be subject to licenses and other third party rights that have not been disclosed by Municipalities to WRRTC. It is the responsibility of WRRTC to determine if any of these undisclosed rights exist. If any license or other third-party right that affects only the Corridor is identified after the Execution Date, Municipalities' rights and obligations under such license or third-party right will be assigned to and assumed by WRRTC at or after Closing.

Section 6. Environmental Disclosures; As Is; Release; Environmental Indemnity; and General Indemnity.

(a) ENVIRONMENTAL DISCLOSURES. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BELOW, MUNICIPALITIES HAVE NO KNOWLEDGE OF ANY CONDITION WITH RESPECT TO THE CORRIDOR OR THE OPERATION OF THE RAILROAD BUSINESS CONDUCTED THEREON THAT WOULD REASONABLY GIVE RISE TO ANY ACTION, SUIT OR PROCEEDING BEFORE ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AGENCY UNDER

ANY ENVIRONMENTAL LAW, STATUTE, ORDINANCE OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. IT IS KNOWN BY MUNICIPALITIES, WRRTC AND WSOR THAT THERE IS A PRESUMED ASSUMPTION THAT STRUCTURES AND DEVICES (E.G. BRIDGES AND SIGNAL BOXES) MAY CONTAIN ASBESTOS, LEAD PAINT AND PCBS. SOME SIGNAL BOX LOCATIONS MAY HAVE CONTAINED (OR CONTINUE TO CONTAIN) ACID BATTERIES USED AS AN EMERGENCY BACKUP POWER SUPPLY.

(b) AS IS. WRRTC AND ITS REPRESENTATIVES, PRIOR TO THE EFFECTIVE DATE, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE CORRIDOR AND MATTERS RELATED THERETO AS WRRTC AND ITS REPRESENTATIVES DESIRE. WRRTC ACKNOWLEDGES AND AGREES THAT THE CORRIDOR IS TO BE SOLD TO AND ACCEPTED BY WRRTC IN AN "AS IS" CONDITION WITH ALL FAULTS. MUNICIPALITIES MAKE NO REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE CORRIDOR. IN PARTICULAR, BUT WITHOUT LIMITATION, MUNICIPALITIES MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE USE, CONDITION, TITLE, OCCUPATION OR MANAGEMENT OF THE CORRIDOR, OR COMPLIANCE WITH APPLICABLE STATUTES, LAWS, CODES, ORDINANCES, REGULATIONS, REQUIREMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (WHETHER OR NOT OF RECORD), OR THE VOLUME, NATURE OR QUANTITY OF RAIL TRAFFIC.

(c) RELEASE. FROM AND AFTER CLOSING, WRRTC, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES MUNICIPALITIES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF OR ATTRIBUTABLE TO ANY OCCURRENCE ON OR AFTER THE CLOSING DATE CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CORRIDOR (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE CORRIDOR BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT, AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF MUNICIPALITIES, WRRTC OR ANY THIRD-PARTY, AND DAMAGE TO PROPERTY OF MUNICIPALITIES, WRRTC OR ANY THIRD-PARTY.

(d) ENVIRONMENTAL INDEMNITY. As a condition to Closing under this Contract, WSOR shall provide Municipalities with the following Environmental Indemnity in WSOR's Freight Easement Deed and Agreement:

FROM AND AFTER CLOSING, WSOR SHALL, TO THE EXTENT PERMITTED BY WISCONSIN LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS MUNICIPALITIES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "ENVIRONMENTAL COSTS"), IN ANY WAY ARISING OUT OF OR ATTRIBUTABLE TO ANY OCCURRENCE ATTRIBUTABLE TO THE KNOWN ENVIRONMENTAL ISSUES FROM THE CLOSING DATE AND THEREAFTER AFTER THE CLOSING DATE CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CORRIDOR (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE CORRIDOR BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF MUNICIPALITIES, WSOR, WRTC OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF MUNICIPALITIES, WSOR, WRTC OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF MUNICIPALITIES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

NOTWITHSTANDING THE FOREGOING, MUNICIPALITIES, WRTC AND WSOR AGREE THAT,

GENERAL ALLOCATION OF ENVIRONMENTAL RESPONSIBILITY. FROM AND AFTER CLOSING, WRTC, AT NO COST TO MUNICIPALITIES, IS RESPONSIBLE FOR CONDUCTING ANY INVESTIGATION, MONITORING, REMEDIATION, REMOVAL, RESPONSE OR OTHER ACTION REQUIRED BY ANY GOVERNMENTAL AGENCY, COURT ORDER, LAW OR REGULATION WITH RESPECT TO ANY EXISTING OR FUTURE ENVIRONMENTAL CONTAMINATION OF THE CORRIDOR (COLLECTIVELY, "**ENVIRONMENTAL REMEDIATION**"). THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING.

Section 7. Representations and Warranties.

(a) Representations and Warranties of Municipalities. Municipalities represent and warrant to WRTC as of the Execution Date, as follows:

(i) Organization. Municipalities are Wisconsin municipal corporations duly organized and validly existing under the laws of the State of Wisconsin, with full power and authority to enter into and comply with the terms of this Contract.

(ii) Enforceability. Subject to the provisions of Section 4, this Contract and all documents executed by Municipalities which are to be delivered to WRRTC at the Closing are intended, provided WRRTC had duly executed those documents requiring its signature(s), to be legal, valid and binding obligations of Municipalities, and do not and will not at the time of Closing violate any provisions of any agreement or judicial order to which Municipalities are parties or to which Municipalities or the Corridor is subject.

(b) Representations and Warranties of WRRTC. WRRTC represents and warrants to Municipalities as of the Execution Date, as follows:

(i) Organization. WRRTC is a governmental organization duly organized under the laws of the State of Wisconsin, with full power and authority to enter into and comply with the terms of this Contract.

(ii) Enforceability. Subject to the provisions of Section 4, this Contract and all documents executed by WRRTC which are to be delivered to Municipalities are intended, provided Municipalities have duly executed those documents requiring Municipalities' signatures, to be legal, valid and binding obligations of WRRTC, and do not and will not at the time of Closing violate any provisions of any agreement or judicial order to which WRRTC is a party or to which WRRTC is subject.

(c) STB Authority. WRRTC has a time frame reasonably expected to permit the Closing of this transaction and to make all necessary filings at the STB required to comply with Section 3(a).

Section 8. Post-Sale Obligations.

The following Post-Sale Obligations shall survive the Closing under this Contract and shall remain in full force and effect after Closing.

(a) Municipalities will provide to WRRTC electronic copies, or physical copies to the extent electronic versions are not available, of all available valuation maps, track charts and related documents, to the extent Municipalities possess same, as soon as possible after Closing.

(b) Upon the occurrence of any breach of any term hereof after Closing, the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of such notice, the breach has not been cured and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted at law or

equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole. Failure of the injured party to demand or enforce a cure for breach in one instance or more shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

Section 9. CASUALTY

If, prior to the Closing, the Corridor shall be damaged by fire, flood, earthquake or other insured casualty to a material degree, that is, if the cost of restoration of the damaged portion of the Corridor exceeds twenty percent (20%) of the Purchase Price, Municipalities shall notify WRRTC to the extent of their knowledge and WRRTC shall have the option either to (i) elect not to acquire the Corridor, in which case this Contract shall terminate, and the parties shall be relieved of all further rights and obligations with respect thereto or (ii) to acquire the Corridor, subject to such casualty, without adjustment in the Purchase Price and otherwise in accordance with the terms and provisions of this Contract, but WRRTC shall be entitled to all insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to Municipalities. WRRTC shall give written notice to Municipalities of any election pursuant to this Section 9 within thirty (30) business days following receipt by WRRTC of any written notice of such casualty. Failure of WRRTC to make such election within said period shall be deemed an election to proceed to purchase the Corridor pursuant to clause (ii) above. If prior to the Closing, the Corridor suffers a casualty other than to an extent entitling WRRTC to elect not to acquire the Corridor pursuant to this Section 9, WRRTC shall close the transaction contemplated by this Contract in accordance with the terms hereof as though such casualty had not occurred, except that Municipalities shall, at Closing, pay or assign to WRRTC any net insurance proceeds paid or payable to Municipalities in respect thereof. Risk of physical loss to the Corridor on and after the Closing shall be borne by WRRTC.

Section 10. MISCELLANEOUS PROVISIONS.

(a) Entire Agreement. This Contract constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, oral or written, between the parties concerning the subject matter of this Contract.

(b) Amendment. No modification, addition or amendment to this Contract shall be effective unless such modification, addition or amendment is in writing and signed by the Parties.

(c) Assignment. This Contract shall be binding upon, and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns, except that WRRTC's interests under this Contract may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without Municipalities' prior written approval, until after the Closing at which time this clause shall terminate. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and WRRTC shall be deemed in default hereunder.

(d) Governing Law. This Contract shall be governed by the laws of the State of

Wisconsin.

(e) Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

(f) Exhibits. The Exhibits attached to and referred to in this Contract are incorporated into this Contract by reference.

(g) Notices and Knowledge. Any notices required or desired to be given under this Contract shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Municipalities: CITY OF FITCHBURG
ATTN: Tony Roach, City Administrator
5520 Lacy Road
Fitchburg, WI 53711
Telephone: (608) 270-4200
Facsimile: (608) 270-4212

VILLAGE OF OREGON
ATTN: Mike Gracz, Village Administrator
117 Spring Street
Oregon, WI 53575
Telephone: (608) 835-3118
Facsimile: (608) 835-6503

WRRTC: WISCONSIN RIVER RAIL TRANSIT COMMISSION
ATTN: Mary Penn
P. O. Box 262
20 S. Court Street
Platteville, WI 53818
Telephone: (608) 342-1637
Facsimile: (608) 342-1220

WisDOT: WISCONSIN DEPARTMENT OF TRANSPORTATION
ATTN: Director, Bureau of Transit, Local Roads, Rail and Harbors
4802 Sheboygan Ave, Room 701
Madison, WI 53705
Telephone: (608) 267-9284
Facsimile: (608) 267-3567

WSOR: WISCONSIN & SOUTHERN RAILROAD, L.L.C.
315 W. 3rd Street
Pittsburgh, KS 66762
Telephone: (620) 231-2230
Facsimile: (620) 231-0812

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

(h) Severability. If any provision of this Contract is illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the remainder of the Contract shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

(i) Time is of the Essence. Time is of the essence of this Contract.

(j) Merger. The provisions of this Contract shall merge into the deed to be delivered by Municipalities to WRRTC and shall not survive the Closing, except for the provisions of Sections 4, 6, 7, 8 and 10.

(k) Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization or other proceeding is brought or undertaken, or an attorney retained to enforce this Contract or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) shall be entitled to recover reasonable attorney's fees, expert witness fees, court costs and other expenses, in addition to any other relief to which such party may be entitled.

(l) Contract Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Contract and in closing and carrying out the transactions contemplated by this Contract.

(m) Satisfaction or Waiver of Contingencies. The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

(n) Parties in Interest. Except as expressly provided in this Contract, nothing in this Contract, whether express or implied, is intended to confer any rights or remedies under or by reason of this Contract on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Contract intended to relieve or discharge the obligation or liability of any third persons to any party to this Contract, nor shall any provision give any third persons any right to subrogation or action over against any party to this Contract.

(o) Waiver. No waiver of any of the provisions of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver

constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(p) Effect of Headings. The headings of the paragraphs of this Contract are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

(q) Number and Gender. When required by the context of this Contract, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

(r) Joint and Several Liability. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Contract.

(s) Further Assurances. Each party to this Contract agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Contract, provided that the party requesting such further action shall bear all costs and expenses related thereto.

(t) Negotiated Terms. The parties agree that the terms and conditions of this Contract are the result of negotiations between the parties and that this Contract shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Contract.

(u) Recitals and Exhibits. The recitals and contents of all Exhibits to this Contract are incorporated by reference and constitute a material part of this Contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date:

Attest:

Patti Anderson, Deputy, City Clerk

CITY OF FITCHBURG

By: _____

Shawn Pfaff

Title: Mayor

Attest:

Peggy Haag, Village Clerk

VILLAGE OF OREGON

By: _____

Steven L. Staton

Title: Village President

Attest:

WISCONSIN RIVER RAIL TRANSIT COMMISSION

Charles Anderson, Secretary

By: _____

Alan Sweeney

Title: Chair

APPROVED:

Attest:

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

L. Frank Huntington

By: _____

Donna Brown-Martin

Title: Director, Bureau of Transit, Local Roads,
Railroads and Harbors

Attest:

