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VICE PRESIDENT FOR
FINANCE AND ADMINISTRATION
WRITER'S DIRECT DIAL NUMBER

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11/11/87
30.00

November 4, 1987

ICC Washington, D.C.

BY HAND

Noreta R. McGee, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Ms. Mildred Lee, Room 2303

Dear Secretary McGee:

Enclosed for recordation under the provisions of 49 U.S.C. § 11303(a) and 49 C.F.R. Part 1177 are the original and one executed and acknowledged copy of an Amendment to Management Agreement, dated as of September 11, 1987, ("Amendment") between Interpool, Limited (the "Lessor") and Hillsdale County Railway Company, Inc. (the "Lessee") relating to railway equipment owned by The Connecticut Bank and Trust Company as Trustee and leased to Interpool, Limited. In August 1987, beneficial ownership of this equipment was transferred from Beneficial Leasing Group, Inc. to Westinghouse Credit Corporation. See Bill of Sale, Assignment and Assumption, dated as of August 5, 1987, ICC Recordation No. 10273-D.

1 5365
RECORDATION NO. _____ FILED 1425

NOV 4 1987 - 11 30 AM

INTERSTATE COMMERCE COMMISSION

1 5365/A
RECORDATION NO. _____ FILED 1425

NOV 4 1987 - 11 30 AM

INTERSTATE COMMERCE COMMISSION

Richard H. Capel
Charles H. Capel

Secretary McGee
November 4, 1987
Page 2

To the best of our knowledge and belief, the primary document to which the enclosed Amendment is connected, i.e., the Management Agreement, dated August 1, 1980, between Railpool, a division of Interpool LTD, and Hillsdale County Railway Company, Inc. ("Agreement"), has not been recorded with the ICC. That Management Agreement, however, is attached to the enclosed Amendment as Exhibit 1.

We request that the enclosed Amendment be cross-indexed.

The names and addresses of the parties to the Amendment are as follows:

Lessor: Interpool, Limited
630 Third Avenue
New York, New York 10017

Lessee: Hillsdale County Railway Company, Inc.
50 Monroe Street
Hillsdale, Michigan 49242

A description of the equipment covered by the Amendment is as follows: One hundred fifteen (115) 50' 6" 70-ton boxcars, numbered HCRC 3001 through 3016, both inclusive, and HCRC 3018 through 3200, both inclusive, excluding those cars identified in Section 3 to the enclosed Amendment.

A filing fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

L. John Osborn, Esq.
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
1660 L Street, N.W., Suite 1000
Washington, D.C. 20036

A brief summary of the enclosed document is as follows: The Amendment dated as of September 11, 1987, (1) ratifies and reaffirms the past actions of the Lessor and the Lessee in performance of their respective duties and obligations under the Management Agreement dated August 1, 1980, ("Agreement"); (2) renews and extends the effectiveness of the Agreement until terminated upon written agreement of the Lessor and Lessee; (3) amends the Agreement to omit 84 cars as specified in Section 3 of the Amendment; (4) preserves the security interest of Northern Life Insurance Company and Northwest National Life Insurance

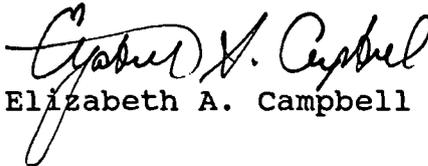
Secretary McGee
November 4, 1987
Page 3

Company in the cars covered by the Agreement; and (5) preserves the ownership interest of The Connecticut Bank and Trust Company in the cars covered by the Agreement.

The undersigned was I.C.C. counsel for the recent transfer of the beneficial interest in the cars covered by the enclosed Amendment, as referred to above, and, as such, has knowledge of the matters set forth herein.

If you have any questions or if we may otherwise be of assistance, please do not hesitate to contact me.

