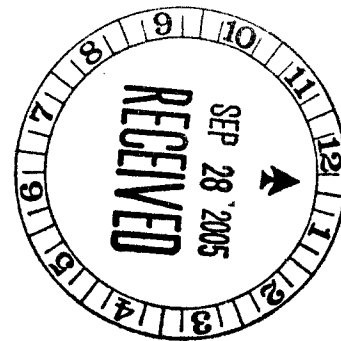


FILED

NOV - 4 2005

WISCONSIN DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

215098



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34764

WISCONSIN DEPARTMENT OF TRANSPORTATION
PURCHASE OF REAL ESTATE AND IMPROVEMENTS
FROM
WISCONSIN & SOUTHERN RAILROAD CO.
IN DANE AND JEFFERSON COUNTIES, WI

ENTERED
Office of Proceedings

NOV - 4 2005

Part of
Public Record

PETITION FOR DECLARATORY ORDER
OF THE
WISCONSIN DEPARTMENT OF TRANSPORTATION

INTRODUCTION

The Wisconsin Department of Transportation (WisDOT) is a governmental entity. WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 U.S.C. Appx. § 1654(a) (formerly § 1654(j)), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats.

In 1998, Wisconsin & Southern Railroad Co. (WSOR) was granted authority to lease and operate approximately 32.5 miles of rail line then owned by Soo Line Railroad Company d/b/a/ Canadian Pacific Railway (CPR). See Wisconsin & Southern Railroad Co.- Lease and Operation Exemption - Soo Line Railroad Company D/B/A Canadian Pacific Railway, STB Finance Docket No. 33571 (STB served May 27, 1998). In 2003, WSOR filed a notice of exemption and acquisition exemption to acquire from the Soo Line Railroad Company d/b/a Canadian Pacific Railway approximately 32.5 miles of rail

line known as the Waterloo Spur, extending between milepost 132.11 at Watertown, WI, and milepost 164.61 in Madison, WI. See Wisconsin & Southern Railroad Co. - Acquisition Exemption - Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No 34285 (STB served January 17, 2003).

On November 7, 2003, WSOR granted WisDOT an option to purchase this rail line and improvements but not the common carrier authority to provide freight rail service. This option will not be exercised without a ruling from the Board that it does not have jurisdiction over the proposed acquisition.

WisDOT submits to the Surface Transportation Board ("STB") a Petition for Declaratory Order (the "Petition") requesting an order or other appropriate written notification stating that the STB does not have jurisdiction over the transaction set forth in the Transaction Agreement Documents, as defined in this Petition. In support of its Petition, WisDOT submits (1) a deed from the WSOR to WisDOT, dated August 10, 2005 (the "Deed"), (2) an easement from WisDOT to WSOR (the "Easement") (the Deed and Easement collectively attached hereto as Exhibit 1), (3) a grant agreement between WisDOT and the Wisconsin River Rail Transit Commission ("WRRTC"¹) (the "Grant Agreement") attached hereto as Exhibit 2), and (4) an operating agreement between

¹ WRRTC is a municipal entity and consortium of interested Wisconsin counties, created under the provisions Wisconsin Statutes Section 66.301, which was established, in part, to oversee the preservation of rail service on certain rail lines acquired by the State of Wisconsin. WRRTC was created to undertake rail preservation activities for the State, because the State of Wisconsin was, prior to an April 1992 amendment, constitutionally prohibited from the acquisition, improvement or construction of railways or other railway facilities (or to be a party to any such works) and from borrowing money to invest in rail line improvements and rehabilitation. See, Article VIII, Section 10, Wisconsin Constitution.

WSOR and the Wisconsin River Rail Transit Commission (the "Operating Agreement", attached hereto as Exhibit 3) (the Deed, Easement, Grant Agreement and Operating Agreement collectively as the "Transaction Agreement Documents").

THE SUBJECT TRANSACTION

Pursuant to the terms and conditions of the Transaction Agreement Documents, WisDOT shall acquire certain specified real estate and improvements thereon from WSOR, as set forth in the Deed's legal description (the "Real Estate"), without acquiring the common carrier authority on the segment of operating railroad (the "Line") running upon the Real Estate. WisDOT has 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) ("Maine DOT") and Brotherhood of Maintenance of Way Employees, et al. v. CP Rail Systems, et al., STB Finance Docket No. 32835 (1997) ("BMWE"). Specifically, WisDOT has structured the transaction to ensure that WisDOT does not assume any common carrier liability by ensuring that the railroad company conveying the Real Estate to WisDOT shall continue to operate the railroad on the Line pursuant to a perpetual easement from WisDOT to WSOR and existing operating agreement between WSOR and WRRTC. As a result, it is WisDOT's opinion that the conveyance of the Real Estate is not the acquisition of a "railroad line" within the intent and meaning of 49 USCS § 10901, and that the transaction is therefore outside the STB's jurisdiction.

WisDOT currently has an option with WSOR to purchase the Real Estate (the "Option"). The Option is perpetual. The Option includes the ability to acquire both real

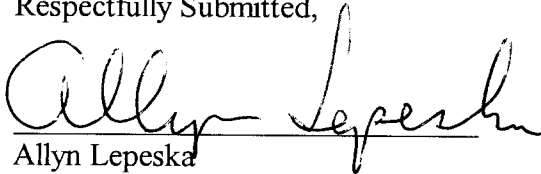
estate and any improvements thereon, including the actual tracks themselves, but does not include acquisition of the common carrier authority to provide rail service on the Line. WisDOT does not intend to record the Transaction Agreement Documents unless and until it receives the requested Declaratory Order from STB. Pursuant to the terms on the face of the Deed, if STB determines that it does have jurisdiction over the transaction, WisDOT shall not record the Transaction Agreement Documents and WisDOT's Option shall be deemed unsatisfied.

WisDOT 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 State of Wisconsin were acquired after they had been authorized for abandonment by the Interstate Commerce Commission and/or Surface Transportation Board. Neither WisDOT nor WRRTC provides, nor is either equipped to provide, common carrier, "for-hire" rail freight service. It has always been WisDOT's and WRRTC's intention to preserve service over light density or abandoned rail lines without incurring a common carrier obligation, and these parties have attempted to fashion their previous rail line transactions to avoid the imposition of this obligation. In the instant case, WSOR is retaining the perpetual easement to operate the Line subject to the terms and conditions of the Operating Agreement so that any such common carrier liabilities shall remain with WSOR after the exercise of WisDOT's Option and the recording of the Transaction Agreement Documents.

CONCLUSION

WisDOT, by following the mandates of Maine DOT and BMW, hereby seeks to avoid the imposition of common carrier liability in this case and respectfully requests the STB to issue a Declaratory Order or other appropriate written notification stating that STB does not have jurisdiction over the subject transaction.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Allyn Lepeska", written over a horizontal line.

Allyn Lepeska
Assistant General Counsel
Wisconsin Department of Transportation
Office of General Counsel
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, Wisconsin 53707-7910
(608) 266-0253

9/26/05

Wisconsin & Southern Railroad Co. (the "Grantor"), hereby **quit-claims to**
The State of Wisconsin, Department of Transportation (the "Grantee"), the
following tract of land in Dane and Jefferson Counties, State of Wisconsin:

All those lands known as the Wisconsin & Southern Railroad Co. Watertown to
Madison Rail corridor in the Counties of Dane and Jefferson, Wisconsin,
described as all the railroad property (land and improved property) located
between railroad milepost 132.11 in the City of Watertown and railroad milepost
164.61 in the City of Madison, a distance of 32.5 miles.

The said property is more particularly described on the Attached Exhibit A (the
"Corridor").

RETURN TO

Allyn Lepeska, WisDOT
P.O. Box 7910
Madison, WI 53707

Grantor hereby reserves a rail freight easement in the Corridor, as set forth
in the attached Exhibit B and made a part hereof by this reference (the
"Easement").

PINs: 60-0709-173-0098-4
60-0709-184-1419-8

Any railroad common carrier obligations and liabilities related to operation of a railroad line over the Corridor described
herein and in the Easement remain the property, obligation and liability of Grantor, its successors, trustees, administrators
and assigns.

Grantee may, in the sole exercise of Grantee's discretion, decline to accept or record this deed pending a determination by
the United States Surface Transportation Board ("STB") as to whether STB has jurisdiction to approve or exempt this
conveyance or whether acceptance of the deed imposes any common carrier obligations and/or liability upon Grantee. In
the event the STB decides that it has jurisdiction to approve or exempt the conveyance or that acceptance of the deed
would result in common carrier obligations and/or liability to Grantee, Grantee may, in the sole exercise of Grantee's
discretion, decline to accept and record this deed, and in such case, the option to purchase the Corridor granted by Grantor
to Grantee, and recorded December 3, 2003, in Volume 59 of RRM, pages 156-172, official records of the Wisconsin
Department of Financial Institutions, shall remain in effect and be considered unsatisfied.

THIS CONVEYANCE IS EXEMPT FROM THE TRANSFER FEE PURSUANT TO SEC. 77.25

In Witness Whereof, the said grantor has hereunto set its hand and seal this 10th day of Aug 2005.

Wisconsin & Southern Railroad Co.

By: William Gardner
William Gardner, President

By: Timothy J. Karp
Timothy J. Karp, Assistant Secretary

State of Wisconsin, SS.
Dane County.

On the above date, this instrument was acknowledged before me by William Gardner,
and Timothy J. Karp, as corporate officers of Wisconsin & Southern Railroad Co.

Vicki L. Schaefer
Signature, Notary Public, State of Wisconsin)

Vicki L. Schaefer
(Print or Type Name, Notary Public, State of Wisconsin)

050706
(Date Commission Expires)

This instrument drafted by the Wis. Dept. of Transportation

EXHIBIT

1

Property Legal Description - Exhibit A

All land and improved property, including but not limited to rails, ties, spikes, joint bars and fastenings, turnouts and switches, bridges, trestles, culverts, buildings, and all other track material on property located between the City of Watertown in Jefferson County, Wisconsin, and the City of Madison in Dane County, Wisconsin, more particularly described as:

The railroad property (land and improve property) located between railroad milepost 132.11 in the City of Watertown and milepost 164.61 in the City of Madison, a distance of 32.5 miles. More particularly, the property begins at a junction (milepost 132.11) located at Dayton Street in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Township 8 North, Range 15 East, said milepost 132.11 being 711.8 feet west of a point of intersection of the centerline of the railroad right of way with the east line of the NW $\frac{1}{4}$ of said Section 5, as measured along said right of way centerline, in the City of Watertown, Jefferson County, and continues southwesterly through said Sections 5 and 6, Township 8 North, Range 15 East, Sections 1, 2, 3, 4, 5 and 6, Township 8 North, Range 14 East; and Sections 1, 2, 3, 4, 9, 8 and 7, Township 8 North, Range 13 East, all in Jefferson County; continuing southwesterly through Sections 12, 11, 10, 9, 4, 5 and 6, Township 8 North, Range 12 East; Sections 1, 2, 3, 4, 5, 8, 7 and 18, Township 8 North, Range 11 East; Sections 13, 24, 23, 26, 27, 34 and 33, Township 8 North, Range 10 East; Sections 4 and 5, Township 7 North, Range 10 East, to a point in said Section 5, Township 7 North, Range 10 East, easterly of Marquette Street (milepost 164.61) in the City of Madison, Dane County, said milepost 164.61 being 242.8 feet east of a point of intersection of the centerline of the railroad right of way with the east line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, Township 7 North, Range 10 East, as measured along said right of way centerline.

Exhibit B

EASEMENT

1. Reservation of Easement:

- 1.1 Wisconsin & Southern Railroad Co. ("WSOR"), its successors, administrators, trustees and assigns, reserves from the Corridor conveyed to the Wisconsin Department of Transportation ("WisDOT") as defined and described in the deed and more particularly in Exhibit A to the deed, which description is incorporated herein by reference, a rail freight easement for the purpose of providing common carrier freight rail service on the Corridor (the "Easement"). The Easement includes the non-exclusive right for WSOR to operate its trains, locomotives, rail cars and rail equipment over the Corridor. It is expressly understood and intended that the Corridor shall be subject to use by third parties for purposes that include, but are not limited to passenger rail service, "light-rail" or commuter rail service, and other public and private purposes. It is further expressly understood and intended that portions of the Corridor may be used by WisDOT or WisDOT's permittees for highway, bicycle, pedestrian ways or other transportation facilities, provided such uses do not unreasonably interfere with WSOR rail operations.
- 1.2 The conveyance by WSOR to WisDOT set forth in the deed excludes any and all rights and obligations of WSOR under federal law to provide, directly or indirectly, common carrier rail freight service. WSOR retains all such rights and obligations to provide freight rail service to all shippers and shippers facilities located on the Corridor.

2. Term and Termination:

- 2.1 The term of this Easement shall commence as of the date and time of the recording of the deed and this Easement.
- 2.2 Except as otherwise provided in the deed and this Easement Agreement, the term of this Easement Agreement and the reserved rail freight easement contained herein shall be perpetual, in recognition of WSOR's continuing common carrier rail freight obligations on the Corridor.
- 2.3 All rights and interests reserved by WSOR in this Easement, including without limitation the rail freight easement reserved herein, shall terminate, be extinguished and vest in WisDOT upon the happening of all of the following: (a) termination by WSOR, pursuant to an order of the United States Surface Transportation Board (the "STB") of common carrier rail freight services on the Corridor (the "STB Termination Order"); (b) recording in the office of the Register of Deeds for Dane County, Wisconsin of a copy of the STB Termination Order; and (c) recording by WisDOT in the office of the Register of Deeds of a notice terminating the Easement.

3. Compensation:

- 3.1 Except as otherwise provided herein, WSOR and WisDOT shall have no obligation to compensate each other in connection with this Easement, including, without limitation, any payment in connection with WSOR's maintenance, dispatching, use or operation of the Corridor or any other portion of the Corridor, as set forth in Section 4.