WISCONSIN & SOUTHERN RAILROAD LLC

By: _____

Rick Baden

Title: President

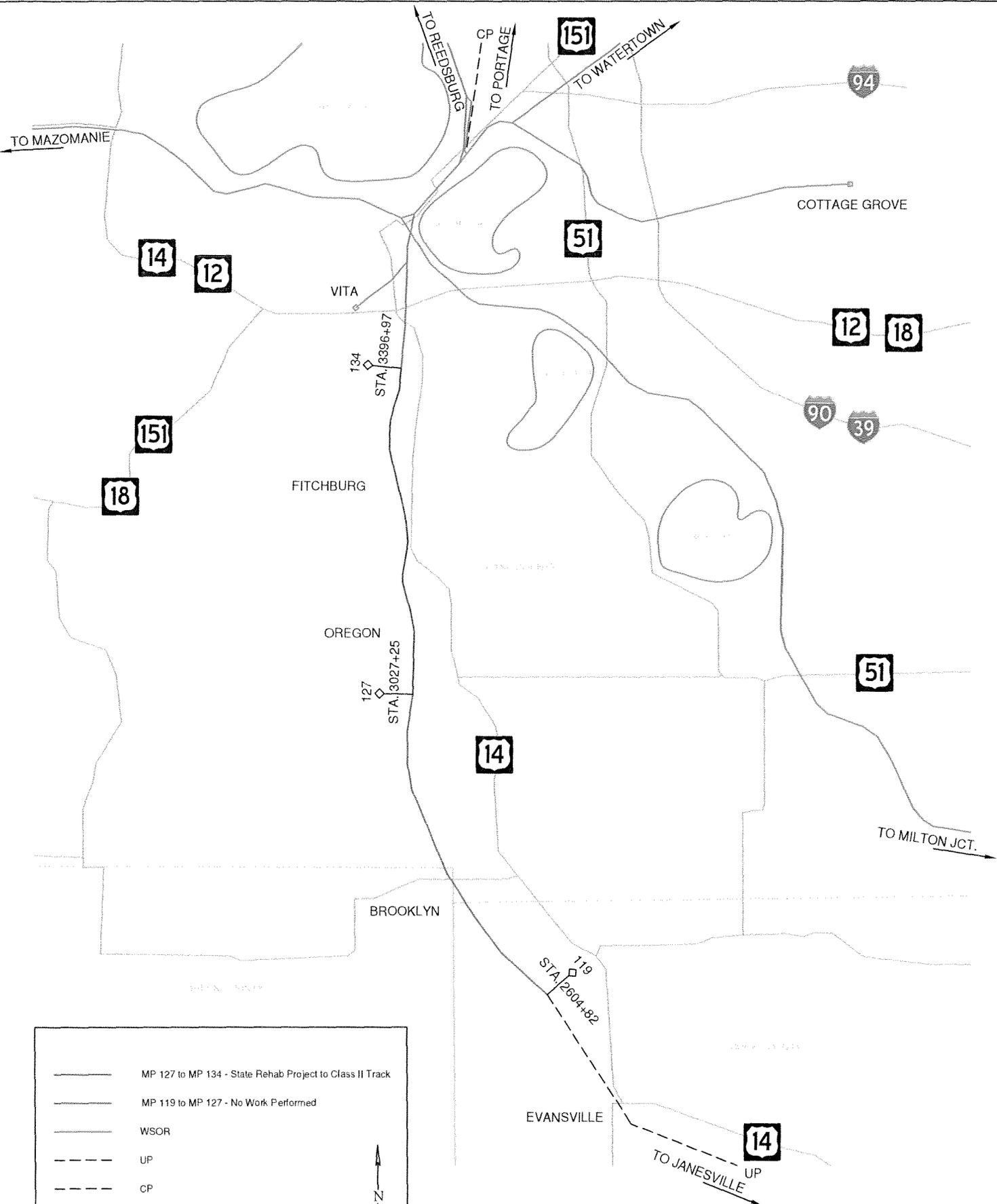
EXHIBIT LIST

- EXHIBIT A - PRINT OF CORRIDOR
- EXHIBIT A-1 - PROPERTY EXCLUDED FROM SALE
- EXHIBIT B - QUIT CLAIM DEED TO PROPERTY
- EXHIBIT C - QUIT CLAIM BILL OF SALE
- EXHIBIT D - ASSIGNMENT AND ASSUMPTION AGREEMENT
- EXHIBIT E - LIST OF AGREEMENTS TO BE ASSIGNED AND ASSUMED
- EXHIBIT F - FREIGHT EASEMENT DEED AND AGREEMENT

EXHIBIT A

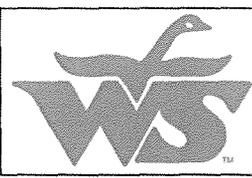
PRINT OF CORRIDOR

(See separate pdf file)



	MP 127 to MP 134 - State Rehab Project to Class II Track
	MP 119 to MP 127 - No Work Performed
	WSOR
	UP
	CP
	County Line
	Major Roadway

DATE: 1-6-14
SCALE: NONE
DIVISION: SOUTHERN
DRAWN BY: BJM
CHECKED BY:
SURVEY BY:



WISCONSIN & SOUTHERN RAILROAD	
EXHIBIT A	
PROPERTY DELINEATION	
REEDSBURG SUB REACTIVATION	
REVISION: 0	SHEET: 1 OF 1
WSOR-PROP-REE-ACTIV	

EXHIBIT A-1

PROPERTY EXCLUDED FROM SALE

None

EXHIBIT B

QUIT CLAIM DEED TO PROPERTY

The City of Fitchburg, a Wisconsin municipal corporation, and the Village of Oregon, a Wisconsin municipal corporation ("Municipalities"), as Grantor, whether one or more, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUIT CLAIM unto the Wisconsin River Rail Transit Commission, a Wisconsin governmental entity ("WRRTC"), and unto its successors and assigns forever, as grantee, all of Municipalities' right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Real Property") situated in the State of Wisconsin, as more particularly described below.

Municipalities EXCEPT from the Real Property hereby quit claimed and RESERVE unto themselves, jointly and severally, their successors and assigns, forever, the following:

A permanent, exclusive easement upon the Real Property, for purposes of conducting freight rail operations and otherwise to fulfill Municipalities' rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Real Property to provide freight rail service to all customers on or served from the Real Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement"). All of the terms and conditions of this Freight Easement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any assignment of this Freight Easement shall be conditioned upon the assignee assuming all obligations set forth herein and entering into an Operating Agreement with WRRTC. WRRTC hereby consents to the assignment of this Freight Easement to Wisconsin & Southern Railroad, L.L.C. ("Short Line Operator"). Notwithstanding any language herein to the contrary, Municipalities shall have the unrestricted right to convey or assign their rights and interest under this Freight Easement to Short Line Operator, and upon Municipalities' conveyance or assignment of their rights and interest under this Freight Easement to Short Line Operator, Municipalities shall be released and discharged from any further obligation or liability under this Freight Easement and references to Municipalities hereunder shall then refer to Short Line Operator or any successor to Short Line Operator, as applicable.

The Real Property herein conveyed is more particularly described as follows:

All right, title, and interest in and to that portion of the 15 mile tail line in Rock, Green, and Dane Counties, extending from railroad milepost 119.0 near Evansville, Wisconsin, to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company near Madison, Wisconsin, known as the Harvard Subdivision of the Union Pacific Railroad Company in, over, and across the following legal subdivisions:

Rock County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
NE $\frac{1}{4}$ NE $\frac{1}{4}$	17	4N.	10E.	4TH
SW $\frac{1}{4}$ SW $\frac{1}{4}$	9	4N.	10E.	4TH
S $\frac{1}{2}$ NW $\frac{1}{4}$	8	4N.	10E.	4TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	7	4N.	10E.	4TH
E $\frac{1}{2}$ NW $\frac{1}{4}$	6	4N.	10E.	4TH

Also all right, title, and interest in and to that portion of the right of way of said Harvard Subdivision situate in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, Township 4 North, Range 10 East of the Fourth Principal Meridian in Rock County, Wisconsin, that lies between the west line of said Section 16 and a line (Mile Post 119) drawn at right angles through the centerline of the main track of said Harvard Subdivision, as originally constructed and operated, at a point thereon that is 1,180 feet, more or less, distant southeasterly, measured along said centerline of the main track from said west line of Section 16.

Green County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
E $\frac{1}{2}$ NE $\frac{1}{4}$	1	4N.	9E.	4TH

Dane County, Wisconsin

<u>SUBDIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
W $\frac{1}{2}$ SW $\frac{1}{4}$	31	5N.	10E.	4TH
E $\frac{1}{2}$,NE $\frac{1}{4}$ NW $\frac{1}{4}$	36	5N.	9E.	4TH
W $\frac{1}{2}$	25	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	24	5N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	23	5N.	9E.	4TH
SE $\frac{1}{4}$ SE $\frac{1}{4}$	14	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	13	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	12	5N.	9E.	4TH
W $\frac{1}{2}$ W $\frac{1}{2}$	1	5N.	9E.	4TH
NE $\frac{1}{4}$ NE $\frac{1}{4}$	2	5N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	35	6N.	9E.	4TH
E $\frac{1}{2}$ E $\frac{1}{2}$	26	6N.	9E.	4TH
E $\frac{1}{2}$	23	6N.	9E.	4TH
ALL	14	6N.	9E.	4TH
S $\frac{1}{2}$	11	6N.	9E.	4TH

Excepting therefrom all of that certain 100 foot wide strip of land situate in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, Township 5 North, Range 9 East of the Fourth Principal Meridian in Dane County, Wisconsin, that lies westerly of a line that is parallel with and 25 feet distant westerly, measured at right angles, to the centerline of the main track of the Harvard Subdivision of the Union Pacific Railroad Company, as originally constructed and operated, said 100 foot wide strip of land being a portion of that certain parcel of land that was conveyed by Stoddard S. Johnson to the Beloit & Madison Railroad Company (predecessor to Union Pacific Railroad Company) by that certain deed dated September 28, 1864, and recorded on September 29, 1864, in Book 65 at

Also excepting therefrom all the right of way of the Union Pacific Railroad Company situate in the W½SW¼ of Section 1, Township 5 North, Range 9 East of the Fourth Principal Meridian in Dane County, Wisconsin, that lies easterly of the easterly line of that certain parcel of land conveyed by that certain deed dated September 28, 1864, from Stoddard S. Johnson to the Beloit & Madison Railroad Company (predecessor to Union Pacific Railroad Company) recorded on September 29, 1864, in Book 65 at Page 131, Dane County, Wisconsin, southerly of the south line of Franklin Street projected westerly, westerly of the centerline of Market Street, and northerly of the centerline of Third Street.

Also, all right, title, and interest, in and to that portion of the right of way of the Harvard Subdivision of the Union Pacific Railroad Company situate in the W½NE¼ of Section 11, Township 6 North, Range 9 East of the Fourth Principal in Dane County, Wisconsin, that lies between the east and west centerline of said Section 11 and a line (Mile Post 134) drawn at right angles through the centerline of the main track of said Harvard Subdivision, as originally constructed and operated, at a point thereon that is 653 feet distant southwesterly, measured along said centerline of the main track, from the north line of said Section 11.

IN WITNESS WHEREOF, the Municipalities and WRTC have caused this deed to be duly executed as of the _____ day of _____ 2014.

GRANTOR:
City of Fitchburg

GRANTOR:
Village of Oregon

By: Shawn Pfaff, Mayor

By: Steven L. Staton, Village President

Attest: Patti Anderson, Deputy City Clerk

Attest: Peggy Haag, Village Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____ 2014, the above-named Shawn Pfaff, Mayor, and Patti Anderson, Deputy City Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)
Notary Public, State of Wisconsin
My Commission expires _____.

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____ 2014, the above-named Steven L. Staton, Village President, and Peggy Haas, Village Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)

Notary Public, State of Wisconsin
My Commission expires _____.

GRANTEE:

Wisconsin River Rail Transit Commission

By: Alan Sweeney, Chair

Attest: Charles Anderson, Secretary

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____ 2014, the above-named Alan Sweeney, Chair, and Charles Anderson, Secretary, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)

Notary Public, State of Wisconsin
My Commission expires _____.

This instrument drafted by:

Attorney Eileen A. Brownlee
Fennimore, WI

EXHIBIT C

QUIT CLAIM BILL OF SALE

The City of Fitchburg, a Wisconsin municipal corporation, and the Village of Oregon, a Wisconsin municipal corporation ("Municipalities"), as Grantor, whether one or more, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby sell, quit claim, transfer and deliver to the Wisconsin River Rail Transit Commission, a Wisconsin governmental entity ("WRRTC"), its successors and assigns, Municipalities' ownership interest in and to the following described personal property, to wit:

All of Grantor's personal property used in rail operations, which is upon or attached to that real property described in Exhibit "1" attached hereto and made a part hereof including, but not limited to, rail, ties, ballast, other track materials, signals, switches, bridges, culverts, communications equipment or facilities and other personal property, fixtures and improvements.

GRANTOR, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE TITLE, OWNERSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE WRRTC IS PURCHASING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS.

IN WITNESS WHEREOF, Municipalities and WRRTC have each duly executed this instrument as of the _____ day of _____, 2014.

GRANTOR:
City of Fitchburg

GRANTOR:
Village of Oregon

By: Shawn Pfaff, Mayor

By: Steven L. Staton, Village President

Attest: Patti Anderson, Deputy City Clerk

Attest: Peggy Haag, Village Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____ 2014, the above-named Shawn Pfaff, Mayor, and Patti Anderson, Deputy City Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)

Notary Public, State of Wisconsin
My Commission expires _____.

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____ 2014, the above-named Steven L. Staton, Village President, and Peggy Haas, Village Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)

Notary Public, State of Wisconsin
My Commission expires _____.

GRANTEE:

Wisconsin River Rail Transit Commission

By: Alan Sweeney, Chair

Attest: Charles Anderson, Secretary

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____ 2014, the above-named Alan Sweeney, Chair, and Charles Anderson, Secretary, to me known to be the persons and officers who executed the foregoing instrument and acknowledge the same.

(print name)
Notary Public, State of Wisconsin
My Commission expires _____.

This instrument drafted by:

Attorney Eileen A. Brownlee
Fennimore, WI

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF FITCHBURG, a Wisconsin municipal corporation and the VILLAGE OF OREGON, a Wisconsin municipal corporation, (hereinafter the "Assignor") do, for valuable consideration, effective as of the date hereof assign, transfer and set over unto the WISCONSIN RIVER RAIL TRANSIT COMMISSION, a Wisconsin governmental entity ("Assignee"), all of the Assignor's right, title and interest in, to and under the agreement shown in **Exhibit E**, hereto attached and hereby made a part hereof.

This Assignment is subject to all of the terms and conditions of the Line Sale Contract dated _____, 2014.

Assignee hereby accepts the assignment of the agreement shown on **Exhibit E**, assumes all of the duties, obligations and liabilities of Assignor thereunder, and agrees to release the Assignor, its successors and assigns, from any and all obligations arising out of, or pursuant to, the agreement or applicable portions thereof herein assigned from and after the effective date hereof.

THIS ASSIGNMENT shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. No provision hereof shall be construed as intended for the benefit of any third party.

Dated as of: _____, 2014.