Sincerely,



Elizabeth A. Campbell

EAC:KS
Enclosures

1007 cars

198

1 5365
RECORDATION NO. _____ FROM 1980

MANAGEMENT AGREEMENT

NOV 4 1987 - 11 32 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT made and entered into this 1st day of August, 1980 by and between RAILPOOL, a division of Interpool LTD, a Bahamian Corporation, which Division's principal office is located at 208 So. LaSalle Street, Chicago, Illinois 60604 (hereinafter referred to as "Lessor"), and HILLSDALE COUNTY RAILWAY COMPANY, INC., a corporation, whose principal office is located at 50 Monroe Street, Hillsdale, Michigan 49242 (hereinafter referred to as "Lessee" or "Manager", and such terms may be used interchangeably); it being understood that this is a Management Agreement.

W I T N E S S E T H:

1. Covenant of Lease. Lessor agrees to present to Lessee, and Lessee agrees to accept and use, upon the terms and conditions herein set forth, the railroad rolling stock identified in Schedule A, which by this reference is made a part hereof as if expressly set forth, (hereinafter referred to as the "Cars"). In the event any car subject to this Agreement is damaged beyond repair or destroyed, Lessor, at its sole option, may substitute a car of similar type and construction, subject to the terms of this Agreement; provided, however, that this provision regarding substitution shall not alter, or in any manner affect the duties and obligations of the parties hereto to maintain and insure the Cars.

2. Mutual Consideration and Trust. Lessor shall receive all of the car revenues as defined herein, less any fees or expenses as specifically authorized under this Agreement; Lessee shall hold any funds due to Lessor, in trust for Lessor, as hereinafter provided, and shall be entitled to use the Cars only within the scope of this Agreement.

3. Term. This Agreement shall commence on the date of mutual inspection by Lessor and Lessee, and acceptance by Lessee, and shall terminate five years after such date, unless mutually extended in writing by the parties.

This Agreement gives no equity to Lessee, nor any entitlement to extend or renew the term of this Lease without consent of Lessor. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall not be obligated to pay any amounts to Lessor except those monies earned by the Cars subject to this Agreement.

It is acknowledged by the parties hereto that Lessee is a subsidized railroad at the time of the execution of this Agreement. In the event that the Lessee's status as a subsidized railroad is terminated during the term hereof and in the further event that Lessee is unable to continue operations then either party to this Agreement shall have the right to serve written notice upon the other party hereto of termination of this Agreement. Thirty (30) days after the delivery of such notice, the lease and all terms and conditions contained herein shall terminate, provided, however, that until Lessor's Cars are placed with another railroad and/or manager and payment of all revenues is made to such new railroad and/or manager, Lessee shall continue to collect and hold all funds due to Lessor in trust as required under this Agreement. Lessee agrees to provide Lessor with written notice within five (5) days of any changes in Lessee's status as a subsidized railroad.

4. Railroad Markings. The parties agree that on or after the date of the execution of this Agreement, Lessor shall take immediate action to insure that the Cars shall be lettered with the railroad markings of Lessee. The cost of application of Lessee railroad markings shall be borne by Lessor. Such name and insignia shall comply with all applicable regulations.

5. Record Keeping. Lessee shall, during the term of this Agreement, prepare all documents and filings relating to the registration, maintenance, and record keeping functions normally performed by a railroad with respect to railroad rolling stock of the type subject to this Agreement. Such matters shall include, but are not limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Cars, and (ii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Cars.

Each Car identified hereunder shall be registered by Lessee at Lessor's cost, in the Official Railway Equipment Register and the Universal Maching Language Equipment Register.

and Interpool Ltd. as co-insured in amounts and against risks of not less than \$1,000,000 per occurrence. Lessee shall procure adequate documentation of having such insurance and provide lessor with this documentation or copy thereof. Lessee shall advise Lessor and Interpool Ltd. of any changes in any such insurance no less than (30) thirty days before such changes are made. Lessor may at its option, waive the need for casualty insurance and execute a hold harmless agreement with Lessee.

7. Restriction of Use. Lessee covenants not to permit use of any Car for the transportation and handling of commodities for which the car was not intended.