4. Maintenance and Operation:

- 4.1 As part of the rights and interests reserved by WSOR in this Easement, WSOR and its successors, administrators, trustees and assigns, shall be bound by all terms and conditions, including but not limited to the obligation for maintenance and operation of

the Corridor and any costs and expenses, including damages of any kind, incurred as a result thereof, of the operating agreement between WSOR and the Wisconsin River Rail Transit Commission (the "Commission"), number 0491-50-39(C), dated September 22, 1995 (the "Operating Agreement").

ORIGINAL

GRANT AGREEMENT

Improved Railroad Property Acquisition

Grant Agreement

By and Between

Wisconsin River Rail Transit Commission

and

Wisconsin Department of Transportation

March 1987

EXHIBIT

2

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Agreement # 0490-40-48(b) (1)

This Agreement made and entered into this 20th day of March, 1987, by and between Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and the Wisconsin Department of Transportation ("WisDOT").

W I T N E S S E T H

WHEREAS, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company has abandoned its land and improved property between Milepost 138.57 in Madison, Wisconsin and Milepost 101.35 in Janesville, Wisconsin, between Milepost 39.64 in Elkhorn, Wisconsin, and Milepost 53.0 at Bardwell Junction, Wisconsin, and between Milepost 94.49 in Janesville, Wisconsin and Milepost 49.76 in Fox Lake, Illinois ("new lines"); and

WHEREAS, the Wisconsin Department of Transportation ("WisDOT") has acquired ownership of the new lines in Wisconsin from the CMC Real Estate Corporation, and Commission has acquired ownership of the new lines in Illinois from the CMC Real Estate Corporation; and

WHEREAS, WisDOT has acquired the land and improved property between Milepost 146.72 in Middleton and Milepost 237.40 in Prairie du Chien excluding land and improved property located approximately between Milepost 233.75 and 235.59, and has acquired land and improved property between Milepost 183.04 (= Milepost 0.26) in Lone Rock and Milepost 16.14 in Richland Center, and has acquired land and improved property between Milepost 0.07 in Mazomanie and Milepost 13.07 in Prairie du Sac ("existing lines"); and

WHEREAS, Commission was created by Iowa, Grant, Crawford, Richland, Sauk, Dane, Rock and Walworth Counties for the purpose of providing for the continuance of rail service on the rail line with authority to acquire the use of the rail line by purchase, lease or otherwise and to provide for the operation of freight rail service thereon by contract or otherwise; and

WHEREAS, Commission seeks to preserve freight rail service over the rail line for the benefit of the commerce, industry and inhabitants in the member counties of Commission; and

WHEREAS, WisDOT owns the land of the new lines in Wisconsin, and Commission, through a grant-in-aid from WisDOT and its own financing, owns subject to various appropriate conditions and limitations, the improved property of the new and existing lines in Wisconsin and the land and improved property of the new lines in Illinois; and

WHEREAS, Commission has determined that it will preserve freight rail service by means of contracting with Operator, a qualified freight rail service provider, to use the lands and to operate on the improved property of the existing lines and the new lines as a freight railroad;

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

ARTICLE 1.0 - DEFINITIONS.

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

- a. "CMC" means the CMC Real Estate Corporation and its successors, if any.
- b. "Soo Line" means the Soo Line Railroad Company and its successors, if any.
- c. "BN" means the Burlington Northern Railroad or its successors, if any.
- d. "ICC" means the Interstate Commerce Commission or its successors, if any.
- e. "WisDOT" means the Wisconsin Department of Transportation.
- f. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- g. "Commission" means the Wisconsin River Rail Transit Commission.
- h. "Operator" means the person providing freight rail service under contract to Commission. On the date of execution of this Agreement Operator is the Wisconsin and Calumet Railroad Company, Inc.
- i. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Commission upon which the improved property is located.
- j. "Rail line" means the new lines and the existing lines as identified in paragraphs (k) and (l).
- k. "New lines" means the lines of railroad including land and improved property between Milepost 138.57 in Madison and Milepost 101.35 in Janesville, between Milepost 39.64 in Elkhorn and Milepost 53.0 at Bardwell Junction and between Milepost 94.49 in Janesville and Milepost 49.76 in Fox Lake, Illinois acquired by WisDOT and Commission, and available for Commission to use.
- l. "Existing lines" means the lines of railroad including land and improved property between Milepost 146.72 in Middleton and Milepost 237.40 in Prairie du Chien (excluding land and improved property located approximately between Milepost 233.75 and Milepost 235.59), between Milepost 183.04 (= Milepost 0.26) in Lone Rock and Milepost 16.14 in Richland Center, between Milepost 0.07 in Mazomanie and Milepost 13.07 in Prairie du Sac.

- m. "Commuter passenger service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- n. "Trackage" means the rails, ties, ballast, track material, bridges, switches, culverts, signals, and all other nonland property acquired by WisDOT and provided under grant to the Commission subject to certain express conditions and limitations set forth in the land use agreement provided under Section 2.4. This term does not include land.
- o. "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.
- p. "Land use agreement" means the Land Use Agreement by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated March 20, 1987 and any amendments thereto.
- q. "Grant agreement" means this agreement which is GRANT AGREEMENT - Improved Railroad Property Acquisition Grant Agreement By and Between Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated March 20, 1987 and any amendments thereto.
- r. "Rail Bank Agreement" means Rail Bank Agreement By and Between the Wisconsin River Rail Transit Commission and Wisconsin Department of Transportation dated September 17, 1986 and any amendments thereto.
- s. "Principal line segment" means one or more of the following rail lines as defined by their end points: (1) Fox Lake, Illinois to Janesville, Wisconsin, (2) Bardwell Jct. to Elkhorn, (3) Janesville to Monroe, (4) Monroe to Mineral Point, (5) Janesville to Milton Jct., (6) Milton Jct. to Waukesha, (7) Milton Jct. to Madison, (8) Madison to Monroe, (9) Monroe, Wisconsin to Freeport, Illinois, (10) Middleton to Prairie du Chien, (11) Mazomanie to Prairie du Sac, and (12) Lone Rock to Richland Center.
- t. "CWP" means Chicago West Pullman Corporation.
- u. "South Central" means South Central Wisconsin Rail Transit Commission.

- v. "Pecatonica" means Pecatonica Rail Transit Commission.
- w. "Start-up" means commencement of revenue freight rail service in accordance with Article 3.0.
- x. "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 for which it was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- y. "AREA" means American Railway Engineering Association.
- z. "Improved property" means buildings and trackage located upon the land of the rail line.
- aa. "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- ab. "Rail Bank" means the public ownership and maintenance of rail land, buildings, and improved property for the purpose of future use for freight rail service but without current operation of freight rail service thereon.
- ac. "Rail Bank Lines" means the buildings and improved property located on principal line segment 1 and principal line segment 2 and principal line segment 6 or any of them as identified in paragraph s.
- ad. "Railroad Preservation Assistance" means the forms of aid WisDOT is empowered to provide under Section 85.08(4)(m), Wis. Stats.
- ae. "Milwaukee Road - Trustee" means the Chicago, Milwaukee, St. Paul and Pacific Railroad, Richard B. Olgilvie, Trustee.

ARTICLE 2.0 - RAILROAD PRESERVATION GRANTS

Section 2.1 Grant and Match for Existing Lines

(a) WisDOT's Grant Amount. In substitution for the terms of Grant Agreement 0490-40-48(b), Improved Railroad Property Acquisition, dated June 29, 1982, by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, this Agreement reconfirms that a grant to Commission by WisDOT in the amount of \$1,910,546 continues to be provided in the form of improved property located on the land between Middleton and Prairie du Chien, Wisconsin, including improved property on the principal line segments to Richland Center and Prairie du Sac, Wisconsin.

(b) Commission's Match Amount. The amount of \$477,000 paid by Commission to WisDOT was and continues to be Commission's share of the existing lines acquisition cost required under Sec. 85.08(4m)(c), Wis. Stats.

Section 2.2 Grant and Match for New Lines

(a) WisDOT's Grant Amount. In substitution for the Rail Bank Agreement dated September 19, 1986 by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, this Agreement reconfirms a grant to Commission by WisDOT in the amount of \$1,825,454 provided in the form of improved property on the new lines in Wisconsin. The additional amount of \$190,711 granted to Commission by WisDOT in the form of the land and improved property of the new lines located in Illinois is likewise reconfirmed hereunder.

(b) Commission's Match Amount. (i) The amount of \$482,468 paid by Commission to WisDOT was and continues to be Commission's share of the acquisition cost of the new lines as required under Section 85.08(4m)(c), Wis. Stats.

(ii) Commission's matching share is allocated as follows:

- (A) \$456,364 for Commission's share of improved property in Wisconsin;
- (B) \$26,104 for Commission's share of improved property in Illinois.

Section 2.3 Grant and Match for Rail Bank Lines

(a) WisDOT's Grant Amount. (i) In substitution for the Rail Bank Agreement dated September 19, 1986 by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, this Agreement reconfirms a grant to Commission by WisDOT in the amount of \$144,194 provided in addition to the amounts set forth in Section 2.2(a) as a portion of the settlement of an eminent domain proceeding associated with the acquisition of improved property on principal line segment 1 and principal line segment 2. This additional \$144,194 includes \$8,668 of local matching funds which Commission shall repay WisDOT under Section 2.3(b)(i).

(ii) WisDOT hereby states that the value of the improved property on principal line segment 6 is \$253,844.00. This amount shall be considered granted to Commission upon its compliance with Section 2.3(b)(ii).

(b) Commission's Match Amount. (i) Commission shall pay to WisDOT the remaining \$8,668 of its required matching share for the improved property in Wisconsin on or before March 30, 1987 as its share of the settlement of the eminent domain proceeding identified in Section 2.3(a).

(ii) Commission shall pay to WisDOT, on or before March 30, 1987, the greater of \$11,135.00 or the sum collected from the Village of Milton and the counties of Waukesha, Jefferson, Walworth and Rock for their

contribution to the \$22,271.00 match amount due from Commission in connection with principal line segment 6. Commission further agrees to pay to WisDOT any match sums collected from these persons subsequent to March 30, 1987 within five working days of receipt by Commission. The unpaid balance of match funds due, if any, shall be paid to WisDOT on or before January 15, 1988. In no event shall the total amount paid to WisDOT by WRTC as match for additional acquisition costs of principal line segment 6 exceed \$22,271.00. In the event these amounts are not paid when due, WisDOT may, at its sole option, liquidate the line, operation as a railroad notwithstanding.

Section 2.4 Grant of Land Use

(a) WisDOT further grants the use of land to Commission under the terms of agreement number 0490-40-48(a) (1), Land Use Agreement, between Commission and WisDOT, dated March 20, 1987 and attached hereto as Attachment I.

(b) WisDOT will provide Commission a description of the land of the existing lines and of the new lines provided to Commission within 90 days of the signing of this Agreement. Said descriptions shall be made a part of Attachment I.

(c) WisDOT will provide Commission a description of land of the rail bank lines within 90 days of receipt of final payment of match amounts due under Section 2.3.

Section 2.5 Superseded Agreements

(a) This Agreement supersedes and is controlling in all matters set forth in Grant Agreement 0490-40-48(b), Improved Railroad Property Acquisition, dated June 29, 1982 by and between Commission and WisDOT.

(b) This Agreement supersedes and is controlling in all matters set forth in Grant Agreement 0490-40-60, Rail Bank Agreement, dated September 19, 1986 by and between Commission and WisDOT.

(c) Agreement 0490-40-48(a) (1), attached hereto as Attachment I, supersedes and is controlling in all matters set forth in Agreement 0490-40-48(a), Land Use and Lease Agreement, dated June 29, 1982 by and between Commission and WisDOT.

Section 2.6 Rail Bank Expiration

All obligations of WisDOT to retain ownership of principal line segment 1 and principal line segment 2 shall expire September 9, 1988 if these lines are still rail bank lines. Unless otherwise provided in a subsequent agreement with Commission, WisDOT may, at its sole option, proceed to liquidate the rail bank lines after that date. Net proceeds of liquidation shall be distributed according to the terms of Section 6.6(d).

ARTICLE 3.0 - RAILROAD SERVICE OBLIGATIONS.

Section 3.1 Method of Operation

(a) Commission shall enter into and maintain in force a contract, approved by WisDOT, for the provision of common carrier freight rail service over the rail line provided to Commission under the grant agreement. This service shall be provided under a Modified Certificate of Public Convenience and Necessity, 49 CFR §§1150.21-.24 from the Interstate Commerce Commission for the railroad operations described under the grant agreement which shall be kept in full force and effect throughout the term of the grant agreement.

(b) In the event start-up of operation on each principal line segment is not simultaneous, operating requirements contained herein are applicable only to the principal line segment or segments being operated over, beginning with the day operation commences on any principal line segment or part thereof. Commission shall notify WisDOT in writing five (5) calendar days prior to the start up of operation on each principal line segment giving the expected date of start up.

(c) Commission shall require Operator to make all required filings and reports to the ICC and the Wisconsin Office of the Commissioner of Transportation.

Section 3.2 Operating Rights and Obligations

(a) Operating Right. (i) Commission shall provide Operator the right to operate over the rail line as a common carrier railroad providing exclusive originating and terminating rail service on this rail line, including line-haul and switching services to shippers on the principal line segments over which it is operating as a rail freight carrier except as provided in Section 3.3(i).

(ii) Commission shall require, in its operating agreement with Operator, that this right immediately terminate upon filing by Operator for protection under any bankruptcy statute or law, by Operator, or cessation, including lapse or suspension or cancellation of liability insurance coverage of Operator.

(b) Management and Control. Except as otherwise provided herein, Commission shall permit Operator to control, manage, staff and plan for the provision of freight rail service on the principal line segments over which it is operating as a rail freight carrier. Commission may grant Operator the power to effect such additions, changes, betterments and repairs to the trackage and improved property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the rail line. Commission may itself or may grant to Operator the right to adopt and promulgate rules governing access to, use of, and operation of the land and improved property, provided any such rules affecting freight rail service which differ from the General Code of Operating Rules adopted by Union Pacific Railroad System, Burlington Northern Railroad Company, Chicago & North Western

Transportation Company, Soo/Milwaukee System, et al., effective April 27, 1986 or as subsequently revised, shall be lawful under Federal and state statutes and regulations governing such service and shall have been approved by WisDOT within 180 days of the issuance of the order adopting or promulgating the rules and provided any such rules are consistent with the grant agreement.