Attest: **CITY OF FITCHBURG**

Patti Anderson, Deputy City Clerk

By: _____
Shawn Pfaff
Title: Mayor

Attest: **VILLAGE OF OREGON**

Peggy Haag, Village Clerk

By: _____
Steven L. Staton
Title: Village President

Attest: **WISCONSIN RIVER RAIL TRANSIT COMMISSION**

Charles Anderson, Secretary

By: _____
Alan Sweeney
Title: Chair

APPROVED:

Attest:

L. Frank Huntington

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

By: _____
Donna Brown-Martin
Title: Director, Bureau of Transit, Local Roads,
Railroads and Harbors

Attest:

WISCONSIN & SOUTHERN RAILROAD LLC

By: _____
Rick Baden
Title: President

EXHIBIT E

LIST OF AGREEMENTS TO BE ASSIGNED AND ASSUMED

Grant Agreement between Municipalities and WisDOT dated January 27, 1999

EXHIBIT F
FREIGHT EASEMENT DEED AND AGREEMENT

**WHEN RECORDED RETURN TO
AND MAIL TAX NOTICES TO:**

Wisconsin & Southern Railroad, L.L.C.
315 W. 3rd Street
Pittsburg, Kansas 66762
(414) 438-8820

SPACE ABOVE FOR RECORDER'S USE ONLY

FREIGHT EASEMENT DEED AND AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Freight Easement Deed and Agreement (this "Deed") is made and entered into as of this ___ day of _____, 2014 ("Effective Date") by and between the City of Fitchburg, having its principal office at 5520 Lacy Road, Fitchburg, WI 53711, and the Village of Oregon, having its principal office at 117 Spring Street, Oregon, WI 53575, (both collectively hereinafter referred to as "GRANTOR"), and Wisconsin & Southern Railroad, L.L.C., a Wisconsin limited liability company, having an office at 315 W. 3rd St., Pittsburg, KS 66762 (hereinafter referred to as "GRANTEE").

Whereas, by Quitclaim Deed to Property dated _____, 2014, recorded _____, as Instrument No. _____ in the Official Records of Dane County, Green County, and Rock County, Wisconsin (the "Quitclaim Deed"), Grantor reserved unto itself, its successors and assigns, a permanent, exclusive easement upon, under and across certain real property (the "Property") from Grantor's Milepost 134.00 near Madison to Milepost 119.00 near Evansville known as the Evansville to Fitchburg Line (the "Property"), described in **Exhibit A** attached hereto and incorporated herein by reference for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "Freight Easement").

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment and quitclaim by Grantor.

Effective as of the date of this Deed, Grantor hereby transfers, conveys, assigns and quitclaims to Grantee all of Grantor's right, title and interest in and to and under the Freight Easement. Grantor warrants that as of the Effective Date of the Deed ("Effective Date"), there is no other freight rail carrier to which Grantor has granted rights to use the Property.

2. Acceptance and Assumption by Grantee.

Grantee hereby accepts the foregoing transfer, conveyance, assignment and quitclaim of Grantor's right, title and interest in, to and under the Freight Easement and assumes and agrees to perform and keep and to be bound by all covenants, agreements, and obligations contained in the Quitclaim Deed and this Deed pertaining to the Freight Easement with respect to the Property to be made, kept and performed by the grantor thereunder. This Deed is made subject to all the terms and conditions of the Quitclaim Deed pertaining to the Freight Easement and all obligations of Grantee in that certain operating agreement with the Wisconsin River Rail Transit Commission and Grantee dated _____, 2014 (the "Operating Agreement").

3. Release of Grantor.

From and after the effective date of this Deed, the Grantee agrees to release the Grantor from any obligations to be kept, observed and performed by Grantor under the Freight Easement with respect to the Property.

4. Grantee's Obligations That Shall Survive the Effective Date.

By execution of this Deed, Grantee, for itself, and its successors and assigns, assumes and agrees to obtain all authority under federal laws and regulations to exclusively perform the obligations as a common carrier by freight railroad under applicable federal laws and regulations and to perform all such obligations to the shipping public with respect to the Property, and to so perform the obligations of Grantee under the Operating Agreement.

Grantee will not abandon, suspend or discontinue its operation by rail over all or any part of the Property without first applying for and obtaining from the Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such abandonment, suspension or discontinuance of operations over the Property.

As Is. GRANTEE AND ITS REPRESENTATIVES, PRIOR TO THE EFFECTIVE DATE, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE PROPERTY AND MATTERS RELATED THERETO AS GRANTEE AND ITS REPRESENTATIVES DESIRE. GRANTEE SHALL TAKE THE FREIGHT EASEMENT IN AN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR

PARTICULAR PURPOSE OR VOLUME OR QUALITY OF TRAFFIC ON THE PROPERTY AND SUBJECT TO: (A) ALL OUTSTANDING RIGHTS; AND (B) WITHOUT LIMITATION OF (A) ABOVE, THE RIGHTS, INTERESTS, CONTRACTS, AGREEMENTS AND LICENSES IDENTIFIED ON **EXHIBIT A** ATTACHED HERETO AND HEREBY MADE A PART HEREOF (WHICH ARE HEREINAFTER REFERRED TO AS "GRANTOR AGREEMENTS").

Release. FROM AND AFTER THE CLOSING DATE, GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING AFTER THE EFFECTIVE DATE OF THIS AGREEMENT AND CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT) INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY, AND DAMAGE TO PROPERTY OF GRANTOR, GRANTEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

Environmental Indemnity. FROM AND AFTER THE CLOSING DATE, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "ENVIRONMENTAL COSTS"), IN ANY WAY ARISING OUT OF AN ACCIDENT OR EVENT FIRST OCCURRING AFTER THE EFFECTIVE DATE CONNECTED WITH THE KNOWN OR UNKNOWN, EXISTING OR FUTURE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO (INCLUDING, WITHOUT LIMITATION, THE TOXIC

SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT), AND INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER INCLUDING EMPLOYEES, AGENTS OR CONTRACTORS OF GRANTOR, GRANTEE OR ANY THIRD PARTY. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

General Indemnity. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, REGARDLESS OF THE NEGLIGENCE, NEGLIGENCE PER SE OR STRICT LIABILITY OF GRANTOR OR GRANTOR'S AGENTS, EMPLOYEES, SERVANTS, AFFILIATED COMPANIES, SUCCESSORS OR ASSIGNS (COLLECTIVELY THE "GRANTOR'S AGENTS"), GRANTEE SHALL PROTECT, DEFEND, HOLD HARMLESS, AND INDEMNIFY AND REIMBURSE GRANTOR FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, PENALTIES, FINES, EXPENSES, DAMAGES, LOSSES AND COSTS, INCLUDING ATTORNEY'S FEES (COLLECTIVELY, "COSTS"), INCURRED BY OR ASSESSED AGAINST GRANTOR AND/OR THE GRANTOR'S AGENTS, DUE TO OR RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE ARISING OUT OF GRANTEE'S USE, OPERATION OR MAINTENANCE OF THE PROPERTY ON OR AFTER THE EFFECTIVE DATE OR AS A RESULT OF GRANTEE'S BREACH OF, OR FROM ITS FAILURE TO COMPLY WITH, ANY PROVISIONS OF THIS AGREEMENT, EVEN IF THE COST (A) RESULTS IN WHOLE OR IN PART FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE GRANTOR OR THE GRANTOR'S AGENTS, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, AND THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA") OR (B) IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY OF THE GRANTOR; **PROVIDED, HOWEVER,** THAT ALL COSTS INCLUDING COSTS FOR PERSONAL INJURIES, DEATH OR PROPERTY LOSS ARISING IN CONNECTION WITH TOXIC WASTE OR ENVIRONMENTAL CONDITIONS, WILL BE GOVERNED BY THE PROVISIONS OF SECTIONS 4.3 and 4.4.

5. Breaches and Remedies

Upon the occurrence of any breach of any term hereof, the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of thirty (30) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party has the right (but not the obligation) at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall

prevent the injured party from resorting to any other remedy permitted under this Agreement or at law or equity including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

6. Freight Easement runs with STB authorized Common Carrier Authority.

This permanent and exclusive freight operating easement is retained by the Grantee until Grantee obtains authority from the STB to discontinue or abandon Grantee's common carrier by railroad operations on the Property and consummates such discontinuance or abandonment or the Wisconsin Department of Transportation ("WisDOT") or the Wisconsin River Rail Transit Commission obtains authority from the STB for the adverse discontinuance or abandonment of Grantee's common carrier by railroad operations on the Property and consummates such adverse discontinuance or abandonment. Upon STB issuance of any subsequent common carrier by railroad authority to a third person to operate as a common carrier by railroad upon the Property, the permanent and exclusive freight operating easement shall be assigned to and assumed by that operator, under the same terms and conditions as this Deed. Notwithstanding the foregoing, upon the natural expiration or termination of the Operating Agreement, if any Class II or Class III rail carrier other than WSOR or an affiliate thereof shall assume the common carrier by railroad freight operations over the Property, the parties hereto agree to use their commercially reasonable best efforts to cause any such new Class II or Class III rail carrier to take an assignment of all rights and assumption of all obligations from the WSOR or WSOR's common carrier by railroad rights and obligations with regard to the Property and the Freight Easement.

7. Notices

All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

- (a) If intended for Grantor, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantor at:

City of Fitchburg,
5520 Lacy Road
Fitchburg, WI 53711

Village of Oregon,
117 Spring Street
Oregon, WI 53575

(b) If intended for Grantee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Grantee at:

Wisconsin & Southern Railroad, L.L.C.
315 W. 3rd Street
Pittsburg, Kansas 66762

Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

8. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Wisconsin.

9. Termination.

The right, title and interest in the Freight Easement granted to Grantee herein over any portion of the Property shall terminate, cease and determine upon the occurrence of all of the following: (i) Grantee's abandonment of rail freight transportation service over such portion of the Property pursuant to a final order of the United States Surface Transportation Board ("STB Abandonment Order"); (ii) recording in the offices of the Register of Deeds for the county or counties in which such portion of the Property is located of a copy of the STB Abandonment Order; (iii) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of termination of the Freight Easement; and (iv) recording in the offices of the Register of Deeds for such county or counties of Grantee's notice of consummation of the STB Abandonment Order.

(Signatures on following page)

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the _____ day of _____, 2014.

GRANTOR:

CITY OF FITCHBURG,

Attest:

Assistant Secretary

(Seal)

By: _____

Name: _____

Title: _____

Attest: _____

City Clerk

VILLAGE OF OREGON,

Attest:

Assistant Secretary

(Seal)

By: _____

Name: _____

Title: _____

Attest: _____

Village Clerk

GRANTEE:

**WISCONSIN & SOUTHERN RAILROAD,
L.L.C., a Wisconsin limited liability**

**Attest:
company**

Secretary

(Seal)

By: _____

Name: _____

Title: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

On this _____ day of _____, 2014, before me, Notary Public in and for said County and State, personally appeared _____ and _____ who are the Village President and the Village Clerk, respectively, of Village of Oregon, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(Seal)

**CITY OF FITCHBURG
VILLAGE OF OREGON**

DANE County, Wisconsin

Exhibit "A"

[See Next Sheet Attached]

**CITY OF FITCHBURG
VILLAGE OF OREGON**

GREEN County, Wisconsin

Exhibit "A"

[See Next Sheet Attached]

**CITY OF FITCHBURG
VILLAGE OF OREGON**

ROCK County, Wisconsin

Exhibit "A"

[See Next Sheet Attached]



655 Fifteenth Street, NW, Suite 225
 Washington, DC 20005
 balljanik.com
 t 202.638.3307
 f 202.783.6947

August 22, 2014

236493
 ENTERED
 Office of Proceedings
 August 22, 2014
 Part of
 Public Record

Karl Morell
 Of Counsel
 kmorell@balljanik.com

BY HAND DELIVERY

Cynthia Brown
 Chief, Section of Administration
 Surface Transportation Board
 Office of Proceedings
 395 E Street, SW
 Washington, DC 20423



Re: Finance Docket No. 35838, Wisconsin & Southern Railroad,
 L.L.C. – Acquisition and Operation Exemption – City of
 Fitchburg and Village of Oregon

Dear Ms. Brown:

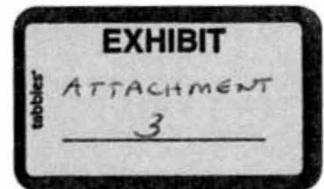
Attached for filing are the original and ten copies of a Petition for
 Exemption under 49 U.S.C. § 10502 and a check covering the
 \$6,900 filing fee.

If you have any questions, please contact me.

Sincerely,

Karl Morell
 Of Counsel

Enclosures



FEE RECEIVED
 August 22, 2014
 SURFACE
 TRANSPORTATION BOARD

FILED
 August 22, 2014
 SURFACE
 TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35838

WISCONSIN & SOUTHERN RAILROAD L.L.C.
--ACQUISITION AND OPERATION EXEMPTION--
CITY OF FITCHBURG AND VILLAGE OF OREGON

PETITION FOR EXEMPTION



Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street
Washington, DC 20005
(202) 638-3307

Counsel for WISCONSIN & SOUTHERN
RAILROAD L.L.C.

Dated: August 22, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35838

WISCONSIN & SOUTHERN RAILROAD L.L.C.
--ACQUISITION AND OPERATION EXEMPTION--
CITY OF FITCHBURG AND VILLAGE OF OREGON

PETITION FOR EXEMPTION

Wisconsin & Southern Railroad L.L.C. (“WSOR”), a class II rail carrier, hereby petitions the Surface Transportation Board (“Board”) for an exemption from prior review and approval under 49 U.S.C. § 10902 of WSOR’s acquisition of the exclusive rail freight easement over the 15-mile rail line currently owned by the City of Fitchburg, Wisconsin and the Village of Oregon, Wisconsin (collectively the “Partnership”).

SUMMARY OF TRANSACTION

In STB Docket No. AB-33 (Sub-No. 119X), *Union Pacific Railroad Company – Abandonment Exemption – In Rock, Green and Dane Counties, WI*, Union Pacific Railroad Company (“UP”) sought to abandon its 15-mile line located between milepost 119.0, near Evansville, and milepost 134.0, near “MX” a crossing of the WSOR, near Madison, WI (the “Line”). The Partnership acquired the Line through the offer of financial assistance procedures. See STB Docket No. AB-33 (Sub-No. 119X), decision served November 20, 1998.

There has been no traffic on the Line since 1997. It has recently come to the attention of Wisconsin River Rail Transit Commission (“WRRTC”) that a shipper seeking rail service is locating in the Village of Oregon, WI. WRRTC has requested WSOR to initiate service over the

Line. Consequently, the Partnership is transferring the exclusive rail freight easement to WSOR. In a related proceeding, the Partnership is also transferring the physical assets of the Line to WRRTC. *See* Finance Docket No. 35843 Wisconsin River Rail Transit Commission – Petition For Declaratory Order – Rail Line in Dane, Green and Rock Counties, WI.