8. Maintenance. Lessee shall maintain the Cars, and provide for their repair at the expense of Lessor, according to the "Code of Rules Governing the Conditions and Repairs to Freight and Passenger cars for the Interchange of Traffic" adopted by the AAR, Operation and Maintenance Department, Mechanical Division, now in effect and as hereinafter modified, or such higher standard of maintenance as authorized or instructed by Lessor in writing. Title to any alterations, improvements, or additions shall be and remain with the Lessor.

Lessor shall have the right to inspect the Cars at such reasonable times and places as it shall desire, and may order, at its expense, all alterations, modifications or replacements of parts, as it shall deem necessary to maintain the Cars in good operating condition throughout the term of the Agreement of such Cars. Such alterations, modifications or replacements of parts shall be performed by such persons as Lessor may select from time to time. Lessee may direct all such billing to Lessor.

9. Taxes and Assessments. Lessor agrees to reimburse Lessee for all personal property and any other such taxes or assessments paid attributable to its Cars. Should Lessee obtain a waiver or abatement of taxes and/or assessments, credits for such shall accrue first to any leases entered into by Lessee prior to the effective date of this agreement.

10. Car Revenues Defined. The term "car revenues" as used herein means the sum of monies collected for each car consisting of car hire earnings (basic per diem, incentive per diem and mileage fees) according to schedules adopted by the ICC or AAR and any other fees such as demurrage.

11. Car Hire Relief for Other Railroads. Car hire relief may be granted other railroads only upon the prior approval of Lessor, the decision to grant such relief shall be solely at Lessor's option.

12. Payment to Lessor. It is agreed that all car revenues received by the Lessee shall be held by the Lessee, in trust for the account of the Lessor, less that amount of disbursements, which may be made by Lessee, for the following: a) Lessee's management fee as permitted under Article 21 of this agreement; b) Article 6 (with respect to insurance); c) Article 8 (with respect to maintenance); d) Article 9 (with respect to taxes); and e) Article 11 (with respect to car hire relief as authorized by Lessor). Any other disbursements shall be only upon authorization by Lessor. New revenues due herein to Lessor shall be paid to Lessor by Lessee on a monthly basis. Such remittance shall be made to Lessor on the last day of each month.

13. Use of Cars. The parties acknowledge that the Cars as identified in the Schedule A attached to this Agreement will be placed in assigned use with other railroads and car users at or shortly after the execution of this Agreement. It is agreed that the Lessee will regularly review the earning performance of the Cars in the various assigned uses and make recommendations to the Lessor concerning this performance and alternative uses of the Cars which might increase car revenues, provided, however, that the Lessee shall not authorize or allow the change in assignment or in use of any Car or groups of Cars without the prior written consent of the Lessor having first been obtained. Should cars be returned to Lessee, they will be free of any rental charges; Lessee, however, will use its best efforts to move the cars to the new assignment point; and freight charges therein would be for the account of Lessor.

14. Right to Reposition Cars. Lessor shall have the option to reposition any Car subject to this Agreement or to enter into a new agreement with respect to any Car if said Car is on Lessee's track for more than thirty (30) continuous days. Any such option must be exercised within ninety (90) days from the date such option arises and any cost incurred as a result of Lessor exercising its option to reposition such Cars shall be paid by Lessor.

Should the Lessor request its Car(s) to be repositioned to Lessee's home track, any cost so incurred shall be paid by Lessor. Lessor's failure to exercise such options shall not constitute a waiver of its rights to do so in the future.

15. Default.

a. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required hereunder to be paid by Lessee within ten (10) days after notice thereof.

(ii) The default by Lessee under any other term, covenant, or conditions of this Agreement which is not cured within ten (10) days after notice thereof from Lessor.

(iii) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing,

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) In the event Lessor's Car is on the tracks of the Lessee for a period in excess of forty-five (45) consecutive days within the aforesaid twelve (12) month period, there shall be a default pertaining to that Car and Lessor may, at its option, terminate the lease as to such Car upon ten (10) days written notice to Lessee.