Section 3.3 - Service Obligations.

(a) Equipment. Commission shall arrange to provide and maintain all suitable locomotives, cars and other rail equipment as are necessary in the operation of rail freight service. Commission 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.

(b) Operating Personnel. Commission shall arrange to obtain and maintain the necessary personnel for operation and management of freight rail service over the rail line. It is understood and agreed that no personnel of Commission or Operator are agents, employees, servants or subcontractors of WisDOT. All such personnel shall be qualified and properly trained for such service, but this shall not be the responsibility of WisDOT.

(c) Accounting Services. Commission shall arrange to establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with the grant agreement. Commission shall permit access by WisDOT and its agents to all documents related to the business operation of Commission and Operator including, but not limited to, agreements for leases, loans, revenue divisions and records of rail traffic, receipts and expenditures.

(d) Accounts. (i) Commission shall itself or require its Operator to establish and maintain a system of accounts as prescribed by the ICC or as determined by WisDOT if the ICC no longer prescribes a system of accounts.

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

(e) Provision of Service. Commission shall require Operator 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.

(f) Standard of Service. Commission shall require Operator 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.

(g) Safety and Other Inspections. Commission shall facilitate the inspection of the rail line facilities as required by governmental agencies. Commission shall inform WisDOT of the time and place of any inspection requested by a federal or insurance inspector. Commission shall permit representatives of WisDOT authorized by the Secretary or Director of Bureau of Railroads and Harbors of WisDOT to accompany the inspector. Commission shall provide access to all documents related to any inspection by any governmental entity or insurance underwriter's agent. Commission agrees upon reasonable notice 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 WisDOT or its agents during normal business hours. Commission covenants and agrees to furnish WisDOT with copies of all inspection reports from federal agencies or insurance underwriter's agents and safety orders from federal agencies or operating restrictions imposed by insurance underwriter's agents and to furnish WisDOT any like reports and orders from the Wisconsin Office of the Commissioner of Transportation.

(h) Definition of Service Failure. Failure to provide freight rail service to any station on principal line segment of the rail line is defined as:

(i) The unavailability of freight rail service for 30 consecutive days to any station on such principal line segment, or

(ii) The availability of an average of less than one train per week for a consecutive 12 week period to any station on such principal line segment, or

(iii) The failure to move any revenue freight car loads for 12 consecutive months over the entire principal line segment.

(i) Penalty for Service Failure. (i) Failure to provide minimum service required or agreed to hereunder or required under Section 3.2(h) shall at WisDOT's option subject Commission to termination for default as hereinafter provided. The foregoing notwithstanding, Commission shall not be required to provide freight rail service on principal line segment 1 or principal line segment 2 until liability insurance is reasonably available for use of trackage rights over CMC trackage between Fox Lake and Cragin, Illinois or until August 9, 1989, whichever occurs first.

(ii) In the event freight rail service, as defined in Section 3.3(h) and Section 3.3(i) (i), is not provided on any principal line segment or segments, Commission agrees to return possession of such principal line segment or portion of a principal line segment to WisDOT upon 15 days written notice of demand by WisDOT. Notwithstanding the foregoing, in the event that Commission and WisDOT agree in writing that a principal line segment or segments need not be operated over, or if service is temporarily suspended on a principal line segment or segments pursuant to Section 3.3(k) or Section 8.10, lack of service on such principal line segment or segments shall not constitute a failure by Commission to provide freight rail service as defined in this paragraph h.

(j) Financial and Operating Reports. (i) Commission shall require its Operator to submit the following information to WisDOT within 45 days after the end of each quarter year beginning with the quarter ending June 30, 1987:

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

(ii) Commission shall, and shall require its Operator to, submit the following reports to WisDOT:

- (A) Independently audited financial statements for each year ending December 31, to be submitted on or before June 30 each year, commencing June 30, 1987;
- (B) A certificate of insurance submitted on or before each insurance coverage renewal date appropriately showing that all the terms and conditions of Section 7.2 of this Agreement are fully met;
- (C) Appropriate documentation showing any changes in operating status or authority 30 days prior to its effective date; and
- (D) Immediate notice of damage or injury to persons or property as required under Section 7.2 of this Agreement.

(k) Immediate Suspension of Rail Operations. Upon emergency notice from WisDOT's Bureau of Railroads and Harbors or Division of State Patrol (by telephone and later confirmed in writing), Operator shall immediately suspend the movement of trains or motive power when, in the reasonable judgment of Commission or WisDOT, after consulting with Operator if possible, operation of trains or motive power would be unsafe or if the liability insurance coverage of Operator lapses, is suspended or is cancelled for any reason or is less comprehensive than is required under Section 7.2 of this Agreement. Operation of trains and motive power by Operator shall remain suspended until the president or general manager of Operator is contacted by Commission and WisDOT and until the safety hazard is ameliorated and the required insurance coverage is reinstated. Suspension of operations for safety reasons shall be ordered when operations are not or would not be in compliance with FRA safety regulations. At the option of Operator, safety officials of FRA may be called

upon to determine the existence or non-existence of any safety hazard cited by WisDOT or Commission as a sufficient reason for suspending operations. When FRA is called upon, operations shall be suspended until such determination is made by FRA.

(1) Excursion Trains. If Commission 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, Commission shall itself or shall require its Operator to first apply for and receive a written permit from WisDOT. 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 7.2 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 the proposed operator on any portion of the rail line subject to this Agreement. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior permit fee remains unpaid in whole or in part.

Section 3.4 Relations with Other Railroads - General

(a) Division of Revenues. Commission shall ensure Operator makes necessary and satisfactory arrangements for divisions of revenues with all connecting railroads. Documented evidence of this shall be furnished to WisDOT prior to start-up. Commission shall ensure that Operator makes arrangements for division of revenues as are needed if there are other interchange points needed for proper operation of this rail line and shall furnish WisDOT documented evidence of such divisions after their being obtained.

(b) Trackage Rights. (i) Commission has the responsibility for ensuring the obtaining of necessary trackage rights required to permit the operation over rail line that is required to perform the necessary freight rail services for shippers along the rail line. Commission shall use its best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access to the trackage. All trackage rights agreements obtained shall be filed with the ICC as may be required by law.

(ii) Commission shall furnish WisDOT copies of trackage rights agreement(s), prior to start-up under this agreement, allowing operation over:

- (A) Soo property, Milepost 101.35 to Milepost 94.49 in Janesville;
- (B) Soo property, Milepost 9.46 (= Milepost 46.06 = Milepost 98.69) to Milepost 11.02 in Janesville;
- (C) Soo property, Milepost 138.58 in Madison to Milepost 146.72 in Middleton;

- (D) C&NW property, Milepost 138.4 to Milepost 130.0 - Madison Sub.;
- (E) C&NW property, Milepost 81.4 to Milepost 79.7 - Cottage Grove Sub.;
- (F) BN property, Milepost 233.75 to Milepost 235.59 in Prairie du Chien; and
- (G) Such other railroad property as is or as may become necessary to operate the rail lines.

(c) Interchange Agreements. It is necessary to maintain interchange agreements with the Soo Line at Janesville and Madison and with the BN at Prairie du Chien. Commission shall obtain and supply WisDOT documented evidence of the interchange agreements and any amendments thereto.

(d) Interline Divisions. (i) Commission shall require Operator to adhere to and comply with the interline accounting rules of the Association of American Railroads in dividing revenues, under through rates, among participating carriers.

(ii) Commission shall require Operator to 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, WisDOT may, at its option, declare Commission in default of this Agreement.

Section 3.5 Relations With Certain Class II and Class III Lines.
Commission shall include the following in its operating agreement with Operator:

(a) Division of Freight Revenues. (i) When Carrier A originates revenue traffic, interchanges the traffic with Carrier B and Carrier B terminates the traffic, there shall be allowed a division of freight revenue from such traffic to each carrier computed at 25% for the originating carrier; 25% for the terminating carrier; with the balance of the revenue prorated to each carrier on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose.

(ii) When Carrier A originates or terminates revenue traffic interchanged with Carrier B, which in turn bridges the traffic to or from Carrier C, the revenue attributable to the combined services of Carrier A and B shall be apportioned 33% to Carrier A as the originating or terminating carrier; 10% to Carrier B as the bridging carrier; and the balance of the revenue prorated to Carriers A and B on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose. Traffic moving

on combination rates with Carrier C shall, between themselves, be treated by Class II and III railroads operating over state assisted lines as traffic moving on a through rate and subject to the provisions of Section 3.5(a) (i).

(iii) When both Carriers A and B only bridge the same revenue traffic with neither originating nor terminating it, the revenue attributed to their combined services shall be allotted in an amount equal to 10% to each of them with the balance of the revenue prorated to each carrier on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose. Traffic moving in this manner on combination rates shall, between themselves, be treated by Class II and Class III railroads operating over state assisted lines as traffic moving on a through rate and subject to the provisions of either Sections 3.5(a) (i) or 3.5(a) (ii).

(iv) Revenue derived from surcharges imposed by any carrier subject to the revenue division formulas set forth in Sections 3.5(a) (i), 3.5(a) (ii), or 3.5(a) (iii) above shall not be included in the computation or settling of divisions covered under those paragraphs.

(b) Switching Charges. (i) The fees listed in this subsection apply to switching performed by one Class II or Class III railroad operating over state assisted lines for or with another. These charges shall apply to all forms or classes of switching within the switching limits of junction stations.

(ii) The switching fees set forth herein are applied to each loaded car handled. Distances are computed from the point of switch on the designated interchange track to the point of switch on the industrial siding or subsequent interchange track.

(iii) The switching fee schedule is:

<u>Distance</u>	<u>Amount Per Loaded Car</u>
0 - .99 miles	\$ 50.00
1 - 2.99 miles	\$ 65.00
3 - 4.99 miles	\$ 80.00
over 5 miles	\$ 100.00

(iv) The switching carrier shall be permitted five (5) days use of cars in switching without being charged per diem on the cars. The switching fee schedule in Section 3.5(b) (iii) shall be adjusted in compliance with any ex parte rail cost recovery increases following the effective date of the increase.

(c) Trackage Rights. (i) Trackage rights shall be allowed for motive power, system cars, system equipment and revenue freight movement between any two segments of a commonly controlled or commonly managed or commonly

owned Class II or Class III carrier operating over state assisted lines by any other Class II or Class III carrier operating over state-assisted lines under the terms of Section 3.5(c) (ii) or 3.5(c) (iii).

(ii) Engines, system equipment, and freight moved between two track segments commonly owned, managed, or controlled by a Class II or Class III carrier operating over state assisted lines shall be moved at the rate of \$5.00 per train mile for trains of 5 cars or less, excluding caboose, plus \$0.25 per car mile for each car in excess of 5 cars in each train beginning with the sixth car. These fees shall be adjusted annually and take effect upon the first day of January each year. Adjustments shall be determined by multiplying the fee amounts in effect for the year ending December 31 by the sum of the Cost Recovery Tariff percentage increases allowed through the year ending December 31. (Example: first quarter 1982, 2%; second quarter 1982, 0.5%; third quarter 1982, 1%; fourth quarter 1982, 1.5%; sum of increases for 1982, 4%; adjusted rates for calendar 1983 equal \$5.20 and 26 cents). Adjusted rates shall be rounded to the nearest whole cent. General Managers Association of Chicago rules then current shall apply to any other joint facility agreement.

(iii) Maintenance of a line is the responsibility of the carrier managing or controlling the line and shall be performed such that the trackage on which trackage rights fees are collected is maintained at the FRA Track Safety Standard Class level it met at the time the trackage rights agreement was signed, or such other level as may be agreed to by the parties to the trackage rights agreement.

(iv) Any Class II or Class III carrier operating over state assisted lines as well as owning, managing or controlling a line segment between two line segments of a carrier as described in Section 3.5 (c) (i) may, with respect to revenue freight movements, elect either of the following two methods for handling such revenue freight:

(A) Participate in a joint rate, including such intervening mileage, and receive a freight revenue division in accordance with Section 3.5(a).

(B) Forego all participation in joint rates for such mileage and traffic movement and grant trackage rights permitting revenue freight bridging operations in accordance with the fees established under Section 3.5(c) (ii) of this subsection.

(d) Binding arbitration of Disputes Under Section. (i) Either carrier involved in an unresolved issue controlled by Section 3.5 may request binding arbitration of the dispute.

(ii) The arbitration committee shall consist of three members, one member each selected by the disputants from Class II or Class III railroads operating in Wisconsin and the third member selected by the first two who shall also serve as chairman of the committee. In the event a third member cannot be agreed upon, the arbitration selection provisions of Section 788.04, Wis. Stats., will apply.

(iii) The form and method of conduct of the arbitration effort shall be determined by the arbitration committee.

(iv) All expenses of arbitration shall be shared equally between the railroad carriers involved.

(e) Use as Interim Agreement. The terms and conditions of subsections 3.5(a) through 3.5(d) shall be used as an interim revenue division and trackage rights compensation formula between and among Class II and III railroads operating over state assisted lines effective from the date traffic is offered for interchange between them until such time as replaced by a subsequent agreement of the parties.

ARTICLE 4.0 - CAPITALIZATION OF OPERATOR

Section 4.1 Amount of Initial Capitalization.

Commission shall require Operator to furnish Commission and WisDOT proof of its capitalization, in an amount of \$425,000, necessary for operation over the new lines, existing lines and the rail lines of the Pecatonica and South Central and of its right to do business in Wisconsin. Operator's proof of capitalization is subject to acceptance and written approval by Commission and WisDOT as a condition precedent to the effectiveness of this Agreement.