ARGUMENT

I. THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. § 10902.

Under 49 U.S.C. § 10902, prior Board approval is required for a Class II or Class III rail carrier to acquire the freight easement over an extended or additional rail line.

Pursuant to 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope, or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to

determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation - Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision that would apply in the absence of the exemption. *Blackstone Capital Partners – Control Exemption – CNW Corp.*, 5 I.C.C.2d 1015, 1019 (1989)(“*Blackstone*”); *Vill. of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991). Section 10902(c) requires the Board to issue a certificate authorizing the transaction “unless the Board finds that such activities are inconsistent with the public convenience and necessity.”

A. Regulation Of The Proposed Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

An exemption from the requirements of Section 10902 for WSOR’s acquisition of the exclusive rail freight easement over the Line is consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application, is not necessary to carry out the rail transportation policy set forth in Section 10101. The Line has been out of service for about 17 years. A rail customer is locating along the Line and WSOR is willing to restart rail service on the Line. By minimizing the administrative expense of considering the proposed

transaction, the requested exemption will expedite regulatory decisions and reduce barriers to entry [49 U.S.C. §§ 10101(2) and (7)]. The proposed transaction will help promote a safe and efficient rail transportation system [49 U.S.C. § 10101(3)], ensure the continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation and ensure effective competition [49 U.S.C. § 10101(5)], encourage honest and efficient management [49 U.S.C. § 10101(9)], and promote energy conservation [49 U.S.C. § 10101(14)]. Other aspects of the rail transportation policy will not be adversely affected.

B. The Proposed Transaction Is Of Limited Scope.

The Line is 15 miles in length and only a single rail served customer will be located on the Line. The Board and its predecessor have found the acquisition and operation of greater lengths of rail line to be limited in scope. *See, e.g., Ind. R.R. Co. – Acquisition & Operation – Ill. Cent. R.R. Co.*, 6 I.C.C.2d 1004, 1011 (1990)(acquisition of 90.3 miles of rail line found limited in scope); Finance Docket No. 31482, *Mid Michigan R.R. Co. – Purchase Exemption – The St. Joseph & Grand Island R.R. Co. Line Between St. Joseph, MO and Upland, KS* (not printed), served August 7, 1989 (acquisition of 107.3 miles of rail line found limited in scope); Finance Docket No. 32149, *Genesee & Wy. Indust., Inc. – Continuance in Control Exemption – Allegheny & E. R.R., Inc.* (not printed), served October 23, 1992 (acquisition of control of carrier operating 147.1 miles of rail line and serving 8 customers found limited in scope).

The proposed transaction will not have any measurable impact on the national, regional or local rail industry. Consequently, the proposed transaction is of limited scope.

C. Regulation Of The Proposed Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Even if the proposed transaction were not limited in scope, the transaction should nevertheless be exempted because the transaction will not result in any abuse of market power. The Line is currently dormant and WSOR intends to reinstitute rail service along the Line in order to service the single rail customer locating along the Line. Consequently, the proposed transaction will not result in an abuse of market power. Rather, the proposed transaction, overall, will enhance competition. Accordingly, regulation is not necessary to protect shippers from an abuse of market power.

II. LABOR PROTECTION.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Because WSOR is Class II rail carrier, the transaction is subject to the labor protection requirements of 49 U.S.C. § 11326(b) and *Wisconsin Central Ltd. – Acquisition Exemption – Lines of Union Pacific Railroad*, 2 S.T.B. 218 (1997).

III. Labor Notice.

The provisions of 49 C.F.R. § 1121.4(h), require a Class II rail carrier filing for a transaction under Section 10902 to provide labor notices to employees working on the Line. No employee, however, has worked on the Line since 1997. Consequently, WSOR is seeking a waiver of the notice requirement set forth in Section 1121.4(h).

IV. Interchange Commitment.

The Freight Easement Deed and Agreement between WSOR and the Partnership will not contain any provision that prohibits WSOR from interchanging traffic with a third party or limits WSOR's ability to interchange with a third party.

V. ENVIRONMENTAL AND HISTORIC IMPACTS.

WSOR is acquiring the exclusive rail freight easement for continued rail operations. Further Board approval is required for WSOR to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Petition for Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

WSOR's acquisition of the rail freight easement will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. WSOR's acquisition of the rail freight easement will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

CONCLUSION

Regulation of the proposed transaction is not necessary to carry out the rail transportation policy. Also, the proposed transaction is limited in scope. Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Consequently, WSOR respectfully request that the Board exempt from the prior approval requirement the proposed acquisition by WSOR of the exclusive rail freight easement over the Line.

Respectfully submitted,

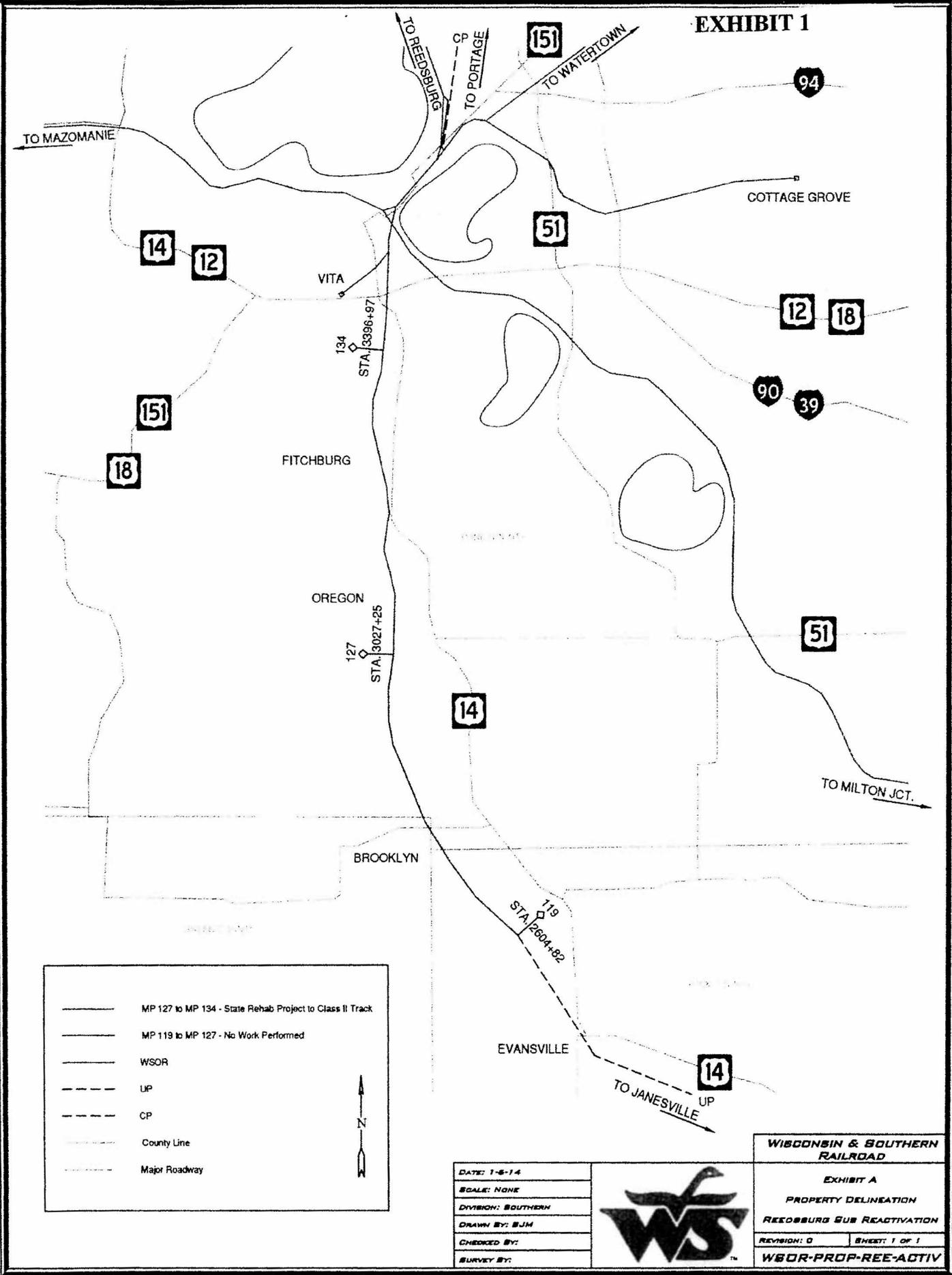
A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
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(202) 638-3307

Counsel for WISCONSIN & SOUTHERN RAILROAD L.L.C.

Dated: August 22, 2014

EXHIBIT 1



	MP 127 to MP 134 - State Rehab Project to Class II Track
	MP 119 to MP 127 - No Work Performed
	WSOR
	UP
	CP
	County Line
	Major Roadway



DATE: 1-6-14
SCALE: NONE
DIVISION: SOUTHERN
DRAWN BY: BJM
CHECKED BY:
SURVEY BY:



WISCONSIN & SOUTHERN RAILROAD	
EXHIBIT A	
PROPERTY DELINEATION	
REEDSBURG SUB REACTIVATION	
REVISION: 0	SHEET: 1 OF 1
WSOR-PROP-REE-ACTIV	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been served on the following entities by first class mail this ^{22d} day of August, 2014:

The Honorable Scott K. Walker
Governor
State Capitol
115 East Capitol
Madison, WI 53702

Wisconsin Department of Transportation
P.O. Box 7999
Madison, WI 53707-7910



Karl Morell

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35838

WISCONSIN & SOUTHERN RAILROAD, LLC
--ACQUISITION AND OPERATION EXEMPTION--
CITY OF FITCHBURG AND VILLAGE OF OREGON

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1121.4(h)

236494
ENTERED
Office of Proceedings
August 22, 2014
Part of
Public Record

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
WISCONSIN & SOUTHERN RAILROAD,
LLC

Dated: August 22, 2014



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35838

WISCONSIN & SOUTHERN RAILROAD, LLC
--ACQUISITION AND OPERATION EXEMPTION--
CITY OF FITCHBURG AND VILLAGE OF OREGON

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1121.4(h)

Wisconsin & Southern Railroad, LLC (“WSOR”), a Class II rail carrier, hereby petitions the Surface Transportation Board (“Board”) to waive the employee notice requirements of 49 C.F.R. § 1121.4(h).

WSOR is concurrently filing with the Board a petition for exemption to permit WSOR to acquire the permanent exclusive easement for freight railroad purposes (“Freight Easement”) over approximately 15 miles of rail lines in Wisconsin from the City of Fitchburg and the Village of Oregon, Wisconsin (the “Partnership”). The rail lines that will be operated by WSOR are located between milepost 119.0, near Evansville, and milepost 134.0, near “MX” a crossing of the WSOR near Madison, WI (the “Rail Line”). Wisconsin River Rail Transit Commission (“WRRTC”) is acquiring the physical assets of the Rail Line from the Partnership. *See Finance Docket No. 35843, Wisconsin River Rail Transit Commission – Petition for Declaratory Order – Rail Line in Dane, Green and Rock Counties, WI* (not printed).

WSOR is a Class II rail carrier thus invoking the employee notice requirements of Section 1121.4(h). The purpose underlying the notice requirement, however, would not be

thwarted by waiver in this proceeding. The purpose of the notice requirement is to ensure that rail labor unions and employees working on a line being transferred are given adequate notice of the transaction. *See Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592 (1997). In adopting the notice requirement, the Board specifically recognized that “situations may occur necessitating acquirer requests for waiver of the 60-day notice provision....” *Id.* at 601.

Here, labor notice would serve no useful purpose. There has been no traffic on the Rail Line since 1997 and no employee of the Partnership has ever worked on the Rail Line. Neither will any WSOR employee be affected by the acquisition of the Freight Easement. Consequently, providing advance labor notice would be a futile act. *See* STB Finance Docket No. 34660, *Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed), served February 28, 2005; STB Finance Docket No. 34531, *The Indiana Rail Road Company – Acquisition Exemption – Line of Monon Rail Preservation Corporation* (not printed), served November 22, 2004; STB Finance Docket No. 34904, *Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served July 24, 2006.

In summary, WSOR respectfully requests that the Board waive the requirements of 49 C.F.R. § 1121.4(h).

Respectfully submitted,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

KARL MORELL

Of Counsel

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Suite 225

655 Fifteenth Street, N.W.

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(202) 638-3307

Attorneys for:

WISCONSIN & SOUTHERN RAILROAD, L.L.C.

Dated: August 22, 2014

OPERATING AGREEMENT
BY AND BETWEEN
WISCONSIN RIVER RAIL TRANSIT COMMISSION
AND
WISCONSIN & SOUTHERN RAILROAD, L.L.C.

AGREEMENT NO. 0490-40-08(d)(1)

AUGUST 2014

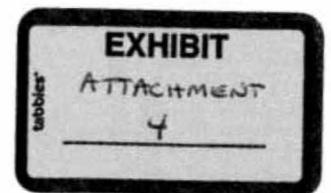


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APPENDIX A - RENTAL

OPERATING AGREEMENT

This Agreement made and entered into this _____ day of _____, 2014 by and between Wisconsin River Rail Transit Commission, a governmental entity established in accordance with Section 66.0301, Wis. Stats., having its principal office at 20 South Court Street, P.O. Box 262, Platteville, WI, 53818, ("Commission") and Wisconsin & Southern Railroad, L.L.C., 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 315 W. 3rd Street, Pittsburg, KS, 66762, ("Operator").

WITNESSETH

WHEREAS, this Agreement is a new agreement covering additional line segments to Commission's system and in no way affects the status of Agreement No. 0490-40-48(d), dated September 1, 1997; and

WHEREAS, Commission is currently comprised of Crawford, Dane, Iowa, Jefferson, Grant, Rock, Sauk, Walworth and Waukesha Counties and was created for the purpose of supporting the continuance of rail service to its member counties with authority to acquire the use of the Rail Line(s) by purchase, lease or otherwise and to support freight rail service thereon by contract or otherwise; and

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

WHEREAS, WisDOT owns the Principal Line Segment(s) in Wisconsin, and the Commission owns or has been granted the use of the Land and the Improved Property to work with the Operator providing railroad freight service over the Improved Property of the Principal Line Segments in Wisconsin subject to all the conditions and limitations set forth in the Grant Agreements and Land Use Agreements identified in Section 1.0(k) and (o) respectively, and, subject to the Operator's permanent, exclusive operating easement and the Surface Transportation Board ("STB") authority to provide freight railroad service; and

WHEREAS, Operator is also operating over the tracks of the East Wisconsin Counties Railroad Consortium ("EWCRC") and Pecatonica Rail Transit Commission ("PRTC") 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 _____ 2014, and the Grant Agreement By and Between the Commission and WisDOT dated _____ 2014; and

WHEREAS, Operator has been furnished copies of and reviewed the Grant Agreement – Improved Railroad Property Acquisition by and between the City of Fitchburg and Village of Oregon, and WisDOT dated January 27, 1999 and; the Land Use and Lease Agreement by and between Wisconsin River Rail Transit Commission, and the City of Fitchburg and Village of Oregon.