(vii) Lessee's failure to comply with any governmental regulation pertaining to the operation of the Cars, subject to this lease, after sixty (60) days notice from a government agency, unless the Lessee contests in good faith the application of the regulation itself.

b. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may:

(i) Proceed by appropriate court action to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear all costs and expenses, including reasonable attorney's fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may by its agents enter upon any premises where the Cars (or Car) may be located and take possession of them (or it) and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall nevertheless have a right to recover from Lessee any and all funds due but not yet paid to Lessor under the terms of this Agreement, and Lessee shall still maintain all funds of Lessor as trust funds as required hereunder.

16. Substitution of Equipment.

a. In the event any Car shall be (i) so damaged or in need of repair that Lessor deems it uneconomical to repair the same, or (ii) damaged beyond repair, or (iii) destroyed, or (iv) lost, Lessor shall have the right, under its covenant to maintain said Car, to substitute another similar Car of equal or greater value therefor, provided, however, that Lessor shall not be obligated to make the substitution of any Car.

b. Should Lessor elect not to replace said damaged, destroyed or lost Car, then, provided that Lessee is not in default of any provisions of this Agreement, this Agreement shall terminate as to such Car but shall continue as to the remaining Cars. In the event that this Agreement is terminated as provided under this Paragraph, Lessee shall continue to hold in trust all funds due to Lessor with respect to the damaged, destroyed or lost Car as required hereunder.

17. Prohibition to Use Cars as Collateral. Lessee shall not utilize the Cars as collateral nor perform or permit any lien or encumbrance of whatever nature to be imposed on any of the Cars; nor shall Lessee take or permit any action to be taken which would or could in any manner affect the clear title or interest of Lessor in said Cars except for liens, if any arising from the failure of the Lessor to pay for maintenance expenses, taxes, insurance, and approved capital improvements.

18. Assignments by Lessee. Lessee shall not assign or transfer any interest in this Agreement without the prior written consent of the Lessor.

19. Lessor's Assignment. All rights of the Lessor hereunder, or any part thereof, may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without consent of or notice to Lessee. In the event of an Assignment, said successor in interest shall succeed to rights of Lessor hereunder.

20. Manager Appointment. The Lessor hereby appoints Hillsdale County Railway Company Inc., as the Manager of the Cars. However, when the cars are assigned to another railroad, that railroad shall become the pool manager and must register the assigned cars with AAR as appropriate.

21. Management Fees. A management fee will be paid to Hillsdale County Railway Company, Inc. each month at the rate of _____ in service per month, payable monthly. This fee may be adjusted annually by mutual agreement.

22. Collections. Collection of revenue derived from the earnings of the Cars shall be performed by Lessee, and funds due to Lessor shall be paid on a monthly basis, Lessor will be obligated to reimburse Lessee for any per diem reclaims for which Lessee may be charged by other railroads.

23. Powers, Duties and Responsibilities of Manager.

The duties of the Manager shall include:

a. Managing the Cars and arranging for maximizing utilization and car hire revenues derived from the utilization of the Cars in the manner as provided in this Agreement.

b. Arranging for maintenance of the Cars to maintain their good quality at favorable prices.

c. Providing Lessor with an annual statement of the earnings of the Cars and all pertinent tax and accounting information.

d. Advising the Lessor of any pertinent changes, adverse or beneficial, both physical and legal in nature, which could affect the interest of the Lessor in any Car.

e. Performing all necessary administrative acts to ensure the proper utilization of said Cars and the protection of the Lessor's interest therein in a manner consistent with the terms of this Agreement.

f. Hiring any company or firm to assist it in providing accounting services and legal services of a collection nature without the prior approval of the Lessor, at no cost to the Lessor, unless such services shall be performed at the request of Lessor.

g. Distributing to Lessor all net earnings, receipts, income and revenue received by the Manager and resulting from the use of said Cars promptly, on a monthly basis.

24. Return of Cars. Upon termination of this Agreement, Cars under this Agreement shall be returned to such delivery point as Lessor shall direct. Costs of delivery, remarking and restenciling, all other costs of termination attendant thereto, shall be borne by Lessor.