Section 4.2 - Review of Capitalization

(a) Commission shall require Operator to allow WisDOT, at its option, to review this level of capitalization and make necessary adjustments either upward or downward one year from the date of WisDOT approval of this agreement or upon the start up of operations south of Janesville, or on the Sauk City branch, or prior to WisDOT's awarding grants of financial assistance other than those currently proposed for the actual cost of work on the BN crossing in an amount up to \$80,000.00, the rehabilitation of the bridge at Lone Rock in an amount up to \$24,000.00 and brushing in an amount up to \$11,540.00, whichever comes first.

(b) The review of the level of capitalization in 4.2(a) shall require Operator to submit to WisDOT a pro forma which covers operations or prospective operations over the principal line segments.

(c) Commission shall not permit Operator to take possession of the land or trackage or buildings or operate in any manner on the new lines or existing lines or principal line segment 6 until it first receives written Commission and WisDOT approval of its capitalization relating to each principal line segment comprising the new lines or existing lines or principal line segment 6.

ARTICLE 5.0 - PROPERTY MANAGEMENT.

Section 5.1 Maintenance of Rail Line.

Commission shall perform or cause to be performed all maintenance of the rail line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the land or improved property reasonably necessary for the safe operation of freight rail service or any other service provided by it and to prevent deterioration of the trackage below the FRA Class II level or the FRA class level of the line, if less than Class II, as determined by WisDOT after consultation with Commission and Operator as of an inspection date prior to sixty (60) days following the Commencement Date of the Operating Agreement between Commission and Operator or the level attained by any future rehabilitation project funded in part by WisDOT as defined in any future rehabilitation grant agreement between WisDOT and Commission or, in the case of buildings and other structures, as required by local and state building codes. In the event of a dispute between Commission and WisDOT as to the condition of the trackage following the inspection referred to above, Commission and WisDOT shall jointly request FRA to determine the FRA track safety classification. If trackage is maintained to the FRA class level required as stated above and buildings are maintained in compliance with state and local building codes and bridges are maintained in compliance with AREA chapter 7, Part 3, then the maximum annual expenditure of Commission and Operator for maintenance need not exceed the maximum amount set forth in Section 5.11(b) in the following year. Commission may be declared in default, as hereinafter provided, if a deviation from the applicable FRA track safety standards or local and state building codes remain uncorrected for more than thirty (30) days after notification of the deviation as hereinafter provided or if Commission has not diligently commenced to correct such deviation within said 30 day period. Further, Commission shall provide or cause Operator to provide a maintenance plan as set forth in Section 5.11 hereinafter. Any trackage installed on or funds expended for maintenance of any portion or component of the rail line under the jurisdiction of Commission by permit or grant from WisDOT that is not approved by WisDOT as part of a rehabilitation project shall not be eligible for reimbursement by WisDOT upon sale of the rail line or transfer of operating rights over the trackage to another agency or operator.

Section 5.2 - Maintenance of Rail Bank Lines.

(a) Commission shall perform or cause to be performed all maintenance of the rail bank line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the rail bank line necessary for safety, compliance with state or local laws applicable to the rail bank lines, and to prevent deterioration of the trackage.

(b) WisDOT agrees that for purposes of fulfilling Commission's grade crossing maintenance obligations with respect to state trunk highways that cross the rail bank lines in Wisconsin, WisDOT shall perform or arrange for the performance and payment of the necessary grade crossing maintenance.

(c) WisDOT agrees that to the extent any fencing is legally required on the rail bank lines in Wisconsin during the period it is not being operated

form or amount as equity, security, or collateral for any borrowing or other means of raising capital by Commission or Operator or as collateral for any other purpose.

Section 5.6 Public Order.

Commission assumes full responsibility for preserving public order upon the subject property and for resolving matters concerning trespass upon or from the rail line land and improved property adjacent to private lands. Commission may adopt or allow Operator to adopt and enforce any necessary rules in accordance with Section 3.2(b) in order to protect the rail line. Commission 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.

Section 5.7 Fencing.

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

Section 5.8 Vegetation Control.

Commission assumes such responsibility as may exist for the eradication, control and removal of vegetation as required by applicable state law or local ordinance.

Section 5.9 Highways and Streets.

Commission assumes responsibility on each principal line segment for the maintenance of trackage, warning devices, and railroad highway crossings whenever crossing maintenance is required by law except as provided in Section 5.2(b).

Section 5.10 Private Crossings.

Commission may, according to applicable statutory provisions, abrogate any private crossing established by agreement which interferes substantially with the providing of freight rail services. Commission shall obtain authorization from WisDOT and, if necessary, the Office of the Commissioner of Transportation, prior to permitting any additional private crossings.

Section 5.11 Maintenance Plan.

(a) Commission shall prepare or cause to be prepared 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 Commission's Operator by any other rail transit commission chartered in Wisconsin. The plan shall be prepared in consultation with WisDOT and shall be fully completed and delivered 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.

(b) A maintenance plan shall not be eligible for WisDOT approval unless the sum of the expensed and capitalized maintenance expenditures called for in the plan (the "Maintenance Expenditure") is, during each year of this Agreement until January 1, 1989, equal to 5% of the then current system gross operating revenue projection for the system of rail lines owned by WisDOT or Commission or South Central or Pecatonica and operated over by Operator, based on a mileage prorate ("Projected Gross Operating Revenue"). Commencing with calendar year 1989, a maintenance plan shall not be eligible for WisDOT approval unless the Maintenance Expenditure is an amount not less than 5% of Projected Gross Operating Revenue provided, however, that WisDOT shall not be entitled, as a condition to WisDOT approval of a maintenance plan, to require that the Maintenance Expenditure, in addition to the minimum 5% of Projected Gross Operating Revenue for any year exceed the lesser of (i) 100% of Operator's Projected Federal pretax income for the system of rail lines owned by WisDOT or Commission or Pecatonica or South Central and operated over by Operator, based on a mileage prorate, for such year, or (ii) the applicable Gross Operating Revenue Limit (as hereinafter defined) for such year. As used herein, the applicable "Gross Revenue Limit" shall mean 1% of Projected Gross Operating Revenue for 1989, 2% for 1990, 3% for 1991, 4% for 1992, 5% for 1993, 5.5% for 1994, 6% for 1995, 6.5% for 1996, 7% for 1997, 7.5% for 1998, 8% for 1999, 8.5% for 2000, 9% for 2001, 9.5% for 2002, and 10% for 2003 and each year thereafter.

Notwithstanding the above, in the event, under terms of Section 5.1, maintenance is required to meet the track classification levels required under Section 5.1, sufficient funds to achieve the classification level required shall be expended. The Plan or modification shall be revised and resubmitted within 30 days following a WisDOT request so as to overcome the deficiencies, if any, identified by WisDOT.

(c) Due to the sequential start up of various principal line segments expected by the parties hereto, the Maintenance Expenditure requirement calculated under Section 5.11(b) above shall apply to all principal line segments without regard to date of start up of any principal line segment. This paragraph, 5.11(c), shall become effective upon amendment to appropriate agreements between Operator and Pecatonica and Operator and South Central conforming the effective dates for requiring an increase in the Maintenance Expenditure above the minimum 5% to the dates set forth in Section 5.11(b) above.

(d) WisDOT shall be notified immediately of any major change to the Plan which shall become necessary after receipt of WisDOT approval of the initial Plan. WisDOT approval of all major changes is required in accordance with Section 5.11(b). Major changes to the maintenance plan are defined to be

changes to the maintenance plan which represent more than 10% of the approved quantity of labor, material, or equipment contained in the most recently approved maintenance plan or which represent more than 10% of the projected cost of the approved maintenance plan or which require a change in the maintenance plan work schedule of one month or more for any portion of the rail line to which the maintenance plan applies.

Section 5.12 Liens Against Rail Line.

Commission 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. Commission 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.

ARTICLE 6.0 - PROPERTY TRANSACTIONS

Section 6.1 Easements, Permits, Licenses, and Leases.

(a) Commission and Operator shall have no authority to enter into easements, permits, licenses or leases affecting all or any part of the rail line or rail bank line unless specific prior authorization to do so is granted in writing by WisDOT. WisDOT agrees to cooperate with Commission in providing leases to businesses or users who would benefit the rail business through the operation of any such leases.

(b) Revenue derived by Commission or Operator from authorized easements, permits, licenses or leases of land or improved property which pertain to anything other than freight rail transportation and excursion rail transportation shall be shared with WisDOT provided that net profit of Operator, as reported to the Wisconsin Department of Revenue, exceeds \$1,000,000. Operator shall pay to Commission 10% of gross operating revenues derived from authorized permits, licenses or leases which pertain to anything other than freight rail transportation, and Commission shall pay to WisDOT no less than 80% of the amount received. Commission shall retain 20% of the amount received. WisDOT and Commission shall treat 50% of any amount paid by Operator under this section as a credit toward the purchase of principal line segments 5,7,10,11, and 12. This credit towards purchase is granted only if all these lines are purchased by Operator and does not create any form of equity position or claim of Operator in the physical assets of the rail lines. This credit does not create an option to purchase in favor of the Operator. Commission shall establish a separate account for receipts under this section and shall perform an annual audit of the account as of December 31 of each year this agreement is in effect. A copy of the audit report and a check for any amounts due shall be provided to WisDOT on or before March 1 of each year.

Section 6.2 Rents Paid to Commission.

All income received by Commission under Section 6.1 shall be used for operating expenses of Commission and for preservation and improvement of railroad transportation facilities on the rail line excluding rolling stock.

Any rents collected by Commission shall be kept in an interest bearing account(s) at a Wisconsin bank(s) or savings and loan(s). Commission shall obtain and retain title to improvements or facilities funded from rents paid to Commission unless title already resides with a local government or the State or Federal Government. Commission shall obtain an independent annual audit, or if the amount of rent proceeds is less than \$10,000, a certified statement of an accountant, of Commission operating expenses and transactions involving the use of rent proceeds. Commission shall establish the audit date as December 31 of each year and shall supply a copy of the preliminary audit report to WisDOT no more than five days after receipt of the preliminary audit by Commission and a copy of the final audit report by March 31 of each year.

Section 6.3 Lease, Permit and Sale of Land

Among the statutory purposes for acquisition of the land and improved property are recreation and scenic purposes, and WisDOT might determine in the future that the use for railroad purposes is such that the width of the land at particular points might permit recreational or scenic uses. With these possible future uses in mind, WisDOT hereby makes this Agreement subject to the following conditions:

(a) (i) WisDOT retains the right to retake or retain possession of any of the rail line under lease to third parties for itself. If there presently are sidetracks on any of the land leased to third parties, WisDOT shall provide Commission with the right of continued use of the sidetrack and land 16.5 feet from the center line on each side of the side track subject to improvements which may exist on the date of this agreement. The right of WisDOT to review such Commission uses is retained.

(ii) Subject to Section 6.3(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 after consultation with Commission and Operator.

(b) (i) In the event WisDOT determines certain parcels of land or improved property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such land or improved property located outside 33 feet of the center line of the main track to any party after first offering the land or improved property to Commission and to other state and local government units under the provisions of Section 85.09, Wis. Stats. Commission shall promptly notify WisDOT in writing whether it intends to exercise any right to purchase land and improved property pursuant to the preceding sentence.

(ii) WisDOT shall obtain Commission approval, which shall be deemed granted unless specifically denied in writing within 30 days of WisDOT's request, prior to the sale or lease of any land and improved property within 33 feet of the center line of the main track if the parcel to be sold is unoccupied by permanent structures, or is to be sold to an owner

of property abutting the main line. Commission approval is not required for WisDOT's sale or lease of land and improved property within 33 feet of the center line of the main track when the land and improved property is subject to a lease and is occupied by a permanent structure existing on the date of this Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser indemnifies Operator in writing 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.

Section 6.4 Bill of Sale

(a) The trackage and other improved property excluding that located on rail bank lines shall be transferred by WisDOT to Commission by bill of sale. The bill of sale shall recite conditions relating to limitations on Commission's disposal of the trackage and improved property, and it shall be subordinate to this agreement and any subsequent rehabilitation assistance agreement.

(b) The trackage and other improved property located on the rail bank lines shall be transferred from WisDOT to Commission by bill of sale issued in accordance with Section 6.4(a) upon Commission's satisfaction of the terms of Section 2.3.

Section 6.5 Sale to Local Units of Government

(a) Approved Sale. If the improved property or any portion of it is sold by Commission to another local unit of government and such local unit of government agrees to continue freight rail service on the rail line and WisDOT approves such sale, no repayment of grant funds to WisDOT shall be required from Commission as a result of such sale.

(b) Unapproved Sale. If the improved property or any portion of it is sold to another local unit of government and such sale is not consistent with the terms of the Section 6.5(a), Commission shall repay that portion of the grant amount determined by the provisions in Section 6.6.

Section 6.6 Amount Payable Upon Sale or Default

(a) Existing Lines. The schedule of values set forth in Section 6.6 and the amount of repayment, for the existing lines only, are governed by the following conditions:

(i) Yearly periods shall be calculated from July 1, 1982, the date of closing on the existing lines.

(ii) Changes in the applicable percentage shall take place at 12:01 A.M. each anniversary date of closing on the existing lines.

(iii) Should railroad operation be terminated or suspended for more than six consecutive months without liquidation, the change to lower percentages is also suspended.

(iv) The percentages are applied to the dollar amount set forth in Section 2.1(a) of this Agreement.

(v) Repayment amounts shall be the amount determined by the use of this schedule if improved property is sold to the Commission's Operator or by the use of either this schedule or 80% of the net proceeds of liquidation of the trackage and other improved property, whichever is lesser, if the improved property is disposed of to any other entity.

(b) Repayment Schedule

100% - years 1 through 5	55% - year 14
95% - year 6	50% - year 15
90% - year 7	45% - year 16
85% - year 8	40% - year 17
80% - year 9	35% - year 18
75% - year 10	30% - year 19
70% - year 11	25% - year 20
65% - year 12	20% - thereafter
60% - year 13	

(c) Repayments made to WisDOT under this section shall first be made from the proceeds, if any, from the transfer of improved property to an owner other than the Commission. The remainder due, if any, shall be paid by the Commission from the fiscal resources of the Commission unless prompt repayment can be made from a different source agreeable to WisDOT. Repayment shall be made within 120 days of closing by the Commission on an ownership transfer or the letting of a salvage contract for the liquidation of the trackage or upon written notice by WisDOT to the Commission that railroad service on the segment has ceased.