WHEREAS, this Agreement replaces and supersedes Agreement No. 0490-40-48(d) by and between Commission and Operator, dated January 27, 1999.

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. "BNSF" means the Burlington Northern and Santa Fe Railroad Company, or its successors or assigns, if any.
- c. "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.
- d. "Commencement Date" means the date this Agreement is approved in writing by WisDOT on the Signature Page of this Agreement.
- e. "Commission" means the Wisconsin River Rail Transit Commission.
- f. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- g. "CN" means Canadian National Railway Company, and its subsidiaries, assigns and successors, if any.
- h. "CPR" means the Canadian Pacific Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- i. "EWCRC" means the East Wisconsin Counties Railroad Consortium.
- j. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.

- k. "Grant Agreements" means:
- (1) Grant Agreement No. 0490-40-08(b)(1) By And Between Commission And WisDOT, dated _____, 2014, and any amendments thereto pertaining to the Madison to Cottage Grove/Reedsburg rail lines.
 - (2) Grant Agreement – Improved Railroad Property Acquisition by and between the Commission and WisDOT dated _____ 2014 pertaining to the Fitchburg to Evansville rail line.
- l. "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.
- m. "Improved Property" means Buildings and Trackage located upon the Land of the Rail Line.
- n. "Land" means the real estate, generally sixty-six (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.
- o. "Land Use Agreement" means: Land Use Agreement No. 0490-40-08(a)(1) by and between Commission and WisDOT, dated _____, 2014 and any amendments thereto.
- p. "Operator" means the Wisconsin & Southern Railroad, L.L.C., and its successors, if any.
- q. "PRTC" means Pecatonica Rail Transit Commission.
- r. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- s. "Principal Line Segment" means one of the following as defined by their beginning and end points:
- (1) Milepost 134.00 near "MX" in Madison, a crossing of the Wisconsin & Southern Railroad Company, to Milepost 191.90 near Reedsburg (Madison to Reedsburg Line), including Milepost 83.78 to Milepost 85.50 in Madison (Central Soya Spur).
 - (2) Milepost 81.00 to Milepost 71.00 (Madison to Cottage Grove Line)
 - (3) Milepost 119.0 near Evansville to Milepost 134.00 near "MX" in Madison, a crossing of the Wisconsin & Southern Railroad Company (Fitchburg to Evansville Line)
- t. "Rail Line" means the Principal Line Segments in aggregate.
- u. "RHS" means Railroads and Harbors Section of WisDOT.
- v. "South Central" means South Central Wisconsin Rail Transit Commission.
- w. "STB" means the Surface Transportation Board of the United States Department of Transportation, or its successors, if any.

- x. "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.
- y. "UP" means the Union Pacific Railroad and its successors, if any.
- z. "Watco" means Watco Companies, L.L.C., or any successor thereto whether by merger, consolidation or acquisition, the indirect parent company of Wisconsin & Southern Railroad, L.L.C.
- aa. "WisDOT" means the Wisconsin Department of Transportation.
- ab. "WRRTC" means the Wisconsin River Rail Transit Commission.
- ac. "WSOR" means Wisconsin and Southern Railroad, L.L.C, its successors, if any.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) Commission hereby leases to Operator the Land and the Improved Property for Operator to manage and operate rail service thereon, subject to Operator's permanent, exclusive operating easement, which operating easement was or shall be reserved or acquired by Operator, for the benefit of itself, its successors and assigns, to use the Land for the purpose of providing freight rail service and for all other purposes incidental to the foregoing, subject, however, to the uses and reservations identified in Section 2.2 hereafter and further subject to the uses and reservations set forth in the governing Land Use and Grant Agreements.

(b) This Agreement is to be executed upon authorization of the Commission, and the Board of Managers of Operator. 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(k) and (o) 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 its own initiative or upon request, 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, WisDOT retains the right 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 only upon approval by Operator and the Commission, and shall not affect Operator's permanent, exclusive operating easement.

(b) In the event WisDOT determines with the concurrence of Operator and the Commission that 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 thirty-three (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 Operator 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 ownership of same to Operator for the purchase price provided by Operator and other reasonable purchase and transfer costs incurred by Commission. Notwithstanding the foregoing sentence, the 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 to Operator. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within thirty-three (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 thirty-three (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 Agreements, 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 permanent, exclusive operating easement and common carrier obligation of Operator. In the Land Use Agreement, WisDOT retains the right to approve all leasing of Improved Property and to conduct all the leasing of Land subject to the permanent, exclusive operating easement and common carrier obligation of Operator. If there 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 sixteen and one-half (16.5) feet from the center line on each side of the side track.

(d) WisDOT retains the right to lease Land, which is not under license and lease to Operator or not presently leased to third parties. 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 obtain the concurrence of 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. Pursuant to Chp. Trans 29, Wis. Admin. Code. 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 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 the costs of these changes shall not be imposed on Operator. No change shall interfere with Operator's permanent, exclusive operating easement or its common carrier obligation 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 or passenger excursion rail service, pursuant to Chp. Trans 31, Wis. Admin. Code. 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.

ARTICLE 3.0 - RENT.

(a) Operator's rent to Commission shall be in accordance with Attachment 7 to Agreement No. 0490-40-48(d) between Commission and Operator, a copy of which is attached hereto as Appendix A.

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

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 provide 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 required by law.

(b) Operator shall furnish Commission and WisDOT copies of trackage rights or lease agreement(s) allowing Operator to operate over lines not owned by Commission and WisDOT upon request.

Section 4.3 - Interchange Agreements.

It is recognized that Operator may enter into interchange agreements with the BNSF, CN, CPR, UP and the Belt Line Railroad Company of Chicago (BLR) 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 or upon WisDOT requirement, declare Operator in default of this Operating Agreement.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Generally.

(a) Operator has or shall acquire and shall maintain the requisite common carrier obligation 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, and any other regulatory agency as required by law.

(b) Operator has or shall acquire and shall maintain a permanent, exclusive operating easement for freight railroad service and the associated STB common carrier obligation to fully exercise its operating easement over the Principal Line Segments and provide shippers with common carrier freight railroad service. Operator shall exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it operates as a freight rail carrier and shall use the Principal Line Segments pursuant to its common carrier obligation and permanent, exclusive operating easement to provide exclusive originating and terminating freight rail service on the Principal Line Segments, including line-haul and switching services to shippers. 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 Principal Line Segments. Operator shall coordinate with Commission regarding any such additions, changes, betterments, and repairs. Operator has the authority to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property.

Section 5.2 - Requirements.

Operator hereby agrees to obtain and maintain the requisite common carrier obligation from STB to operate and provide freight railroad service on the Rail Line. Provision of rail service shall include but not be limited to:

(a) Service. Operator is required 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 initiate the process to find Operator in default of this Agreement.

(b) Maintenance. Operator shall perform or cause to be performed at its own cost and expense 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. Funding of the work included in the maintenance plan, as defined in Section 5.2, shall be the responsibility of Operator. Tracks shall be maintained to FRA Class 2 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 2 standards and a list of line segments that shall be maintained to FRA Class 1 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 49 CFR Part 237 and 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 the operation of any such leases. Operator understands that any agreement for leasing Land is subject to the Grant Agreements or Land Use Agreements 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 Section 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 in accordance with 49 CFR Part 237.

(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. Structures shall be maintained and repaired in accordance with 49 CFR Part 237.

(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 Wisconsin 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 ten (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 by Operator. The Plan or modification shall be revised and resubmitted within thirty (30) days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT. WisDOT approval of the maintenance plan does not imply or commit WisDOT funding of any part of the work included in the maintenance plan. Funding of the maintenance plan is the responsibility of Operator.

(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 ten (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 fifty million dollars (\$50,000,000) per occurrence, or other form reasonably 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 (FELA) 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 or in lieu of federal employer's liability coverage and for the covering of any employees, if any, who are not covered under FELA. Operator further agrees to carry property insurance including but not limited to fire and extended coverage for any buildings and structures subject to damage and rolling stock insurance in an amount not less than fifteen million dollars (\$15,000,000). 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, any insurance policy shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided, and approved by 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 sixty (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 ten (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 consistent with prudent industry practice for a similar company and the financial ability of Operator to satisfy such self-insured retention. The self-insured retention shall be no more than three million dollars (\$3,000,000) per occurrence for railroad liability, employee injuries under FELA, property damage and rolling stock equipment, without the consent of the Commission and WisDOT. 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 sixty (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 provide Commission and WisDOT a certificate from a financial institution reasonably acceptable to Commission and WisDOT verifying that the Operator or Watco (as heretofore defined in Article 1.0) has an ongoing minimum line of credit of ten million dollars (\$10,000,000) of unencumbered funds that would be available to cover any loss. Further, the Operator and/or Watco shall provide notice should said line of credit be terminated or the unencumbered line of credit amount falls below ten million dollars (\$10,000,000). If at any time Operator and/or Watco shall fail to comply with the above line of credit requirement (but solely during the pendency of any non-compliance), WisDOT may require that Operator and/or Watco file a letter of credit ("LOC") for an amount and upon terms reasonably agreed to by the parties but the amount shall not exceed the amount equal to the then existing self-insured retention maintained by Operator. The LOC will be available to be drawn upon by WisDOT to satisfy any self-insured retention on any pending claim(s) against Operator to the extent not timely satisfied by Operator. Upon Operator's or Watco's cure of any compliance failure pertaining to the line of credit requirement, WisDOT shall immediately release any LOC put in place by the parties as set forth above.

(d) Reporting of Incidents and Claims. During the term of this Agreement and any extension thereof, any property damage exceeding one hundred thousand dollars (\$100,000) or injury to person 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 WisDOT. Operator shall, within five (5) days, provide a written report, which shall also include a summary of the facts of the incident and any law enforcement or

FRA reports. An estimate by the Operator as to the approximate potential liability, which might arise from any incident and any information that could impact legal proceedings shall be provided verbally and shall be considered confidential. If a notice of injury or claim of damage is made to Operator regarding any incident, then Operator shall forthwith furnish Commission and WisDOT each with a copy thereof. Thereafter, Operator shall provide Commission and WisDOT written updates on 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. Any such updates shall be provided in a format reasonably designed to preserve any applicable attorney client privilege.

(e) 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 (12) 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, upon the written request of WisDOT or Commission, no less than ninety (90) 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(e)(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 reasonably require Operator to purchase additional insurance as may be consistent with industry best practice for a similarly situated company, and naming the additional insureds as is required under Section 6.2(a) herein. Irrespective of any other provision in this Agreement, no annual increase, if elected by Commission and WisDOT without the concurrence of the Operator shall exceed five (5) percent of the coverage limits in place for the policy year immediately preceding such election. 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) **(Intentionally Omitted)**
- (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 reasonable 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) coverage amounts and self insured retentions consistent with industry best practice for a similarly situated company. 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. 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 thirty (30) days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than fifty (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(e)(v) herein, any one of them may require arbitration in accordance with Section 6.2(e)(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(e)(iii) herein, but in no event shall the coverage limit be less than fifty million dollars (\$50,000,000) per occurrence, 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, (4) when Operator is in violation of Wisconsin or federal law, or (5) at the option of Operator, when the Land Use Agreements or the Grant Agreements between Commission and WisDOT expires, or is terminated,

amended, or revoked without Operator approval. Notwithstanding this provision, Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or the Commission obtains authority from the STB for the adverse discontinuance of Operator's service.

(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 13.3 below. The declaration of default 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 contractual obligations of Operator to provide freight rail service and obligations of Operator and Commission to maintain the Land and Improved Property under this Agreement shall cease as provided for in Section 7.9, but all other obligations of the parties shall remain in full force and effect until all operations of Operator hereunder have been terminated in accordance with this Agreement. 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 in accordance with Sections 7.8 and 7.9.

Section 7.5 - Termination Approvals.

Both parties recognize that the termination of Operator's lease and common carrier obligation will require STB approval before termination is 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 is commenced by or against Operator for any relief which includes, or might result in, any modification of the obligations of Commission or 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 upon ten (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 terminates pursuant to Section 7.6, Operator shall forthwith deliver possession of the Land and Improved Property to Commission at such time as the STB discontinuance authority is effective. 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 there from 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; Discontinuance of Service.

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. Upon receiving said notice, Operator shall immediately seek authorization from the STB to discontinue service over the Rail Line. If Operator does not initiate discontinuance proceedings within thirty (30) days of receiving said notice, WisDOT and/or the Commission may seek to terminate such service by prosecuting an application with the STB for the adverse discontinuance of service by Operator. Operator shall vacate the Principal Line Segment(s) within twenty (20) days of the effective date of a final, non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision. Commission shall arrange with Operator for an inventory of the Principal Line Segment(s) to be conducted within this twenty (20) day period. If Operator

does not remove any of its equipment within the twenty (20) 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 ten (10) days following its receipt of a final non-appealable STB decision authorizing discontinuance of service, or in the event of an appeal, a final non-appealable court decision, 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 thirty (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 twelve (12) week period to any station on such Principal Line Segment, or

(c) The failure to move any revenue freight car loads for twelve (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), Commission shall at WisDOT's option pay to WisDOT an amount computed according to the terms of Section 8.2 of this Agreement or return ownership of the project property to WisDOT. Operator may not discontinue service on portion of the Rail Line without STB authorization. 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 Commission or Operator to provide freight rail service as defined in this section.

Section 7.11 - Immediate Suspension of Rail Operations.