25. Indemnity. Lessee shall indemnify and save harmless Lessor from any and all claims, causes of action, suits, or other controversies arising out of Lessee's use or operation of the equipment herein, except for negligence of Lessor.

26. Additional Services. Should the Lessor request the Manager to perform additional services not explicitly stated herein, Manager may, at its option, perform such services on mutually acceptable terms.

27. Accounting and Records. Manager shall cause appropriate books and records to be maintained on behalf of the Lessor relating to the management of the Cars covered by this Agreement. The Manager shall provide written monthly reports of total car revenues and expenses as specified in this Agreement in connection with the Cars.

28. Notices. Notices may be given in writing addressed to the recipient. The address of the Lessor and Manager is:

HILLSDALE COUNTY RAILWAY

COMPANY, INC.

50 Monroe Street

Hillsdale, Michigan 49242

Attention: President

and the address of the owner is:

RAILPOOL

208 So. LaSalle Street

Chicago, Illinois 60604

Attention: Sheldon Landy, Vice President

29. Miscellaneous. This Agreement is binding upon and for the benefit of the respective parties and to the extent permitted herein, to the assignees of the Lessor. In the event an action is taken to enforce the terms hereof, the prevailing party shall be entitled to recover all expenses of such action, including attorney's fees therefor.

30. Arbitration. In the event that a dispute arises between the parties to this Agreement with regard to the interpretation of this Agreement, it shall be settled by binding arbitration in accord with the laws of the State of Michigan. The nonprevailing party must pay the expense of arbitration. Each party shall designate one (1) arbitrator and the two (2) arbitrators shall designate a third (3rd). The panel must be selected within three (3) weeks of notice of either party requesting arbitration; should the third (3rd) arbitrator not be picked within three (3) weeks of original notice, the American Arbitration Association shall select the third member. The Rules of the American Arbitration Association shall apply.

31. Headings. The Section headings in this Agreement are for convenience of reference only and shall not be considered to be a part of this Agreement.

32. Invalidity of a Provision. This Agreement reflects the entire understanding of the parties. If any provision hereof is deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality, and enforceability of this Agreement in other respects and in other jurisdictions shall not be in any way impaired or affected hereby.

33. Amendments and Representations. This Agreement may be amended by mutual agreement in writing. There are no representations or agreements, oral or in writing, except those which is set forth in this Agreement.

34. Governing Laws. This Agreement is to be interpreted under the laws of the State of Michigan, the Interstate Commerce Act, and the rules and regulations of the Interstate Commerce Commission, and the Association of American Railroads.

35. No Obligation On State. Neither the Federal government nor the States of Michigan or Indiana shall incur any obligation or liability for any payment which may be due to Lessor under this Agreement.

and appendices A and B are attached herewith and
36. Exhibit A ~~is~~ made part of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, for themselves, their successors or assigns hereby affix their hands and seals on the date and year first above written.

LESSOR:

RAILPOOL

Lorraine Brady

By: Sheldon Jandy

LESSEE/MANAGER:

HILLSDALE COUNTY RAILWAY COMPANY, INC.

Judith Sawyer

By: John H. Martin

MANAGEMENT AGREEMENT

SCHEDULE A

No. of Cars: 199

Description: 50'6"; 70 Ton Box Cars, with Single Sliding Doors

Numbers: HCRC 3001 - HCRC 3016
HCRC 3018 - HCRC 3200

Final

April, 1977

**APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission* finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated, and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

* The Civil Rights Commission referred to is the Michigan Civil Rights Commission.

APPENDIX B

AFFIRMATIVE ACTION

Section 1. Definitions

As used in this Appendix:

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210)

(b) "Administrator" means the Federal Railroad Administrator or his delegate.

(c) "Affirmative action program" means the program described in Sections 265.9 through 265.15 of 49 CFR Part 265.

(d) "Agency" means the Federal Railroad Administration.