(d) New Lines. (i) Conceptual Basis. Commission and WisDOT have invested in the acquisition of the new lines. Furthermore, Commission accepts the obligation to physically maintain the improved property, buildings, and rail bank lines so as to maintain its value. Over time, three results are possible: (1) Commission may invest in maintenance sufficiently to retain the value of these properties, or (2) Commission, in violation of the terms of this Agreement, under-invests in maintenance thereby reducing the value of these properties, or (3) Commission, on its own initiative, over-invests in maintenance, thereby either maintaining, reducing or enhancing the value of these properties. In the event of liquidation of these properties, both WisDOT and Commission 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.

(ii) Computation. The initial investment basis of WisDOT and Commission shall be determined by the financial contributions of each to the cost of acquisition of land, improved property and rail bank lines which grant funds are expended. For the purposes of this computation, the initial investment basis of WisDOT is \$3,724,681. Of this amount, \$190,711 is for that portion of the land and improved property located in Illinois. The initial investment basis of Commission is \$482,468. Of

this amount, \$456,364 is for improved property in Wisconsin, and \$26,104 is for improved property located in Illinois. Upon termination of the grant agreement, the basis of WisDOT and that of Commission shall be:

- (A) No more than 60 days following the closing of a sale of improved property by Commission or the failure by Commission or its Operator to remove a condition of default the gross salvage value of improved property on the rail lines or any portion thereof subject to the default shall be appraised by WisDOT using generally accepted appraisal standards.
- (B) The estimated costs of liquidation, which include both direct salvage operation costs and WisDOT administrative costs, shall be deducted from the appraised value.
- (C) WisDOT's share shall be determined by multiplying WisDOT's percentage of the initial acquisition costs by the net liquidation value of the land and improved property of rail lines located in Wisconsin and in Illinois. Commission's share shall be determined by multiplying Commission's percentage of the initial acquisition of improved property and the improved property located on the rail lines located in Wisconsin and rail bank lines located in Illinois by the net liquidation value of the improved property located in Wisconsin and the improved property located on the rail lines located in Illinois. WisDOT shall receive 100% of the net liquidation value of the Wisconsin and Illinois land corridor.
- (D) In the event the improved property on rail lines is liquidated, the net proceeds of the liquidation are used in place of appraised value in steps A through C except that the estimate of direct salvage cost of liquidation shall not be deducted from the net proceeds under step C.

Section 6.7 State's Lien as Security

(a) The terms, provisions, and conditions of this grant agreement to be observed and performed by Commission or its Operator shall create a lien in favor of WisDOT on the trackage and other improved property specified in Article 1.0(j). The WisDOT lien provided for herein shall survive the execution and delivery of a bill of sale from WisDOT to Commission, as herein provided in Section 6.4, and shall continue in full force and effect after such delivery.

(b) Commission shall cause legally sufficient notices of this lien to be recorded in the Office of Register of Deeds for each County in which, and in the Office of the Secretary of State in which the rail line is located within 30 days of signing this Agreement which notices shall be removed from the record only upon written release of lien by WisDOT.

Section 6.8 New Improved Property.

Commission, or its designees (collectively "Owner"), may acquire or install on the new or existing lines, 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 WisDOT, which approval shall not be unreasonably withheld. In the event of liquidation or transfer of ownership to anyone other than Commission, WisDOT shall first determine, within 180 days, if any of these additional facilities are needed for the provision of freight rail service on this or any other line in the State. If WisDOT determines that they are not needed for such purpose, the owner of the additional facilities may dispose of the facilities in any manner it sees fit at its own expense and shall restore any trackage and land to the condition it was in prior to the installation of the additional facilities. If WisDOT determines that any of the additional facilities are needed, WisDOT 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. 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. Commission shall obtain WisDOT approval before improvements are made on the rail lines before erection or construction of a building or buildings or other improvements.

Section 6.9 Maintenance Property and Expenditures

Any improved property installed or funds expended for maintenance of any portion or aspect of rail lines 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 property or transfer of operating rights on the property to another agency or operator.

ARTICLE 7.0 - LIABILITY AND INSURANCE

Section 7.1 Hold Harmless.

Commission shall save and hold 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 Commission or Commission's Operator, or its agents, servants, subcontractors, officers 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) while Operator is performing its work or (2) during the period this agreement is in effect, or (3) while any of the Operator'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 Operator's operation 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 frequentors, or to any other person or legal entity whether based upon, or claimed to be based upon, contract, tort, or having its basis in worker's 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, Commission, or any other persons and whether or not caused or claimed to have been caused by the negligence, or other breach of duty by WisDOT, its employees, officers, agents, subcontractors or frequentors, Commission, its employees, officers, agents, subcontractors or frequentors, or any other person or legal entity. Without limiting the applicability 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. Commission 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 7.2 Insurance.

(a) Required Coverage. During the term of this Grant Agreement, Commission or its Operator shall maintain, at its own cost and expense, a Comprehensive Railroad Liability Policy with limits of not less than \$2,000,000 per occurrence, or other form approved by WisDOT, for freight operations, and of not less than \$5,000,000 per occurrence, or other form approved by WisDOT, for excursion operations, provided that WisDOT and its officers, employees and agents shall be named as additional insureds under such policy. Commission or its Operator shall maintain and keep in force worker's compensation and employer's liability insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Commission and its Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Commission or its Operator shall carry fire and extended coverage for any buildings and structures subject to damage in such amounts as approved by WisDOT. All such

insurances shall cover WisDOT to the extent of its ownership in any of said properties and to include under such coverage buildings, and trackage owned by WisDOT, 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 to any third party. Items of coverage for Commission may be waived by letter from WisDOT to the Commission.

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

(c) Self-Insured Retention. It is understood and agreed that the comprehensive railroad liability policy to be obtained and kept in force by Commission or its Operator may contain a self-insured retention. At the time of the commencement of this Agreement, the figure of \$150,000 per occurrence is hereby approved as the self-insured retention. Commission has been informed by the Operator that this self-insured retention figure will be reviewed from time to time by its insurance carrier and that good operation practices and rehabilitation may ultimately reduce the amount of self-insured retention. Commission shall require its Operator to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. If a lower amount of self-insured retention is reasonably available, the amount of self-insured retention required may be established by Operator, WisDOT and Commission, two of the three shall prevail, upon 30 days notice to the Operator prior to the expiration date of the comprehensive railroad liability policy. It is a condition of this Agreement that Commission or its Operator prior to start-up of operations hereunder and annually thereafter is to provide WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention should claims be filed.

(d) Reporting of Incidents and Claims. During the term of this contract and any extension thereof, any damage or injury to person or property occurring on the rail line or from the operation of the equipment of Operator or by the employees of Operator (herein referred to as an "incident") shall be immediately reported to Commission and WisDOT. Operator shall be required to provide within 5 days a written report which shall also include a brief resume of the facts of the incident and an estimate by the Operator as to the approximate potential claim which might arise thereunder. If a notice of injury or claim of damage is made to Commission or Operator, then Commission or Operator shall forthwith furnish WisDOT with copies thereof. Thereafter, Commission or Operator shall provide WisDOT copies of any further instruments,

reports or records involving such matter and shall periodically but not less frequently than monthly report to WisDOT as to further happenings regarding the incident including the final disposition of the matter.

(e) Self-Insured Retention Set Aside. Commission shall require its Operator to, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Operator's counsel and WisDOT's counsel. If the two are unable to agree, they shall select a third party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Commission shall require Operator to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trial Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter beginning with the quarter ending September 30, 1986, is less than 1.1 to 1, as determined by WisDOT, WisDOT shall have the right to terminate this Agreement by fifteen (15) days written notice to Commission. If, upon receipt of such notice of termination, Commission shall desire to continue this Agreement in effect, Commission or Operator shall have the right to do so by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

(f) Review and Modification of Liability Insurance. The coverage limits of the Comprehensive Railroad Liability Insurance for freight and excursion operations shall be subject to review by Commission and WisDOT in 1989 and every two years thereafter that this agreement is in effect. Modifications to self-insured retention amounts shall be governed by Section 7.2(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 7.2(a) above and may be permitted only upon WisDOT's approval and upon amendment to this agreement. Review of liability insurance shall be conducted by Commission, Operator and WisDOT 90 days prior to the expiration date of the policy then in force according to the biennial schedule established herein, except that a special review may be conducted in the event Operator experiences a cancellation of or a refusal to renew its liability insurance. Such special review shall be governed solely by Section 7.2(f) (iv) herein. The following conditions shall apply to the review and modification of comprehensive railroad liability insurance for freight operations:

(i) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's gross revenue, as determined under Sections 7.2(f) (ii) and 7.2(f) (iii) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and

naming the additional insureds as is required under paragraph (a). Operator's decision to obtain insurance beyond that which is required under paragraph (a) covering the liability that arises out of Operator's actions, omissions, presence or operations on the land or the improved property or over the rail line and naming Commission and WisDOT, their officers, employees, and agents, as additional insureds, shall not result in Operator purchasing any less insurance coverage for these purposes under paragraph (a) than would otherwise be required if Operator did not purchase the additional insurance coverage beyond that required for these purposes under paragraph (a).

(ii) A base percentage of gross revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this agreement at 4% of Operator's gross revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expand up to an amount equal to 150% of the base percentage, which amount is 6% of gross revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

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

(iii) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the adjustment 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 adjustment contrary to the other two, the entity holding the minority position may require the required adjustment to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 7.2(f)(ii). The arbitrator shall then determine the amount of expenditure adjustment that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure adjustment, the arbitrator is limited to the expenditure level adjustment required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 7.2(f)(ii). The arbitrator's

determination shall be final and binding on Commission, WisDOT and Operator as to the amount of the expenditure adjustment required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 60 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) (A) 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.
- (B) 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.
- (C) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 7.2(f) (iv) (B) above, any one of them may require arbitration in accordance with Section 7.2(f) (iii) to determine the required amount of insurance coverage.
- (v) 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 7.2(f) (iii), but in no event shall the coverage limit be less than \$5,000,000 per occurrence, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 8.0 - TERMINATION OR SUSPENSION

Section 8.1 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 Commission's or Operator's insurance coverage lapses, is suspended, is cancelled, or fails to satisfy all the terms and conditions of Section 7.2 of this agreement or any amendment thereto, or (3) when Commission or Operator files for protection under any bankruptcy statute.

(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 12.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 8.2 Termination for Default.

In the event of any default described in Section 8.1, 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 8.3, 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 8.3 Ability to Cure Default.

(a) Removal of Commission Default. Commission shall have ten (10) calendar days from written notification by WisDOT of default by Commission or Operator, from the date required insurance coverage ceased, or from the date Commission or Operator filed for bankruptcy, whichever occurs first, to remove the cause of the default. Such correction shall be completed and available for WisDOT review within the ten (10) day period. Upon written petition by Commission, WisDOT 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, WisDOT shall provide appropriate written notice to Commission.

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

Section 8.4 Contractual Obligations Upon Termination.

Except as otherwise agreed to by the parties in writing, the obligations of Commission to WisDOT to provide freight rail service and to maintain the land and improved property under this Agreement shall cease on the effective date of the termination hereof except as provided for in Section 8.9, but all other obligations of the parties shall remain in full force and effect until all operations of Commission or Operator hereunder have ceased. Both parties agree to make reasonable efforts to satisfy their surviving obligations promptly after termination. Upon termination, however, Commission's rights to use the land and improved property shall cease immediately.

Section 8.5 Termination Approvals.

Both parties recognize that the termination of Operator's lease and license may require regulatory agency approval before termination can be effective. Commission agrees to cooperate in necessary efforts associated with obtaining such approvals and to require its Operator to cooperate with WisDOT in all necessary efforts associated with obtaining such approvals.

Section 8.6 Bankruptcy of Commission or Operator.

If any proceeding shall be commenced by or against Commission or 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 and said contract may be terminated upon 10 days notice by WisDOT to Commission. If all the obligations of Commission or 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 Commission or 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 WisDOT with the trustee or bankruptcy court for continuation under such terms as agreed to by WisDOT.

Section 8.7 Return of Property Upon Bankruptcy Default.

If this Agreement shall terminate pursuant to Section 8.6, Commission shall forthwith deliver possession and title, if title had been transferred to Commission, of the rail line land and improved property to WisDOT. Rail line land and improved property so delivered shall be in the same or better operating order, repair and condition as when originally delivered to Commission, reasonable wear and tear in service excepted, shall meet the standards of all applicable laws and shall have removed therefrom at Commission expense any addition, modification, or improvement owned by Commission or Operator and for which WisDOT has not made a specific request for it to remain with the property.

Section 8.8 Vacating the Rail Property.

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

Section 8.9 Obligations of Commission in the Event of Termination.

Commission 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 Commission or its Operator at the time of termination belonging to WisDOT or in which WisDOT has an interest arising out of a rehabilitation program where funds of WisDOT have been expended to pay for materials or materials otherwise have been paid for or partially paid for by WisDOT from its funds, Commission shall set such material aside on property belonging to WisDOT. In addition to all other obligations in the event of termination, Commission is obligated to remove all cars from the rail line within 10 days following its receipt of a notice to vacate and to deliver all cars to or from shippers on the rail line which are in transit to or from any source.

Section 8.10 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: acts of God; strikes or other labor troubles; other causes, except the unavailability of insurance coverage in full accordance with Section 7.2 of this Agreement or any amendment thereto, beyond the reasonable control of the parties; interruption of service caused by explosion, fires, vandalism, malicious mischief; or unavoidable interruption or cessation of service for a period of less than 120 days caused by a connecting railroad.

ARTICLE 9.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 9.1 WisDOT.

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

(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 other decree of any court, administrative agency or governmental body.

Section 9.2 Commission.

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

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

ARTICLE 10.0 - TAXES.