Upon emergency notice from Commission, WisDOT, or Division of State Patrol (by telephone and later confirmed in writing), Operator shall cooperate in using its discretion to 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 at its discretion remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is resolved and/or 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. In the event of any service suspension having an expected duration of at least twenty-four (24) consecutive hours, Operator shall file an embargo notice with the Association of American Railroads.

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 one hundred twenty (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 - 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, subject to Sec. 85.09. Wis. Stats., and 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 sixty (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, fail to respond in writing within such sixty (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 determination 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 8.2 - 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. 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 is four million five hundred, ninety-five thousand, four hundred dollars (\$4,595,400) for acquisition of Improved Property from the UP and four hundred and four thousand, six hundred dollars (\$404,600) for major bridge improvements made by WSOR for a total initial value of the Improved Property of five million dollars (\$5,000,000). The initial investment basis of each party is as follows: (1) WisDOT – four million dollars (\$4,000,000); (2) Commission - \$0.00; and, (3) Operator – five hundred ninety-five thousand, four hundred dollars (\$595,400) cash and four hundred and four thousand, six hundred dollars (\$404,600) in kind for a total of one million dollars (\$1,000,000). Upon termination of the Grant Agreements, the basis of WisDOT, Commission and Operator shall be calculated as follows:

(i) No more than sixty (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 at fair market value, which shall be determined by appraisal. 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 fifteen (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 right of first refusal is not exercised, the cost of such appraisals shall accrue to the Operator. If right of first refusal is exercised, the cost of the third appraisal is shared equally with each party also paying its respective appraiser.

(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 one hundred percent (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 8.3 - New Improved Property.

Commission or Operator, 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 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.

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 Operator is duly removed, and Commission requires Operator to do so, Operator will support Commission and/or WisDOT efforts to provide a replacement freight rail service, without obligation of Operator to expend additional funds to do so.

(d) All non-federal funding required for completion of the objectives of this Agreement and/or required under the terms of any 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, Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system. Pursuant to Section 66.0301, Wis. Stats., the Commission 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 Commission.

(b) To the best knowledge of Commission and its Commissioners, 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 Agreements and the Grant Agreements, in effect on the date of this Agreement, and the same have not been 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 Agreements or Grant Agreements 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 Agreements and the Grant Agreements 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) Operator or Watco shall submit the following information to Commission and WisDOT as specified.

(i) A certificate of covenant compliance as identified in Section 6(2)(c), within forty-five (45) days after the end of each quarter year for its operations (for the avoidance of doubt, the Operator shall operate on a calendar year basis);

(ii) A summary of originating and terminating traffic by commodity, by Principal Line Segment and by month. This summary will be provided at least annually;

(iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by Principal Line Segment, at least annually; 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, at least annually.

(b) Operator or Watco shall as to item (i) below provide for inspection at a location mutually agreed to by WisDOT, and as to items (ii)-(v) below submit to WisDOT, in a format and manner reasonably acceptable to WisDOT the following reports:

(i) Independently audited financial statements for Watco and unaudited financial statement for the Operator for each year ending December 31, to be submitted on or before June 30 of the year following the applicable audit year; If upon WisDOT's inspection of the above financial records, Operator is not in compliance with the financial covenants set forth in this Agreement, then WisDOT shall be allowed to retain copies of the financial statements. Otherwise, WisDOT's rights are merely a review right and no copies of the financial statements shall be retained by WisDOT. If Operator is required to allow WisDOT to retain copies of the financial statements as set forth above, then the Operator shall clearly mark any confidential and proprietary information included in the audited and/or unaudited financial statements and any related financial information as confidential proprietary information. WisDOT shall notify Operator immediately upon receipt of any request for information marked as confidential or

proprietary. All records retained by WisDOT shall be subject to Wisconsin Public Records Law, Section 19.31, et seq., Wis. Stats.

(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 of Operator thirty (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.

(v) A certificate of financial covenant compliance, provided within forty-five (45) days after the end of each quarter year confirming Watco's compliance with the financial covenants (or any waivers thereof) contained within Watco's then existing senior credit facility.

Section 10.2 - Accounts.

(a) Operator shall establish and maintain a system of accounts as prescribed by the STB or as determined by Operator and reasonably approved 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 - 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 Environmental Protection Agency and the State Historical Preservation Officer.

Section 12.2 - 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 Wisconsin River Rail Transit Commission and Dane, Crawford, Grant, Iowa, Jefferson, Rock, Sauk, Walworth and Waukesha 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 12.3 - Nondiscrimination.

(a) Operator agrees that no otherwise qualified disabled individual in the United States, as defined in Section 705(9)(A) of Title 29 USC and in subchapter II of Section 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.

(b) Operator agrees not to engage in any act of employment discrimination as specified in Section 111.322, Wis. Stats, against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.

(c) 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 also comply:

- a. Title VI of the Civil Rights Act of 1964, 42 USC 2000, et seq.
- b. Subchapter II of Section 111, Wis. Stats.
- c. Section 16.765, Wis. Stats. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

(d) 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.

(e) These provisions 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. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

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.

All records retained by WisDOT shall be subject to Wisconsin Public Records Law, Section 19.31, et seq., Wis. Stats.

Non-Appropriation of Funds. With respect to any payment required to be made by WisDOT under this Agreement, the parties acknowledge WisDOT's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature.

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 - Statement of Parties' Intent.

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), issued by the former Interstate Commerce Commission, now the United States STB, wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in this agreement should be resolved and construed in favor of an outcome complying with the State of Maine requirements.

Section 13.3 - 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 53707-7914

Chair
Wisconsin River Rail Transit Commission
20 South Court Street
P.O. Box 262
Platteville, WI 53818

Wisconsin & Southern Railroad, L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, KS 66762

Watco Companies L.L.C.
ATTN: General Counsel
315 W. 3rd Street
Pittsburg, Kansas 66762

Section 13.4 - 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 13.5 - 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 13.6 - 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 13.7 - 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 13.8 - 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 13.9 - Compliance by Operator with Agreement.

Operator acknowledges it has reviewed the Land Use Agreements and the Grant Agreements 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 Agreements or the Grant Agreements 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 13.10 - 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 8.3.

Section 13.11 - 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 13.12 - 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 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 13.9 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 Agreements and Grant Agreements 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, and pursuant to Section 85.09, Wis. Stats., 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).

Section 13.13 - 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 agreements and will be subject to and comply with federal and state laws as imposed by the grant agreements 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 state or 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 13.14 - 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.

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 Wisconsin River Rail Transit Commission, has caused this Agreement to be signed by its duly authorized officers, this _____ day of _____, 2014.

WITNESS: WISCONSIN RIVER RAIL TRANSIT COMMISSION

Alan Sweeney, Chair

Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin & Southern Railroad, L.L.C., by its Managers, has caused this Agreement to be signed by its Chief Financial Officer, this _____ day of _____, 2014.

WITNESS: WISCONSIN & SOUTHERN RAILROAD, L.L.C.

Rick Baden, President

WisDOT APPROVAL in Accordance with Section 13.16 of this Agreement:

WISCONSIN DEPARTMENT OF TRANSPORTATION

Commencement Date

Donna Brown-Martin, Director
Bureau of Transit, Local Roads, Railroads and Harbors

“Watco Companies, L.L.C., parent company of Wisconsin & Southern Railroad, L.L.C., hereby joins this Agreement for the limited purpose of the representations and obligations specifically assumed by it herein.”

WATCO COMPANIES, L.L.C.

Date

Rick Baden, President

ATTACHMENT 1

Land Use Agreements

LAND USE AGREEMENT No. 0490-40-08(a)(1) by and between Commission and WisDOT, dated _____, 2014 and any amendments thereto pertaining to Madison to Cottage Grove/Reedsburg rail lines.

ATTACHMENT 2

Grant Agreements

GRANT AGREEMENT No. 0490-40-08(b)(1) By And Between Commission and WisDOT, dated _____, 2014, and any amendments thereto pertaining to the Madison to Cottage Grove/Reedsburg rail lines.

GRANT AGREEMENT for Improved Railroad Property Acquisition by and between the Commission and WisDOT dated _____, 2014 pertaining to the Fitchburg to Evansville rail line.

ATTACHMENT 3

Summary of Existing FRA Track Classification

(TO BE DEVELOPED FOLLOWING ACQUISITION)

APPENDIX A

RENTAL

ATTACHMENT 7
TO AGREEMENT NO. 0490-40-48(d)

ATTACHMENT 7

to

AGREEMENT NO. 0490-40-48(d)

WHEREAS, the Wisconsin River Rail Transit Commission ("Commission") has leased improved property on Land subject of the long-term operating agreement between Commission and the Wisconsin & Southern Railroad Company ("Operator"), such agreement dated September 1, 1997, for the purpose of preserving and encouraging continuance of rail service on the Rail Line; and

WHEREAS, the Wisconsin & Southern Railroad Company ("Operator") covenants, agrees and binds itself to pay to Commission a rental payment for use and operation of Land subject to the long-term operating agreement between Commission and Operator; and

WHEREAS, on February 16, 2001, the Commission and Operator fully executed Attachment 4 to Agreement No. 0490-40-48(d), thereby relieving Operator of rental payments for the year 2000 and 2001 and reinstating a rental payment of \$25,000 for the year 2002; and

WHEREAS, Attachment 4 to Agreement No. 0490-40-48(d) was made in effect until December 31, 2002, at which time the \$10.00 per loaded car rent payment would be reviewed and may be reduced or increased by mutual agreement of Commission and Operator; and

WHEREAS, Attachment 5 to Agreement No. 0490-40-48(d) was approved by the Commission on December 6, 2002, and remained in effect until December 31, 2004, as of which time the \$10.00 per loaded car rent payment could be reviewed and reduced or increased by mutual agreement of Commission and Operator; and

WHEREAS, Attachment 6 to Agreement No. 0490-40-48(d) was approved by the Commission on December 20, 2004, and remained in effect until December 31, 2007, as of which time the Commission determined to set the Operator's annual rental obligation for the years 2005, 2006 and 2007 at \$25,000 per year; and

WHEREAS, subsequent to 2007, the Commission increased the Operator's annual rental obligation to \$30,000 per year and later at \$45,000 per year and that obligation has continued through December 2013; and

NOW, THEREFORE, the parties hereto covenant and agree as follows:

1. The Commission and Operator have mutually agreed upon an annual rental obligation for the year 2014, set at the amount of \$48,150 per year. Such

agreement shall be in effect until December 31, 2014.

2. The Operator's rental payments shall be due and payable the first business day of each calendar quarter commencing January 1, 2014.
3. This Attachment shall be in effect until December 31, 2014, at which time the \$10.00 per loaded car rent payment will be reviewed and may be reduced or increased by mutual agreement of Commission and Operator.

IN WITNESS WHEREOF, the Wisconsin River Rail Transit Commission has authorized Karl Nilson, its Chairman, and Charles Anderson, its Secretary, to sign this Agreement this ____ day of _____ 2014.

WISCONSIN RIVER RAIL TRANSIT COMMISSION

BY: Karl Nilson
Karl Nilson, Chairman

ATTEST: Charles Anderson
Charles Anderson, Secretary

IN WITNESS WHEREOF, the Wisconsin and Southern Railroad, L.L.C. has authorized its _____ to sign this Agreement this 7 day of March 2014.

WISCONSIN AND SOUTHERN RAILROAD, L.L.C.

BY: Tom Fuch

APPROVED:

WISCONSIN DEPARTMENT OF TRANSPORTATION

BY: Frank Armstrong

GRANT AGREEMENT

Improved Railroad Property Acquisition

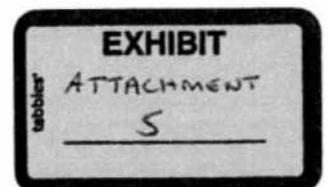
Grant Agreement

By and Between

the City of Fitchburg/Village of Oregon

and the

Wisconsin Department of Transportation



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This Agreement made and entered into this 27th day of January, 1999, by and between the City of Fitchburg/Village of Oregon (the Municipalities) and the Wisconsin Department of Transportation (WisDOT).

WITNESSETH

WHEREAS, the Union Pacific Railroad Company (UP) filed an exemption request with the Surface Transportation Board (STB) to abandon their 15-mile line of railroad in Rock, Green and Dane Counties known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville, WI to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company near Madison, WI (the Line);

WHEREAS, the Municipalities timely filed an offer of financial assistance (OFA) with the STB to purchase the Line to preserve railroad service and requested the STB establish the conditions and amount of compensation for the Line;

WHEREAS, the STB set the purchase price for the Line at \$978,270, consisting of \$591,426 for Improved Property and \$386,844 for the Land;

WHEREAS, the Municipalities applied to WisDOT for funds under the Freight Rail Preservation Program for the preservation of future freight Rail Service to the communities along the Line;

NOW, THEREFORE, the parties do hereby mutually agree that WisDOT shall provide financial assistance and the Municipalities shall accept financial assistance in accordance with Section 85.08(4m)(c), Wis. Stats., and with the following terms and conditions:

ARTICLE 1.0 - DEFINITIONS

1.1 As used in this Agreement:

"Improved Property" means the rails, ties, ballast, track material, bridges, switches, culverts, signals and all other non-land property of the Line.

"Land" means the real estate of the Line acquired by the Municipalities

"Line" means the 15-mile rail line in Rock, Green and Dane Counties known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville, WI to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company near Madison, WI.

"Municipalities" means the City of Fitchburg and the Village of Oregon

“Operator” means the entity providing rail service.

“Rail Service” means Common Carrier Freight Rail Service as the provision of rail cars, switching, line haul and other related rail transportation services by an operator in accordance with Surface Transportation Board regulations.

“STB” means the Surface Transportation Board

“UP” means the Union Pacific Railroad Company

“WisDOT” means the Wisconsin Department of Transportation

ARTICLE 2.0 - RAILROAD PRESERVATION GRANT

2.1 Project Description

- (a) The approved project consists of the acquisition of the Line by the Municipalities for railroad purposes.
- (b) The grant amount under this Agreement shall be repaid by the Municipalities to WisDOT in full within 15 days of notice given by WisDOT to the Municipalities upon failure of the Municipalities to comply with any one or more of the following requirements:
 - 1. Secure from UP within 10 days of closing, a quitclaim deed conveying the Line to the Municipalities for Land and Improved Property.
 - 2. Within 30 days of closing, file with the Wisconsin Department of Financial Institutions and in the Office of Register of Deeds for Rock, Green and Dane County all deeds, descriptions and any other such legal documents as may be required, including this fully executed Agreement.
 - 3. Secure from the UP a written mortgage release for the Line within 100 days of closing the sale.