(e) "Contractor" means a prime contractor or a sub-contractor who will be paid in whole or in part directly or indirectly from financial assistance under the Rail Acts.

(f) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.

(g) "Rail Acts" means the Act and the provisions of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act (45 U.S.C. 501 et seq.) amended by the Act.

(h) "Regulations" means the Regulations relative to non-discrimination in Federally-assisted programs of the DOT Title 49, CFR, Part 21, as they may be amended from time to time.

(i) "Subsidizer" means Michigan State Transportation Commission through the Michigan Department of Transportation.

Section 2. Affirmative Action Requirements

In connection with the performance of rail freight services under this Agreement, the Contractor agrees as follows:

(a) The Contractor shall comply with the Regulations, which are herein incorporated by reference and made a part of this Agreement.

(b) The Contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of its obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Subsidizer or the Agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Subsidizer or to the Agency, whichever is appropriate, and shall set forth what efforts it has made to obtain the information.

(e) In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Subsidizer shall impose such contract sanctions as it or the Agency may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the Contractor under this Agreement until it complies; and/or

(2) Cancellation, termination or suspension of this Agreement in whole or in part.

(f) The Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurement of materials and lease of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Subsidizer or the Agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Subsidizer to enter into such litigation to protect the interests of the Subsidizer and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(g) The Contractor shall comply with all applicable provisions of the Rail Acts, Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49 (u), Public Law No. 94-210 (90 Stat. 31), and Section 905 of the Act.

(h) As a condition to receiving Federal financial assistance under the Act or the provisions of the Rail Acts, the Contractor hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through such assistance.

(i) The following specific discriminatory actions are prohibited:

(1) The Contractor under any projects, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to their receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford them an opportunity to do so which is different from that afforded others under such project, program or activity.

(2) The Contractor in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program, or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity with respect to individuals of a particular race, color, national origin or sex.

(3) In determining the site or location of facilities, the Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program, or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(4) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the agency's representative setting forth the provisions of these non-discrimination clauses. The Contractor understands and agrees that it shall not be an excuse for failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent the Contractor from implementing its affirmative action program.

(5) The Contractor shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(j) As used in these clauses, the services, financial aid, or other benefits provided under a project, program or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(k) The enumeration of specific forms of prohibited discrimination does not limit the generality of prohibition in paragraph (h) (1) of this Section.

(l) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or subject them to discrimination under any project, program or activity to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(m) The Contractor agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (h) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(n) The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract without regard to race, color, national origin or sex.

(o) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or worker's representative of the Contractor's commitments under Section 903 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(p) The Contractor shall comply with all provisions of Section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act and with the rules, regulations, and orders issued under such acts.

(q) The Contractor shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (p) hereof.

(r) The Contractor shall furnish such relevant procurement information not included in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the Contractor, the Minority Business Resource Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(s) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement, or with the provisions of Section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this Agreement will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in Section 906 of the Act, or as otherwise provided by law.

(t) The Contractor shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The Contractor shall insure that the clauses required by Section 4 of this Appendix implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(u) The Contractor agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to Section 265.17 of Title 49 CFR.

(v) The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(w) The Contractor shall include the preceding provisions of paragraphs (h) through (v) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to project, programs or activities financed in whole or in part under the Rail Acts. The Contractor shall cause each such contractor or vendor to include the provisions of paragraphs (h) through (v) in every subcontract. The Contractor will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation.

Section 3. Affirmative Action Programs

(a) General. A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

(b) Employment practices

(1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60-2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five (5) years of such project, program or activity or the period during which such project, program, or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program, or activity financed in whole or in part through financial assistance under the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) Contracts

(1) The affirmative action program shall include details of proposed contracts in excess of Ten Thousand Dollars (\$10,000.00) to be awarded in connection with projects, programs, and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceeding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority business shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail the applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with the applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) Successor organizations. Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organizations.

Section 4. Equal Opportunity Clause

During the performance of this Agreement the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Subsidizer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Subsidizer may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Subsidizer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.