As of the date of this Agreement, unless waived or abated, Commission 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 Commission together with taxes, if any, levied or assessed on WisDOT for land owned by or in the possession of WisDOT. Commission agrees to hold WisDOT harmless from, indemnify against and defend all claims and liabilities with regard thereto.

ARTICLE 11.0 - OTHER COMMITMENTS

Section 11.1 Handicapped.

Commission agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(7)(a) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall, solely by reason of handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 11.2 Environmental Protection.

(a) Commission 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 limit water and air pollution in accordance with all applicable state and Federal standards, statutes and regulations.

(b) Commission agrees to conduct its operations in compliance with all requirements of Section 114 of the Clean Air Act, 42 USC 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under those acts.

(c) Commission hereby certifies that no facilities which will be utilized or improved as a part of its operations are listed on the Environmental Protection Agency (EPA) list of violating facilities ("the EPA list").

(d) Commission stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as a part of its operations is under consideration to be listed on the EPA list.

(e) 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.

Section 11.3 Prohibited Interest in The Proceeds of Operations.

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

(b) 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 11.4 Nondiscrimination.

(a) In connection with the performance of activities under this contract, Commission 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 Sec. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Commission agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

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

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

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

ARTICLE 12.0 - GENERAL PROVISIONS.

Section 12.1 Choice of Law.

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

Section 12.2 Notice.

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

Director, Bureau of Railroads and Harbors
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707

Chairman
Wisconsin River Rail Transit Commission
426 Karmann Library
Platteville, Wisconsin 53818

President
Wisconsin and Calumet Railroad Company, Inc.
203 South Pearl Street
Janesville, Wisconsin 53545

Section 12.3 Status of Commission and its Operator.

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

Section 12.4 Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement is personal to the Commission and shall not pass to its successors or assigns. Commission's rights hereunder shall not be assignable whether by way of assignment, sublease or otherwise, directly or indirectly, without WisDOT's prior written approval. Upon request, however, WisDOT may allow a successor to obtain an identical agreement as the one held by its predecessor. This Agreement shall not create rights of any sort in Commission to assign, sublease or transfer, in any fashion whatsoever, its rights under this Agreement to any other person, firm or corporations, including any affiliated corporation, firm or person. Commission shall not obtain any interest or estate of any kind or extent whatsoever in the property by reason of this Agreement.

Section 12.5 Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it

is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 12.6 Amendments, Consents and Approvals.

No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement. 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 12.7 Captions.

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

Section 12.8 Compliance by Commission With Agreement.

Commission acknowledges it has reviewed the land use agreement by and between Commission and WisDOT and will meet any of the covenants and conditions required therein. In the event of additional agreements arising in grant or other aid instruments hereinafter made between Commission and WisDOT, Commission shall comply with the same.

Section 12.9 Additions or Extension 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 Commission. Permits for and disposition of such extensions shall be in compliance with Section 6.8.

Section 12.10 Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Commission, Commission may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 6.8.

Section 12.11 Specific Performance.

WisDOT 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 WisDOT or Commission has first notified the other party of the other party's obligation to perform.

Section 12.12 Agreement to Amend.

This Agreement has been negotiated, executed and delivered on the basis of the ownership of the title to the real estate involved being in the State of Wisconsin, Department of Transportation with a right of use being granted to Wisconsin River Rail Transit Commission subject to the control and direction of WisDOT. In the event that hereafter the title, ownership and control is granted to the Commission, it is agreed that this Agreement will be amended to reflect such changes.

Section 12.13 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.

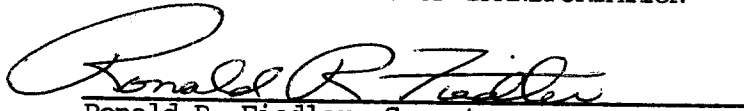
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first written above.

WISCONSIN RIVER RAIL TRANSIT COMMISSION


Richard Scullion, Chairman


John N. Hanrahan, Secretary

WISCONSIN DEPARTMENT OF TRANSPORTATION


Ronald R. Fiedler, Secretary

7001

This document has been drafted by the Wisconsin Department of Transportation.

STATE OF WISCONSIN)
)
Dane COUNTY)

Personally came before me this 20 day of March, 1987, the above named Richard Scullion and John N. Hanrahan, to me known to be the Chairman and Secretary of the above named Transit Commission and acknowledged that they executed the foregoing instrument as such Chairman and such Secretary for the uses and purposes therein expressed pursuant to authorization and direction of the Board of Commissions of said Transit Commission.

Richard E. Black
Richard E. Black
Notary Public, State of Wisconsin
My Commission: March 26, 1989
EXPIRES

STATE OF Wisconsin)
)
Dane COUNTY) s.s.

Personally came before me this 20 day of March, 1987, the above named Ronald R. Fiedler, to me known to be the Secretary of the Wisconsin Department of Transportation and acknowledged that he executed the foregoing instrument as such Secretary for the uses and purposes therein expressed.

Richard E. Black
Richard E. Black
Notary Public, State of Wisconsin
My Commission: EXPIRES March 26, 1989

**Amendment Eight
To
Grant Agreement**

Agreement No. 0490-40-48(b)(1)

This Amendment Eight to Agreement No. 0490-40-48(b)(1) dated March 20, 1987, is made and entered into this 9th day of September, 2005 by and between the Wisconsin River Transit Commission, d/b/a/ Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Section 66.0301, Wis. Stats., ("Commission") and the Wisconsin Department of Transportation ("WisDOT").

WITNESSTH

WHEREAS, the Wisconsin and Southern Railroad Co. (WSOR) purchased from the Canadian Pacific Railway the rail line, including land and improved property, located between Milepost 132.11 in the City of Watertown and Milepost 164.61 in the City of Madison for the purposes of continuing rail transportation service, and

WHEREAS, under an Option to Purchase Agreement dated November 7, 2003 by and between WSOR and WisDOT, the WisDOT granted to the WSOR the sum of Five Million, Two Hundred Thousand Dollars (\$5,200,000) for the purpose of preserving freight rail service, and

WHEREAS, under the terms of said agreement WSOR agreed to extend to WisDOT an option for the future acquisition of this property for an additional amount of One Million, Eight Hundred Thousand Dollars (\$ 1,800,000), and WSOR agreed to enter into an Operating Agreement with the Commission to facilitate and manage the continuation of rail service, and

WHEREAS, WisDOT and Commission desire to incorporate the operation and management of this line into the above referred to Grant Agreement 0490-40-48(b)(1) to facilitate the continued operation of this line as part of the overall Commission's rail system.

NOW, THEREFORE, the parties hereto agree as follows:

1. Article 1.0, Paragraph k, as amended, is deleted in its entirety and replaced by the following:
 - k. "New line" means the lines of railroad including land and improved property between Milepost 138.57 in Madison and Milepost 101.35 in Janesville, between Milepost 39.64 in Elkhorn and Milepost 53.0 at Bardwell Junction, between milepost 94.49 in Janesville, Wisconsin and Milepost 49.79 in Fox Lake, Illinois, between Milepost 20.5 in Waukesha and Milepost 62.48 in Milton Junction, between Milepost 16.53 in Waukesha and Milepost 13.31 in Brook field, between Milepost 138.58 in Madison and Milepost 146.72 in Middleton and between Mileposts 167.53 and 168.00 in Madison,

between Milepost 132.11 in Watertown and Milepost 164.61 in Madison acquired by WisDOT and Commission and available for Commission use.

2. Article 1.0, Paragraph s is deleted in its entirety and replaced by the following:

s. "Principle line segment" means one or more of the following rail lines as defined by their end points:

- (1) Division of ownership with Metra at Milepost 49.79 in Fox Lake, Illinois and the Wisconsin State Line.
- (2) Bardwell Jct. to Elkhorn at Milepost 39.64, including leg(s) of the wye.
- (3) Wisconsin State Line to division of ownership with IMRL at Milepost 94.5 near Janesville, Wisconsin.
- (4) Division of ownership with IMRL at Milepost 11.02 to end of track in Monroe, Wisconsin.
- (5) Milepost 101.51 near Janesville to Milepost 106.52 at Milton Jct.
- (6) Milepost 62.48 at Milton Jct. to Milepost 20.50 in Waukesha.
- (7) Milepost 20.50 in Waukesha to Milepost 19.56 in Waukesha.
- (8) Milepost 106.52 in Milton Jct. to Milepost 138.58 in Madison.
- (9) Milepost 138.58 in Madison to Milepost 146.72 in Middleton.
- (10) Milepost 146.72 in Middleton to division of ownership with BNSF at Milepost 233.75 in Crawford.
- (11) Division of ownership with BNSF at Milepost 235.80 in Prairie du Chien to division of ownership in Prairie Sand and Gravel at milepost 237.20 near Prairie du Chien.
- (12) Prairie du Sac to Mazomanie including both legs of the wye.
- (13) Milepost 16.53 near Waukesha to Milepost 13.31 near Brookfield. This segment is a rail banked line.
- (14) Milepost 132.11 in Watertown to Milepost 164.61 in Madison.

3. Section 2.3 (c) is deleted in its entirety and replaced by the following:

(c) Grant Repayment In the event of liquidation of the principle line segments 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, or any combination of these principal line segments,

following payment by the Commission of the amounts identified in subsection (b) above, both WisDOT and Commission have a claim on the net proceeds of the liquidation in the same proportion as their contribution to the original acquisition and subsequent, if any, rehabilitation of the improved property. WisDOT's and Commission's share of liquidation shall be computed in accordance with Section 6.6 (d) (ii) (A) through (D).

4. The first five full sentences of Section 6.6 (d) (ii) are deleted in their entirety as outlined in Amendments 4 to this agreement. The modifications to this subsection outlined in Amendment 4 are hereby superceded and replaced by the following:

(ii) Computation. The initial investment basis of WisDOT and Commission shall be determined by the financial contributions of each to the cost of acquisition of land, improved property and rail bank lines on which grant funds are expended. For the purposes of this computation, the initial investment basis of WisDOT is as follows:

Principle Line Segment	Land	Improved Property	Total WI	Total IL
Janesville-Fox Lake, IL (1 and 3)	\$403,285	\$4,008,430	\$1,221,004	\$190,711
Bardwell Jct. -Elkhorn (2)	432,000	383,178	815,178	-0-
Janesville - Madison (5 and 8)	824,000	538,262	1,352,262	-0-
Milton Jct. - Waukesha (6)	461,598	253,844	751,442	-0-
Waukesha -Brookfield (13)	30,850	36,770	67,570	-0-
Madison - Middleton			600,000	-0-
Madison- Watertown(14)			7,000,000	
New Line Total	-	-	\$11,807,456	\$190,711

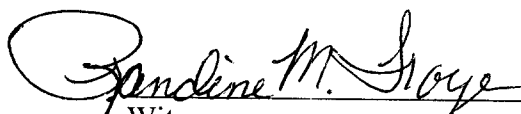
The initial investment basis of commission is as follows:

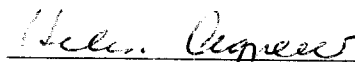
Principle Line Segment	Land	Improved Property	Total WI	Total IL
Janesville-Fox Lake, IL (1 and 3)	-0-	\$252,108	\$226,004	-0-
Bardwell Jct. -Elkhorn (2)	-0-	95,795	95,795	-0-
Janesville - Madison (5 and 8)	-0-	134,565	134,565	-0-
Milton Jct. - Waukesha (6)	-0-	63,461	63,461	-0-

Waukesha - Brookfield (13)	-0-	9,180	9,180	-0-
Madison - Middleton (9)	-0-	-0-	-0-	-0-
Watertown- Madison(14)	-0-	-0-	-0-	-0-
New Line Total	-	-	\$529,005	\$190.711

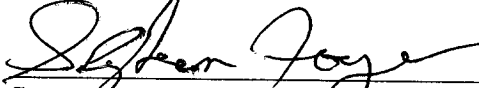
5. All other Articles of Agreement 0490-40-48 (b) shall remain as written.
6. This Amendment will take affect following a determination by the Surface Transportation Board that WisDOT will not assume the responsibilities of a common carrier railroad operator by acquiring this property, and following the execution and recording of all necessary documents transferring ownership and title to the property to WisDOT.

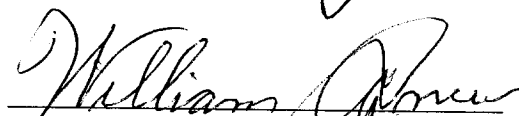
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year first written above.

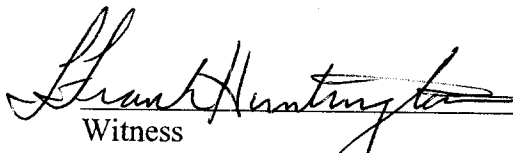

 Witness


 Witness

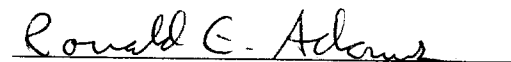
Wisconsin River Rail
 Transit Commission


 Steven Foye, Chair


 William Agnew, Secretary


 Witness

Wisconsin Department of Transportation


 Ronald E. Adams, Chief
 Railroads and Harbors Section

OPERATING AGREEMENT

BY AND BETWEEN

WISCONSIN RIVER RAIL TRANSIT COMMISSION

AND

WISCONSIN & SOUTHERN RAILROAD COMPANY

AGREEMENT NO. 0490-40-48(d)

August 1997



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AGREEMENT NO. 0490-40-48(d)

This Agreement made and entered into this 1st day of September, 1997, by and between Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin & Southern Railroad Comp., a railroad company organized and existing under the laws of the State of Wisconsin and fully empowered to act as a railroad company in Wisconsin, having its principal office at 5300 N. 33rd Street, City of Milwaukee, County of Milwaukee, State of Wisconsin ("Operator").