2.2 Grant and Match for Acquisition

- (a) The STB set the purchase price for the Line at \$978,270, consisting of \$591,426 for track materials and \$386,844 for the Land. WisDOT grants to the Municipalities \$859,985 for the purpose of acquiring the Land and Improved Property of the Line in accordance with the terms and conditions of this Agreement.
- (b) The Municipalities shall provide the remaining \$118,285 for its required matching share for the Improved Property.

ARTICLE 3.0 - RAILROAD SERVICE OBLIGATIONS

3.1 Method of Operation

Municipalities shall enter into a contract or shall cause its lessee to enter into a contract with an Operator to provide Railroad Service over the Line acquired with the proceeds of the grant amount.

3.2 Rail Service Restoration

- (a) Municipalities shall, within ten years of the date of this Agreement, arrange for restoration of Rail Service on the Line.
- (b) Municipalities agrees that failure to provide Rail Service during the ten year period shall permit WisDOT to require Municipalities to file an application to fully abandon the Line in accordance with STB regulations. Following a final decision by STB, Municipalities shall transfer title to the property to WisDOT and cooperate with WisDOT in salvaging the Improved Property. Eighty percent (80%) of the net proceeds from salvaging the Improved Property shall be paid to WisDOT and twenty percent (20%) shall be paid to the Municipalities.
- (c) In the event that Rail Service is provided as defined in Sections 3.2 (a) and subsequently discontinued and not restored within a consecutive twenty-four (24) month period, Municipalities shall be in default and shall be subject to the provisions of 3.2 (b) to proceed with abandonment requirements and reimburse WisDOT.

ARTICLE 4.0 - PROPERTY MANAGEMENT

4.1 Maintenance

- (a) Municipalities or its lessee shall perform or cause to be performed all maintenance of the Line, including the railroad corridor, track structure, at grade road crossings (public or private), bridges, any buildings, and drainage ways and structures necessary for the safe operation of railroad service and to prevent deterioration of the property below a level of FRA Class II minimum track safety standards. At a minimum, the Line shall be subject to annual inspection by WisDOT. Any defects or discrepancies to a level of FRA Class II minimum track safety standards shall be identified in writing by WisDOT. Municipalities shall have thirty days to perform remedial action or be considered in default of this Agreement.
- (b) Municipalities or its lessee shall bear full responsibility for vegetation control on the Line.

4.2 Easements, Permits, Licenses and Leases

- (a) Municipalities or its lessee shall have the right and obligation to negotiate, re-negotiate, and administer any easements, permits, licenses, leases or other Agreements relating to lawful operation or use of any property on the Line and shall be entitled to any proceeds therefrom, of all aforementioned agreements in existence as of date of this Agreement.
- (b) Municipalities or its lessee may enter into or grant new permits or licenses allowing the use of all or part of subject Land or Improved Property after first obtaining approval of the proposed permit or license instrument from WisDOT, which approval shall not be unreasonably withheld. Municipalities or its lessee shall issue only permits or licenses, not easements. Any permit or license shall be cancelable upon 180 day or shorter period notice.
- (c) Municipalities or its lessee may issue permits or licenses (not easements) to utilities to use subject land. Permits to utilities shall, if issued, require compliance by the utility with state administrative rule TRANS 29. In complying with the administrative rule, the utility shall substitute Municipalities wherever the rule states Department.
- (d) Municipalities or its lessee shall regularly inspect for and remove when found, uses (encroachment or trespass) of the Land or Improved Property which are not authorized by a written instrument.

ARTICLE 5.0 - USE OF PROPERTY

5.1 Record of WisDOT's Lien

As contained in 2.1(b)(2), Municipalities shall cause this Agreement to be recorded in the Offices of the Register of Deeds for Rock, Green and Dane Counties.

5.2 Security for Borrowing

Municipalities shall not use the value of the Line acquired with the proceeds of this grant as security or collateral for any loan or other borrowing.

ARTICLE 6.0 - DEFAULT AND TERMINATION

6.1 Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one of more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in 9.12. 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.

6.2 Termination for Default

In the event of an substantial failure on the part of either part to perform its obligations under the terms of this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement, 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.

6.3 Removal of a Condition of Default

WisDOT or Municipalities shall have thirty (30) days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the defaulting party. Correction by Municipalities shall be completed and ready for WisDOT verification within the thirty (30) day period. Upon written petition by Municipalities, WisDOT may extend the period for removal of a default condition. Municipalities shall be notified of satisfactory correction in writing. Subject to diligent efforts being underway to remove the conditions causing default, approval of requests for an extension of time to permit curing of a default condition shall not be unreasonably withheld.

6.4 Contractual Obligations Upon Termination

Upon determination by WisDOT that remedial action has not removed the default condition, other than for Rail Service restoration as provided in 3.2, WisDOT shall provide written notice to Municipalities. Municipalities shall take steps to effect an orderly termination of service obligation upon the Line with appropriate regulatory agencies. Following regulatory agency approval terminating service obligations on the Line, Municipalities shall transfer title to the property to WisDOT and cooperate with WisDOT in salvaging the Improved Property. Eighty percent (80%) of the net proceeds from salvaging the Improved Property shall be paid to WisDOT and twenty percent (20%) shall be paid to the Municipalities.

6.5 Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: Acts of God, strikes or other labor troubles or other causes beyond the reasonable control of the parties.

ARTICLE 7.0 - REPRESENTATIONS AND WARRANTS

- 7.1 WisDOT WisDOT represents and warrants the following:
- (a) WisDOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
 - (b) To the best of WisDOT's knowledge, the execution of this Agreement will not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.
- 7.2 Municipalities Municipalities represent and warrant the following:
- (a) Municipalities have the power to execute and deliver this Agreement and to perform as contemplated hereby.
 - (b) The execution and delivery of this Agreement by Municipalities has been duly authorized by all necessary corporate actions.
 - (c) To the best of Municipalities' knowledge, Municipalities' entering into and performing under this Agreement does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

ARTICLE 8.0 - LIABILITY

Municipalities shall save and hold WisDOT, its officers, employees and agents 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 Municipalities or Municipalities' agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about a place where such operation, act or omission is being performed or in the vicinity thereof (1) during the period this Agreement between WisDOT and Municipalities is in effect, or (2) while any of the Municipalities' property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as a result of the performance of Municipalities' operations including, without limiting the applicability 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, to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of WisDOT, or any other persons or entities, and whether or not caused or claimed to have been caused

by the negligence, or other breach of duty by WisDOT, its officers, employees, agents, subcontractors or frequenters, or any other person or legal entity.

ARTICLE 9.0 - GENERAL PROVISIONS

9.1 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Municipalities' rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly without WisDOT's prior written consent.

9.2 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 permitted by law, provided that the intent of the parties can, in all material respects, be accomplished.

9.3 Captions

The headings of the several paragraphs contained herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

9.4 Amendment

No term or provision of this Agreement may be changed, waived, discharged, or terminated orally but only by an instrument in writing executed by all of the parties to this Agreement.

9.5 Environmental Protection

Municipalities, with respect to the subject Line shall not modify, construct, or improve subject Line unless such modifications are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations. All aspects of any modification to subject property shall be in compliance with all requirements of § 114 of the Clean Air Act, 42 U.S.C. 7414, and § 308 of the Federal Water Pollution Control Act, 33 U.S.C. § 1328, and all applicable regulations issued under such provisions.

9.6 Handicapped

No otherwise qualified handicapped individual in the United States, as defined in 29 U.S.C. § 706(6) and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of his handicap be excluded from participation in, denied the benefits of, or be subject to discrimination under operations by Municipalities on subject Line.

9.7 Prohibited Interest

(a) Neither the Municipalities nor any of its subcontractors shall knowingly enter into any contract, subcontract, or agreement in connection with this project or any property included or planned to be included in the approved project in which any official, officer or employee of the Municipalities during his or her tenure or for one (1) year thereafter has any interest, direct or indirect, except as permitted under s.946.13(2), Wis. Stats.

(b) Municipalities shall insert in all agreements entered into by it in connection with this project, the following provision:

“No official, officer or employee of the Municipalities during his or her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this contract or in the proceeds thereof except as permitted under s.946.13(2), Wis. Stats.”

(c) No member of or delegate to Congress or to the Wisconsin State Legislature shall share any benefit that may arise from this Agreement.

9.8 Non-Discrimination

In connection with this Agreement, Municipalities 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 s.51.05(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 or compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, Municipalities further agrees to take affirmative action to ensure equal employment opportunities. Municipalities agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause. Municipalities shall comply with the following laws, policies, regulations and pertinent directions as may be applicable:

*Title VI of the Civil Rights Act of 1964, Stat. 252, 42 U.S.C. 2000d et seq.

*Subchapter II of Chapter 111, Wis. Stats.

*Section 16.765, Wis. Stats.

*Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

*Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 653, et seq., and any other applicable occupational safety and health laws or regulations.

9.9 Officials

Officials authorized to execute amendments or modifications to this Agreement on Behalf of WisDOT are the Secretary of Transportation, the Deputy Secretary, or the Administrator of the Division of Infrastructure Development or their duly appointed designee. The officials authorized to execute amendments or modifications to this Agreement on behalf of Municipalities is the Mayor and City Clerk of the City of Fitchburg and the Village President and Clerk for the Village of Oregon.

9.10 Remedies Cumulative

Unless subject to Article 6.0, all rights and remedies of the parties herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law or equity.

9.11 Notice

Any notice required or permitted under this Agreement shall, at the election of the person given notice, be personally served or mailed by certified United States mail, return receipt request, postage prepaid, to the following addressed persons at the following addresses as the parties shall direct by notice pursuant to this section.

Ronald E. Adams, Director
Bureau of Railroads & Harbors
Wisconsin Department of Transportation
P. O. Box 7914
Madison, WI 53707-7914

Mark Viviano
~~Douglas W. Morrissette, Mayor~~
Karen Peters, City Clerk
City of Fitchburg
2377 S. Fish Hatchery Road
Madison, WI 53711

Michael Krembs, Village President
Jeannette H. Forman
Village of Oregon
117 Spring Street
Oregon, WI 53575

Any party may by like notice at any time or from time to time designate a different person and address to which notices shall be sent.

9.12 Entirety

This Agreement contains the entire agreement of the parties and supersedes any and all prior agreements or oral understandings among the parties.

ARTICLE 10 - PROPERTY INVESTMENT

10.1 Investment Basis of the Parties

The following shall establish the investment basis of the Parties:

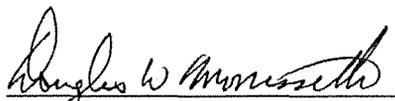
- (a) The investment basis of Municipalities in subject land is zero percent, zero dollars;
- (b) The investment basis of WisDOT in subject land is 100%, \$386,844;
- (c) The investment basis of Municipalities in subject improved property is 20%, \$118,285;
- (d) The investment basis of WisDOT in subject improved property is 80%, \$473,141.

10.2 Non-Investment Basis Expenses

Expenditures by Municipalities in compliance with Articles 4.0-Property Management, do not constitute an increase in the investment basis of Municipalities.

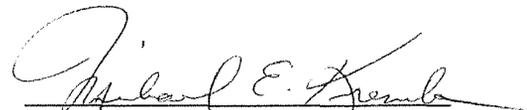
THE PARTIES hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first designated.

CITY OF FITCHBURG


Douglas W. Morrisette, Mayor


Karen Peters, City Clerk

VILLAGE OF OREGON


Michael Krembs, Village President


Jeannette H. Forman, Village Clerk

WISCONSIN DEPARTMENT OF TRANSPORTATION


Ronald E. Adams, Director
Bureau of Railroads and Harbors

0127991

GRANT AGREEMENT

Improved Railroad Property Acquisition

Grant Agreement

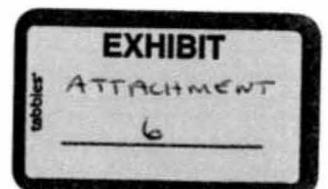
By and Between

Wisconsin River Rail Transit Commission

and

Wisconsin Department of Transportation

August 2014



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This Agreement made and entered into this 12th day of August, 2014 by and between the Wisconsin River Rail Transit Commission (Commission) and the Wisconsin Department of Transportation (WisDOT).

WITNESSETH

WHEREAS, the Union Pacific Railroad Company (UP) filed an exemption request with the Surface Transportation Board (STB) to abandon their 15-mile line of railroad in Rock, Green and Dane Counties known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville, WI to railroad milepost 134.0 near "MX", a crossing of the Wisconsin & Southern Railroad Company near Madison, WI (the Rail Line);

WHEREAS, the City of Fitchburg and Village of Oregon (Municipalities) timely filed an offer of financial assistance (OFA) with the STB to purchase the Rail Line to preserve railroad service and requested the STB establish the conditions and amount of compensation for the Rail Line;

WHEREAS, the STB set the purchase price for the Rail Line at \$978,270, consisting of \$591,426 for Improved Property and \$386,844 for the Land;

WHEREAS, the Municipalities applied to WisDOT for funds under the Freight Rail Preservation Program for the preservation of future freight Rail Service to the communities along the Rail Line;

WHEREAS, the Municipalities and WisDOT entered into a Grant Agreement for Improved Rail Property Acquisition dated January 27th, 1999 where in WisDOT provided a grant of \$386,844 for 100 percent of the purchase of the Land and a grant of \$473,141 for 80 percent of the purchase of the Improved Property for a total grant amount of \$859,985 and Commission provided the remaining \$118,285 for its required matching share for the Improved Property;

WHEREAS, Commission has acquired from Municipalities the Rail Line covered under the January 27, 1999 Grant Agreement between WisDOT and Municipalities;

WHEREAS, upon consummation of the transfer of the Rail Line from Municipalities to Commission, with the approval of WisDOT, the January 27, 1999 Grant Agreement is transferred to and assumed by Commission; and

WHEREAS, upon assumption of the January 27, 1999 Grant Agreement between WisDOT and Municipalities by Commission, that Grant Agreement is immediately superseded and replaced by this Grant Agreement between WisDOT and Commission.