WITNESSETH

WHEREAS, the Wisconsin Department of Transportation ("WisDOT") has acquired ownership of the Principal Line Segments in the State of Wisconsin and the Commission has acquired the Principal Line Segments in the State of Illinois as identified in Article 1.0q; and

WHEREAS, Commission is created by Iowa, Grant, Crawford, Sauk, Dane, Rock, Walworth and Waukesha Counties for the purpose of providing for the continuance of rail service on the Rail Line with authority to acquire the use of the Rail Line by purchase, lease or otherwise and to provide for the operation of freight rail service thereon by contract or otherwise; and

WHEREAS, WisDOT owns the Principal Line Segments in Wisconsin and the Commission owns the Improved Property of the Principal Line Segments in Wisconsin and the Land and Improved Property of the Principal Line Segments in Illinois subject to all the conditions and limitations set forth in the Land Use Agreement and Grant Agreement identified in Article 1.0(p) and (q) respectively; and

WHEREAS, Operator is also operating over the tracks of the Pecatonica Rail Transit Commission ("Pecatonica") under similar Shortline Railroad 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 dated March 20, 1987 by and between Commission and WisDOT and the improved railroad property acquisition Grant Agreement dated March 20, 1987 for the improved railroad property acquisition by and between Commission and WisDOT; and

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

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

ARTICLE 1.0 - DEFINITIONS.

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

- a. "AREA" means American Railway Engineering Association.
- b. "BNSF" means the The Burlington Northern and Santa Fe Railroad Company or its successors, 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 for which it was primarily intended and designed for human use, occupancy or the storage of goods and materials.
- d. "Commission" means the Wisconsin River Transit Commission D/B/A the Wisconsin River Rail Transit Commission.
- e. "Commuter Passenger Service" means mass transit by rail characterized by morning and evening weekday peak ridership period service and by multiple ride tickets.
- f. "CPR" means the CP Railway D/B/A the Soo Line Railroad Company and its successors, if any.
- g. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- h. "Grant Agreement" means GRANT AGREEMENT - Improved Railroad Property Acquisition Grant Agreement By and Between Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated March 20, 1987 and any amendments thereto.
- i. "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.
- j. "Improved Property" means buildings and trackage located upon the Land of the Rail Line.
- k. "IMRL" means the Iowa Minnesota Rail Link.

- l. "Land" means the real estate, generally 66 feet in width, the use of which is provided to Operator by Commission, upon which the trackage which is leased to Operator under this Agreement is located and which is the subject of the Land Use Agreement.
- m. "Land Use Agreement" means the Land Use Agreement by and between the Wisconsin River Rail Transit Commission and the Wisconsin Department of Transportation, dated March 20, 1987 and any amendments thereto.
- n. "Operator" means the Wisconsin & Southern Railroad Comp.
- o. "Pecatonica" means Pecatonica Rail Transit Commission.
- p. "Person" means an individual, a partnership, an association, or bodies politic or corporate.
- q. "Principal Line Segment" means one of the following as defined by their end points:
 - (1) Division of ownership with METRA at Milepost 49.79 in Fox Lake, Illinois and the Wisconsin State Line.
 - (2) Wisconsin State Line to division of ownership with IMRL, at Milepost 94.5 near Janesville, Wisconsin.
 - (3) Division of ownership with IMRL at Milepost 11.02 to end of track in Monroe, Wisconsin.
 - (4) Bardwell Jct. to Elkhorn at Milepost 39.64, including leg(s) of the wye.
 - (5) Milepost 101.51 near Janesville to Milepost 106.52 at Milton Jct.
 - (6) Milepost 62.48 at Milton Jct. to Milepost 20.50 in Waukesha.
 - (7) Milepost 20.50 in Waukesha to Milepost 19.56 in Waukesha.
 - (8) Milepost 106.52 at Milton Jct. to Milepost 138.58 in Madison.
 - * (9) Milepost 138.58 in Madison to Milepost 146.72 in Middleton. *and Amend #1 between mp 168.0 and 167.53 in Madison*
 - (10) Milepost 146.72 in Middleton to division of ownership with BNSF at Milepost 233.75 in Crawford.
 - (11) Division of ownership with BNSF at Milepost 235.80 in Prairie du Chien to division of ownership with Prairie Sand and Gravel at milepost 237.20 near Prairie du Chien.

- (12) Prairie du Sac to Mazomanie including both legs of the wye.
- (13) Milepost 16.53 near Waukesha to Milepost 13.31 near Brookfield. This segment is a rail banked line.
- r. "Rail Line" means the Principal Line Segments in aggregate.
- s. "South Central" means South Central Wisconsin Rail Transit Commission.
- t. "STB" means the Surface Transportation Board or its successors, if any.
- u. "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.
- v. "UP" means the Union Pacific Railroad.
- w. "WisDOT" means the Wisconsin Department of Transportation.

ARTICLE 2.0 - LEASE, LICENSE, TERM AND RESERVATION.

Section 2.1 - Lease, License and Term.

(a) Commission hereby leases to Operator the Improved Property and grants to Operator an exclusive right and license to use the Land for the purpose of providing rail service and for all other purposes necessary to the foregoing, subject, however, to the uses and reservations identified in Section 2.3 and Section 4.5 hereafter and subject to the uses and reservations set forth in the governing Land use and grant agreements. Operator agrees to cooperate with Commission to allow supplemental freight rail service to be provided by Commission in situations where Operator cannot justify and is unable to provide a desired level of freight rail service, provided that Commission indemnifies Operator in all respects under this Agreement and that Commission and WisDOT release in writing Operator from any obligation or liability which would be incurred if Operator were performing the service provided by Commission. The written release shall specify the terms and conditions under which the release is issued.

(b) This Agreement shall be effective upon the date indicated above (herein referred to as "Commencement Date") and shall end at 1201 A.M. December 31, 2047; provided, however, that either party may terminate this Agreement under Article 7.0.

(c) Provided Operator is not in default, 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 is the Land and Improved Property obtained by Commission from WisDOT through the agreements defined in Article 1.0(h) and (m) herein. Future operations may show WisDOT that portions of the Land or Improved Property are not needed for railroad use or are of sufficient width to allow other uses as co-uses.

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

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

(b) In the event WisDOT determines certain parcels of Land or Improved Property are not reasonably required for the preservation of railroad services, WisDOT may, upon its own initiative, sell, permit, or lease such Land or Improved Property located outside 33 feet of the center line of the main track to any party. Before a sale, WisDOT must first offer the Land or Improved Property to Commission and to other state and local government units under the provisions of Section 85.09, Wis. Stats. Commission shall promptly notify Operator in writing whether it intends to exercise any right to purchase Land and Improved Property offered by WisDOT. If Commission does not elect to exercise such right, Operator may, within thirty (30) days following receipt of the foregoing notice, supply Commission with the purchase funds, and Commission shall purchase the Land and Improved Property to the extent that it may be accomplished under Section 85.09, Wis. Stats., and convey same to Operator; provided that Commission shall not be required to purchase such Land and Improved Property on behalf of Operator if in its reasonable judgment Commission determines that the Land and Improved Property will not be used for a public purpose, in which case the funds furnished by Operator to Commission shall be promptly returned. Commission shall not consent to WisDOT sale or lease of any Land and Improved Property within 33 feet of the center line of the main track without Operator approval if the parcel to be sold is unoccupied by permanent structures, or is to be sold to an owner of property abutting the main track. Operator approval is not required for Commission's consent to a WisDOT sale or lease of Land and Improved Property within 33 feet of the center line of the main track when the Land and Improved Property are subject to a lease and are occupied by a permanent structure legally existing on the date of the Grant

Agreement, or if the sale or lease is for utility or communication use provided that the lessee or purchaser agrees in writing to indemnify Operator against loss or disruption to Operator's business caused by such lessee's or purchaser's use of the Land or Improved Property so acquired.

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

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

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

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

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

or changing of the Rail Line or other facilities to accommodate the co-use shall be first approved by WisDOT in accordance with Commission's obligations under the Land Use Agreement and shall not involve any additional cost to Operator and that a reasonable division of costs for the servicing, maintaining and repairing of the trackage and other facilities for the co-use shall be established. It is a further condition that such a joint use shall not unreasonably restrict the use of the particular facilities by Operator. This joint use may involve testing or trial operations as well as permanent operations.

(h) As to the planning operations and the changes which might occur because of planning operations, Commission reserves to WisDOT, itself and the governmental entities along the Rail Line the right to do such planning and to provide for relocation of facilities, including Improved Property and the elimination of certain trackage, buildings and other facilities, in order to carry out the determinations arrived at from such planning. It is a condition of this Agreement that Commission reserves the right to negotiate the contract as to such matters on the condition that Operator be given notice and the opportunity to act as a participant or an observer at any such negotiations and that the following factors are controlling insofar as they affect Operator: Operator agrees that it will cooperate in implementing any agreements made by Commission as to the matters set forth in this subsection providing that the alternate facilities made available to Operator are approximately equal to those released by Operator and that any major costs of the changes are not imposed on Operator.

(i) Commission reserves the right to permit recreational and scenic activities on and along the Rail Line subject to prior approval of WisDOT. Commission agrees that it shall hold Operator, its officers, directors, agents and employees, harmless from and against all liability, damage, loss, claims, costs (including reasonable attorneys' fees) demands and actions of any nature which arise out of any such permittee's use of the Land. Commission represents that it will provide insofar as it is able to do so to Operator the opportunity to participate in the negotiating and establishing of any such additional uses and particularly the opportunity to present to WisDOT and other government units involved, its position as to any hazards, expenses or other impediments or detracting items which might affect or allegedly affect Operator as a result of such proposed additional uses.

(j) 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.

(k) 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. WisDOT in consultation with Commission may grant or deny a permit based solely upon any of the following: adequacy of liability insurance coverage, terms and amount as set forth in Section 6.2 below; trackage condition; proposed speed of operation; preparations for crowd control, parking and clean-up; and sufficiency of consumer protection assurances associated with each use by Operator of any portion of the Rail Line subject to this Agreement to be operated over by Operator or by an affiliate, subcontractor or lessee of Operator. The permit may be denied if not requested in writing a minimum of ten days prior to the proposed use date, or if a fully executed copy of an acceptable certificate of binding insurance is not submitted for Commission and WisDOT review ten days prior to the proposed use date, if insurance coverage is inadequate or flawed in the reasonable judgment of Commission or WisDOT, or if a prior permit fee remains unpaid in whole or in part.

ARTICLE 3.0 - RENT.

(a) Operators rent to Commission shall be determined in accordance with Appendix B.

(b) In addition to any rental due under Appendix B, Operator shall pay Commission 10% of its gross receipts in excess of \$100,000 per year from excursion trains permitted by WisDOT.

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 this Rail Line and to furnish Commission documented evidence of such divisions after being obtained.

Section 4.2 - Trackage Rights.

(a) Operator and Commission have the responsibility for obtaining the necessary trackage rights required to permit the operation over the Rail Line that is required to perform the necessary freight rail service for shippers along the Rail Line. Operator and Commission shall use their best efforts to obtain such rights or to purchase such additional trackage and land or both as are necessary to provide access by Operator to the Improved Property. Operator shall file all trackage rights agreements with the STB as may be required by law.

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

- i. UP property, Milepost 101.51 to IMRL Milepost 94.50 in Janesville;
- ii. IMRL property, Milepost 9.46 (= Milepost 46.06 = Milepost 98.69) to Milepost 11.02 in Janesville;
- iii. UP property, Madison Subdivision, Milepost 138.57 to Milepost 140.3 in Madison;
- iv. UP property, Cottage Grove Subdivision, Milepost 81.4 to Milepost 79.1 in Madison; and
- v. UP property, Central Soya Subdivision, in Madison, Milepost 84.53 to Milepost 89.9.

- vi. BNSF property, Milepost 233.75 to Milepost 235.80 in Prairie du Chien.
- vii. Such other railroad property as is or as may become necessary to operate the Rail Line.

Section 4.3 - Interchange Agreements.

It is recognized that it will be necessary to maintain interchange agreements with the CPR at Janesville and Madison and with the BNSF at Prairie du Chien. Operator agrees to supply Commission with documented evidence of the interchange agreements and any amendments thereto after obtaining the same.

Section 4.4 - Interline Divisions.

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

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

Section 4.5 - Division of Freight Revenues With Certain Class II and Class III Lines.

Operator covenants and agrees to the interchange of freight traffic on such lines as follows:

Subsection 4.5(a) - Division of Freight Revenues.

- (1) When Carrier A originates revenue traffic, interchanges the traffic with Carrier B and Carrier B terminates the traffic, there shall be allowed a division of freight revenue from such traffic to each carrier computed at 25% for the originating carrier; 25% for the terminating carrier; with the balance of the revenue prorated to each carrier on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose.
- (2) When Carrier A originates or terminates revenue traffic interchanged with Carrier B, which in turn bridges the traffic to or from Carrier C, the revenue attributable to the combined services of Carriers A and B shall be apportioned 33% to Carrier A as the originating or terminating carrier; 10% to Carrier B as the bridging carrier; and the balance of the revenue prorated to Carriers A and B on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose.

Traffic moving on combination rates with Carrier C shall, between themselves, be treated by Class II and III railroads operating over state assisted lines as traffic moving on a through rate and subject to the provisions of Section 4.5(a)(1).

- (3) When both Carriers A and B only bridge the same revenue traffic with neither originating nor terminating it, the revenue attributed to their combined services shall be allotted in an amount equal to 10% to each of them with the balance of the revenue prorated to each carrier on the basis of a proration of the rate utilizing Class 100 rate factors most recently published in the Western Trunk Line 1000 class tariff or its successor publication performing a like purpose. Traffic moving in this manner on combination rates shall, between themselves, be treated by Class II and Class III railroads operating over state assisted lines as traffic moving on a through rate and subject to the provisions of either Sections 4.5(a)(1) or 4.5(a)(2).
- (4) Revenue derived from surcharges imposed by any carrier subject to the revenue division formulas set forth in Sections 4.5(a)(1), 4.5(a)(2), or 4.5(a)(3) above shall not be included in the computation or settling of divisions covered under those paragraphs.

Subsection 4.5(b) - Switching Charges.