NOW, THEREFORE, the parties do hereby mutually agree that WisDOT has provided financial assistance and the Commission has accepted financial assistance in accordance with Section 85.08(4m)(c), Wis. Stats., and with the following terms and conditions:

ARTICLE 1.0 - DEFINITIONS

1.1 As used in this Agreement:

“**Commission**” means the Wisconsin River Rail Transit Commission, a governmental entity established in accordance with Sec. 66.0301 Wis. Stats.

“**Improved Property**” means the rails, ties, ballast, track material, bridges, switches, culverts, signals and all other non-land property of the Rail Line.

“**Land**” means the real estate of the Rail Line acquired by the Commission.

“**Municipalities**” means the City of Fitchburg and the Village of Oregon

“**Operator**” means the entity providing rail service.

“**Rail Line**” means the 15-mile rail line in Rock, Green and Dane Counties known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville, WI to railroad milepost 134.0 near “MX”, a crossing of the Wisconsin & Southern Railroad Company near Madison, WI.

“**Rail Service**” means common carrier freight rail service as the provision of rail cars, switching, line haul and other related rail transportation services by an operator in accordance with Surface Transportation Board regulations.

“**STB**” means the Surface Transportation Board of the United States Department of Transportation and/or its successors, if any.

“**UP**” means the Union Pacific Railroad Company and/or its successors, if any.

“**WisDOT**” means the Wisconsin Department of Transportation.

“**WSOR**” means the Wisconsin & Southern Railroad, L.L.C, and/or its successors, if any.

ARTICLE 2.0 - RAILROAD PRESERVATION GRANT

2.1 Project Description

- (a) The approved project consists of the acquisition of the Rail Line by the Municipalities which has been subsequently transferred to Commission for railroad purposes.
- (b) The grant amount under this Agreement shall be repaid by the Commission to WisDOT in full within 15 days of notice given by WisDOT to the Commission upon failure of the Commission to comply with any one or more of the following requirements:
 - 1. Secure from Municipalities within 10 days of closing, a quitclaim deed conveying the Rail Line to the Commission for Land and Improved Property.
 - 2. Within 30 days of closing, file with the Wisconsin Department of Financial Institutions and in the Office of Register of Deeds for Rock, Green and Dane County all deeds, descriptions and any other such legal documents as may be required.

2.2 Grant and Match for Acquisition

- (a) The STB set the purchase price for the Rail Line at \$978,270, consisting of \$591,426 for track materials and \$386,844 for the Land. WisDOT agrees to the transfer to the Commission of the grants made to the Municipalities of \$859,985 for the purpose of acquiring the Land and Improved Property of the Rail Line in accordance with the terms and conditions of this Agreement.
- (b) The Commission agrees to assume the responsibility of Municipalities to provide the remaining \$118,285 for its required matching share for the Improved Property.

ARTICLE 3.0 - RAILROAD SERVICE OBLIGATIONS

3.1 Method of Operation

Commission shall work with an Operator to provide Railroad Service over the Rail Line acquired with the proceeds of the grant amount.

3.2 Rail Service Restoration

Commission agrees that failure to provide Rail Service and continue to provide Rail Service on the Rail Line by an Operator under STB authority shall permit WisDOT to require Commission, following a final abandonment decision by STB, to transfer title to the property to WisDOT and cooperate with WisDOT in salvaging the Improved Property. Eighty percent (80%) of the net proceeds from salvaging the Improved Property shall be paid to WisDOT and twenty percent (20%) shall be paid to the Municipalities.

ARTICLE 4.0 - PROPERTY MANAGEMENT

4.1 Maintenance

- (a) It is recognized that through years of inactivity since the Rail Line was acquired in 1999 the track condition has deteriorated and was no longer in FRA Class 2 condition. It is also noted that with a grant from WisDOT, the track is being rehabilitated back to FRA Class 2 condition, and will be at Class 2 FRA condition when service is restored. Commission shall perform or require Operator to perform all maintenance of the Rail Line, including the railroad corridor, track structure, at grade road crossings (public or private), bridges, any buildings, and drainage ways and structures necessary for the safe operation of railroad service and to prevent deterioration of the property below a level of FRA Class 2 minimum track safety standards. At a minimum, the Rail Line shall be subject to annual inspection by WisDOT. Any defects or discrepancies to a level of FRA Class 2 minimum track safety standards shall be identified in writing by WisDOT. Commission shall have thirty (30) days to perform remedial action or be considered in default of this Agreement.
- (b) Commission shall bear full responsibility for vegetation control on the Rail Line.

4.2 Easements, Permits, Licenses and Leases

- (a) Commission or Operator shall have the right and obligation to negotiate, re-negotiate, and administer any easements, permits, licenses, leases or other Agreements relating to lawful operation or use of any property on the Rail Line and shall be entitled to any proceeds there from, of all aforementioned agreements in existence as of date of this Agreement.
- (b) Commission or Operator may enter into or grant new permits or licenses allowing the use of all or part of subject Land or Improved Property after first obtaining approval of the proposed permit or license instrument from WisDOT, which approval shall not be unreasonably withheld. Commission or Operator shall issue only permits or licenses, not easements. Any permit or license shall be cancelable upon 180 day or shorter period notice.
- (c) Commission or Operator may issue permits or licenses (not easements) to utilities to use subject land. Permits to utilities shall, if issued, require compliance by the utility with state administrative rule TRANS 29. In complying with the administrative rule, the utility shall substitute Commission wherever the rule states Department.
- (d) Commission or Operator shall regularly inspect for and remove when found, uses (encroachment or trespass) of the Land or Improved Property which are not authorized by a written instrument.

ARTICLE 5.0 - USE OF PROPERTY

5.1 Record of WisDOT's Lien

As contained in 2.1(b)(2), Commission shall cause this Agreement to be recorded in the Offices of the Register of Deeds for Rock, Green and Dane Counties.

5.2 Security for Borrowing

Commission shall not use the value of the Rail Line acquired with the proceeds of this grant as security or collateral for any loan or other borrowing.

ARTICLE 6.0 - DEFAULT AND TERMINATION

6.1 Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one of more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in 9.12. 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.

6.2 Termination for Default

In the event of an substantial failure on the part of either part to perform its obligations under the terms of this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement, 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.

6.3 Removal of a Condition of Default

WisDOT or Commission shall have thirty (30) days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the defaulting party. Correction by Commission shall be completed and ready for WisDOT verification within the thirty (30) day period. Upon written petition by Commission, WisDOT may extend the period for removal of a default condition. Commission shall be notified of satisfactory correction in writing. Subject to diligent efforts being underway to remove the conditions causing default, approval of requests for

an extension of time to permit curing of a default condition shall not be unreasonably withheld.

6.4 Contractual Obligations Upon Termination

Upon determination by WisDOT that remedial action has not removed the default condition, WisDOT shall provide written notice to Commission. Commission shall take steps to transfer the Operating Agreement with Operator to WisDOT, or another entity delegated by WisDOT, or if service is to be discontinued, to cooperate with WisDOT to seek abandonment or adverse discontinuance of operating authority of the Rail Line before the STB and salvaging the Improved Property. Eighty percent (80%) of the net proceeds from salvaging the Improved Property shall be paid to WisDOT and twenty percent (20%) shall be paid to the Commission.

6.5 Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: Acts of God, strikes or other labor troubles or other causes beyond the reasonable control of the parties.

6.6 STB Authority for Discontinuance

Notwithstanding this section, no party may interfere with railroad operations, nor may Operator terminate service, until Operator obtains authority from the STB to discontinue service or WisDOT or the Commission obtains authority from the STB for the adverse discontinuance of Operator's service.

ARTICLE 7.0 - REPRESENTATIONS AND WARRANTIES

7.1 WisDOT WisDOT represents and warrants the following:

- (a) WisDOT has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) To the best of WisDOT's knowledge, the execution of this Agreement will not violate any statute, rule, regulation, order, writ, injunction, or decree of any court, administrative agency or governmental body.

7.2 Commission Commission represents and warrants the following:

- (a) Commission has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) The execution and delivery of this Agreement by Commission has been duly authorized by all necessary corporate actions.

- (c) To the best of Commission's knowledge, Commission's entering into and performing under this Agreement does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

ARTICLE 8.0 - LIABILITY

Commission shall save and hold WisDOT, its officers, employees and agents 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 Commission or Commission's agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about a place where such operation, act or omission is being performed or in the vicinity thereof (1) during the period this Agreement between WisDOT and Commission is in effect, or (2) while any of the Commission's property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as a result of the performance of Commission's operations including, without limiting the applicability 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, to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of WisDOT, or any other persons or entities, and whether or not caused or claimed to have been caused by the negligence, or other breach of duty by WisDOT, its officers, employees, agents, subcontractors or frequenters, or any other person or legal entity.

ARTICLE 9.0 - GENERAL PROVISIONS

9.1 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Commission's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly without WisDOT's prior written consent.

9.2 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 permitted by law, provided that the intent of the parties can, in all material respects, be accomplished.

9.3 Captions

The headings of the several paragraphs contained herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

9.4 Amendment

No term or provision of this Agreement may be changed, waived, discharged, or terminated orally but only by an instrument in writing executed by all of the parties to this Agreement.

9.5 Environmental Protection

- (a) Commission agrees and shall cause Operator to agree 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) Commission hereby certifies and shall cause Operator to certify 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) Commission stipulates and shall cause Operator to stipulate 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 Commission 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.

9.6 Disability.

Commission agrees that no otherwise qualified disabled individual in the United States, as defined in Section 705(9)(A) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall, solely by reason of disability, 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.

9.7 Prohibited Interest

- (a) Neither Commission 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 Commission's or Operator's operations, that constitutes a violation of Section 946.13, Wis. Stats.
- (b) The Commission 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 Wisconsin River Rail Transit Commission and Crawford, Dane, Grant, Iowa, Jefferson, Rock, Sauk, Walworth and Waukesha 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

9.8 Non-Discrimination

- (a) Commission shall and shall require Operator to agree that no otherwise qualified disabled individual in the United States, as defined in Section 705(9)(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.
- (b) Commission shall and shall require Operator to agree not to engage in any act of employment discrimination as specified in Sec. 111.322, Wis. Stats, against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, use or nonuse of lawful products off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.
- (c) Commission shall and shall require Operator to agree to comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its subcontractors by contractual agreement to also comply:

- a. Title VI of the Civil Rights Act of 1964, 42 USC 2000, et seq.
 - b. Subchapter II of Chapter 111, Wis. Stats.
 - c. Section 16.765, Wis. Stats. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- (d) Commission and Operator in their 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.

These provisions 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. Operator agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

9.9 Officials

Officials authorized to execute amendments or modifications to this Agreement on Behalf of WisDOT are the Secretary of Transportation, the Deputy Secretary, the Administrator of the Division of Infrastructure Development, the Director of the Bureau of Transit, Local Roads, Railroads and Harbors or their duly appointed designee. The officials authorized to execute amendments or modifications to this Agreement on behalf of Commission is the Chairperson and Secretary, or their duly appointed designees.

9.10 Remedies Cumulative

Unless subject to Article 6.0 or Section 9.11, all rights and remedies of the parties herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law or equity.

9.11 Statement of Parties' Intent

The Parties have intentionally structured this Agreement to comply with the principles enunciated in the State of Maine Decision, (State of Maine DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C. 2d 835 (1991)), issued by the former Interstate Commerce Commission, now the United States Surface Transportation Board, wherein a public entity was authorized to acquire a railroad line comprising part of the National Rail System threatened with abandonment, without commensurately acquiring the common carrier obligation. Any ambiguities in this agreement should be resolved and construed in favor of an outcome complying with the State of Maine requirements.

All terms and provision of this agreement are subject to the Operator's STB common carrier obligation and permanent exclusive Operating Easement.

Notwithstanding any provisions of this Agreement, Operator may not terminate service until it obtains authority from the STB to discontinue service or WisDOT or the Commission or WisDOT obtains authority from the STB for the adverse discontinuance of Operator's service.

9.11 Notice

Any notice required or permitted under this Agreement shall, at the election of the person given notice, be personally served or mailed by certified United States mail, return receipt request, postage prepaid, to the following addressed persons at the following addresses as the parties shall direct by notice pursuant to this section.

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

Chair
Wisconsin River Rail Transit Commission
20 South Court Street
P.O. Box 262
Platteville, WI 53818

Any party may by like notice at any time or from time to time designate a different person and address to which notices shall be sent.

9.12 Entirety

This Agreement contains the entire agreement of the parties and supersedes any and all prior agreements or oral understandings among the parties.

ARTICLE 10 - PROPERTY INVESTMENT

10.1 Investment Basis of the Parties

The following shall establish the investment basis of the Parties:

- (a) The investment basis of Commission in subject Land is zero percent, zero dollars;
- (b) The investment basis of WisDOT in subject land is 100%, \$386,844;
- (c) The investment basis of Commission in subject Improved Property is 20%, \$118,285;
- (d) The investment basis of WisDOT in subject improved property is 80%, \$473,141.

10.2 Non-Investment Basis Expenses

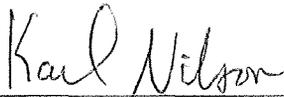
Expenditures by Commission in compliance with Articles 4.0-Property Management do not constitute an increase in the investment basis of Commission.

THE PARTIES hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first designated.

COMMISSION



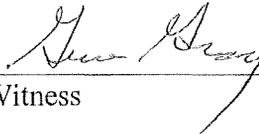
Alan Sweeney
Chair



Karl Nilson
Witness

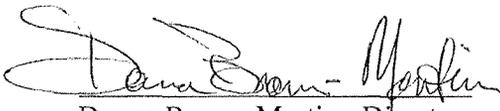


Charles Anderson
Secretary

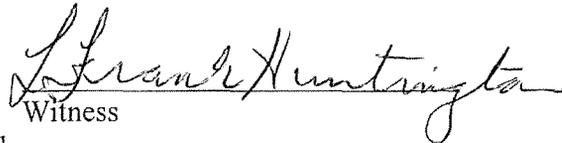


Witness

WISCONSIN DEPARTMENT OF TRANSPORTATION



Donna Brown-Martin,, Director
Bureau of Transit, Local Roads, Railroads and Harbors



Witness