- (1) The fees listed in this subsection apply to switching performed by one Class II or Class III railroad operating over state assisted lines for or with another. These charges shall apply to all forms or classes of switching within the switching limits of junction stations.
- (2) The switching fees set forth herein are applied to each loaded car handled. Distances are computed from the point of switch on the designated interchange track to the point of switch on the industrial siding or subsequent interchange track.
- (3) The switching fee schedule is:

<u>Distance</u>	<u>Amount Per Loaded Car</u>
0 - 0.99 miles	\$ 50.00
1 - 2.99 miles	\$ 65.00
3 - 5.00 miles	\$ 80.00
over 5 miles	\$100.00

- (4) The switching carrier shall be permitted five (5) days use of cars in switching without being charged per diem on the cars. The switching fee schedule in paragraph 3 shall be adjusted in compliance with any ex parte rail cost recovery increases following the effective date of the increase.

Subsection 4.5(c) - Trackage Rights.

- (1) Trackage rights shall be allowed for motive power, system cars, system equipment and revenue freight movement between any two segments of a commonly controlled or commonly managed or commonly owned Class II or Class III carrier operating over state assisted lines by any other Class II or Class III carrier operating over state assisted lines under the terms of Section 4.5(c)(2) or 4.5(c)(3).
- (2) Engines, system equipment, and freight moved between two track segments commonly owned, managed, or controlled by a Class II or Class III carrier operating over state assisted lines shall be moved at the rate of \$5.00 per train mile for trains of 5 cars or less, excluding caboose, plus \$0.25 per car mile for each car in excess of 5 cars in each train beginning with the sixth car. These fees shall be adjusted annually and take effect upon the first day of January each year. Adjustments shall be determined by multiplying the fee amounts in effect for the year ending December 31 by the sum of the Cost Recovery Tariff percentage increases allowed through the year ending December 31. (Example: first quarter 1982, 2%; second quarter 1982, 0.5%; third quarter 1982, 1%; fourth quarter 1982, 1.5%; sum of increases for 1982, 4%; adjusted rates for calendar 1983 equal \$5.20 and 26 cents). Adjusted rates shall be rounded to the nearest whole cent. General Managers Association of Chicago rules then current shall apply to any other joint facility agreement.
- (3) Maintenance of a line is the responsibility of the carrier managing or controlling the line and shall be performed such that the trackage on which trackage rights fees are collected is maintained at the FRA Track Safety Standard Class level it met at the time the trackage rights agreement was signed, or such other level as may be agreed to by the parties to the trackage rights agreement.
- (4) Any Class II or Class III carrier operating over state assisted lines as well as owning, managing or controlling a line segment between two line segments of a carrier as described in Section 4.5(c)(1) may, with respect to revenue freight movements, elect either of the following two methods for handling such revenue freight:
 - i. Participate in a joint rate, including such intervening mileage, and receive a freight revenue division in accordance with Section 4.5(a).
 - ii. Forego all participation in joint rates for such mileage and traffic movement and grant trackage rights permitting revenue freight bridging operations in accordance with the fees established under Section 4.5(c)(2) of this subsection.

Subsection 4.5(d) - Binding Arbitration of Disputes Under Section.

- (1) Either carrier involved in an unresolved issue controlled by Section 4.5 may request binding arbitration of the dispute.

- (2) The arbitration committee shall consist of three members, one member each selected by the disputants from Class II or Class III railroads operating in Wisconsin and the third member selected by the first two who shall also serve as chairman of the committee. In the event a third member cannot be agreed upon, the arbitration selection provisions of Section 788.04, Wis. Stats., will apply.
- (3) The form and method of conduct of the arbitration effort shall be determined by the arbitration committee.
- (4) All expenses of arbitration shall be shared equally between the railroad carriers involved.

Subsection 4.5(e) - Use as Interim Agreement.

The terms and conditions of subsections 4.5(a) through 4.5(d) shall be used as an interim revenue division and trackage rights compensation formula between and among Class II and III railroads operating over state assisted lines effective from the date traffic is offered for interchange between them until such time as replaced by a subsequent agreement of the parties.

ARTICLE 5.0 - RAILROAD OPERATIONS.

Section 5.1 - Authority to Operate.

(a) Operator has obtained the requisite operating authority under Modified Certificate of Public Convenience and Necessity, 49 CFR §§1150.21-.24 from the STB for the railroad operations described under this Agreement and shall keep such authority in full force and effect throughout the term of this Agreement. Operator shall make all required filings and reports to the STB and the Wisconsin Office of the Commissioner of Railroads.

(b) Commission hereby as a part of this Agreement grants Operator the right to operate over the Rail Line as a common carrier railroad providing exclusive originating and terminating rail service on this Rail Line, including line-haul and switching services to shippers on the Principal Line Segments over which it is operating as a rail freight carrier. In such operation, Operator shall have the power and authority to exclusively control, manage, staff and plan for the provision of freight rail service on the Principal Line Segments over which it is operating as a rail freight carrier. As a part of its operation, Operator shall have power to effect such additions, changes, betterments, and repairs to the Improved Property as Operator may, in its judgment, deem necessary, expedient or proper to assist or improve rail service over the Rail Line, subject to the approval of Commission if approval is otherwise required by other provisions in this Agreement, the Land Use or Grant Agreement, other applicable agreements or by law. Commission grants Operator the right to adopt and promulgate rules governing access to, use of, and operation of the Land and Improved Property, provided any such rules affecting freight rail service which differ from the General Code of Operating Rules adopted by Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Railroad Company, Chicago & North Western Transportation Company, CP Rail System Heavy Haul - US, Southern Pacific Lines, and Union Pacific Railroad,

effective April 10, 1994 or as subsequently revised, shall be lawful under Federal and state statutes and regulations governing such service and shall have been approved by WisDOT within 180 days of the issuance of the order adopting or promulgating such rules and provided any such rules are consistent with this Agreement.

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

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

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

(b) Maintenance. Operator shall perform or cause to be performed all maintenance of the Rail Line including trackage, crossings at grade, bridges, buildings, drainage ways and structures, fences, other appurtenances, and any other portion of the Land or Improved Property reasonably necessary for the safe operation of freight rail service or any other service provided by it to no less than the minimum standards set forth in Attachment A hereto, or the FRA class level of the line, if less than Class II, as determined by WisDOT after consultation with Operator as of an inspection date prior to sixty (60) days following the Commencement Date. 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. 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 in Attachment A 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 inside tracks, sidings or other location 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 or Director of Bureau of Railroads and Harbors 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 2.3 or Section 4.5 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 Agreement or Land Use Agreement as to securing authority and approval from WisDOT and as to the division of rents.

(h) Promotion of Business. Operator covenants and agrees to use its best efforts to promote the use of freight rail services by customers located along the Rail Line and in the immediate vicinity and agrees to diligently seek new rail freight 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 Rail Line Land and Improved Property adjacent to private lands. Operator may adopt and enforce any necessary rules in accordance with Section 5.1 in order to protect the Rail Line. Operator shall have the right to post signs and erect barricades necessary to delineate the Rail Line as railroad property and to prevent entrance upon the subject Rail Line by unauthorized vehicles or individuals.

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

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

(m) 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.

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

(o) Maintenance Plan. 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 chartered 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.

(p) 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.

(q) 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 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, 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, 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 applicability 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 \$10,000,000 per occurrence, or other form approved by WisDOT. WisDOT and Commission and their officers, employees, and agents shall be named as additional insureds under such policies. Operator agrees to maintain and keep in force worker's compensation and employer's liability

insurance as applicable under the Federal Employer's Liability Act to the extent, if any, that it is not covered under the Comprehensive Railroad Liability Policy. Further, Operator shall carry Wisconsin Worker's Compensation Insurance to the extent that it is necessary over and above federal employer's liability coverage and for the covering of any employees, if any, who are not covered under the Federal Employer's Liability Act. Operator further agrees to carry fire and extended coverage for any buildings and structures subject to damage in an amount not less than \$5,000,000. All such insurance shall cover Commission and WisDOT to the extent of the ownership of both or either in any of said properties and to include under such coverage buildings, and trackage owned by Commission and leased to Operator hereunder, even though some of said buildings or structures might not be included in the property used by the Operator, except that coverage need not be maintained on improvements sold, leased, licensed or otherwise disposed of by WisDOT or Commission to any third party. Items of coverage for Commission may be waived by letter from Commission to the Operator.

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

(c) Self-Insured Retention. It is understood and agreed that the comprehensive railroad liability policy to be obtained and kept in force by Operator may contain a self-insured retention. The figures of \$75,000 per occurrence is hereby approved as the self-insured retention for railroad liability, \$5,000 for FELA, and \$100,000 for property. Operator agrees to confer with Commission and WisDOT on the amount of self-insured retention at least 60 days prior to policy renewal or at such other time as review may be required by the insurer. It is a condition of this Agreement that Operator shall annually provide Commission and WisDOT with an independently audited financial statement showing the financial capability of the Operator to be sufficient to satisfy the self-insured retention.

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

(e) Self-Insured Retention Set Aside. Operator shall, within 30 days after receiving a claim or notice of claim alleging an incident or after being notified of a claim or notice of claim being received by Commission, a member county of Commission, or a WisDOT employee alleging an incident, set aside a separate, segregated reserve for each claim, including claim defense. The reserve fund set aside for each claim and for its defense shall be determined by Operator's counsel and WisDOT's counsel. If the two are unable to agree, they shall select a third party to make the determination. Pending that determination, at least the lesser amount shall be set aside. For the purposes of monitoring Operator's performance under this Agreement relating to claims, Operator agrees to provide any Commission or WisDOT representative full and complete access to all documents and records related to Operator's operations or financial position. In the event that the ratio of Operator's current assets to current liabilities, including claim reserves, as determined from General Ledger Trail Balance sheets filed with Commission and WisDOT within 45 days after the end of each quarter beginning with the quarter ending September 30, 1994, is less than 1.1 to 1, as determined by WisDOT, Commission shall have the right to terminate this Agreement by fifteen (15) days written notice to Operator. If, upon receipt of such notice of termination, Operator shall desire to continue this Agreement in effect, Commission or Operator shall have the right to do so by (i) purchasing, at its own cost and expense, such insurance as WisDOT and Commission shall deem necessary in their reasonable judgment or by (ii) causing the equity owners of Operator to contribute such additional amounts to the capital of Operator as are required to increase such ratio to 1.1 to 1.

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

- (A) Commission or WisDOT may require Operator to expend up to a fixed percentage of Operator's gross revenue, as determined under Sections 6.2(f)(i)(B) and 6.2(f)(i)(C) herein, to purchase comprehensive railroad liability insurance covering the liability as is required and naming the additional insureds as is required under paragraph (a). Operator's decision to obtain insurance beyond that which is required under paragraph (a) covering the liability that arises out of Operator's actions, omissions, presence or operations on the Land or the Improved Property or over the Rail Line and naming Commission and WisDOT, their officers, employees, and agents, as additional insureds, shall not result in Operator purchasing any less insurance coverage for these purposes under paragraph (a) than would otherwise be required if Operator did not purchase the additional insurance coverage beyond that required for these purposes under paragraph (a).

- (B) A base percentage of gross revenue expended for the purchase of comprehensive railroad liability insurance is established for the duration of this Agreement at 4% of Operator's gross revenue for the Operator's most recent fiscal year, as determined by independent audit. Commission or WisDOT may require Operator to expend up to an amount equal to 150% of the base percentage, which amount is 6% of gross revenues, for comprehensive railroad liability insurance. The amount of liability insurance coverage purchased by this sum shall be maintained in force by Operator until next modified under the terms of this section.

At no time, however, may this base percentage or the review and modification procedure established under this paragraph (f) be used to reduce the requisite insurance amounts and coverages below that required under paragraph (a) above. Those insurance requirements stated in paragraph (a) are minimal requirements and shall be met regardless of the base percentage of gross revenue calculation or of the review and modification procedures described in this section.

- (C) The amount of the increase, if any, in the Operator's expenditure for liability insurance required by Commission or WisDOT may be used to adjust coverage limits or self-insured retention limits or both and shall only be required upon the approval of the increase by two of the following three entities: Commission, Operator, and WisDOT. In the event one of these three entities takes a position on the approval of the required increase contrary to the other two, the entity holding the minority position may require the required increase to be subject to arbitration through the use of the American Arbitration Association and its procedures. The arbitrator shall determine what liability insurance coverage is sufficient for (1) the reasonable and full compensation of the public and persons who may be injured or damaged, (2) the protection of the interests of the Commission, WisDOT, and Operator, and their officers, employees, and agents, including their interests as indemnities and for contribution, in the event of property damage, personal injury, or other loss that may occur, and (3) the availability of that coverage to the Operator in the insurance market place pursuant to the limitations established under Section 6.2(f)(i)(B). The arbitrator shall then determine the amount of expenditure increase that is reasonably necessary to acquire the liability insurance coverage the arbitrator has so determined to be sufficient. In determining the amount of expenditure increase, the arbitrator is limited to the expenditure level increase required by the majority of the three entities, or the one proposed by the minority entity, neither of which shall exceed the increase allowed under Section 6.2(f)(i)(B). The arbitrator's determination shall be final and binding on Commission, WisDOT, and Operator as to the amount of the expenditure increase required. The arbitrator shall render a decision within 30 days of being assigned the arbitration case. An arbitrator, if used, shall be assigned the case no less than 50 days prior to the expiration of the insurance coverage then in effect. The cost of arbitration shall be paid equally by Commission, Operator, and WisDOT.

- (D) (1) 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.
- (2) 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.
- (3) In the event the three entities are unable to reach a common position on the amount of insurance coverage to be obtained, under Section 6.2(f)(i)(D)(2) above, any one of them may require arbitration in accordance with Section 6.2(f)(i)(C) to determine the required amount of insurance coverage.
- (E) Notwithstanding any other provision regarding insurance contained herein. Operator shall at a minimum obtain and maintain liability insurance coverage and limits no less than that required now or in the future by the laws of the State of Wisconsin and no less than that required now or in the future by the laws or regulations of the federal government or its agencies, naming WisDOT and Commission and their officers, employees, and agents as additional insureds.

Modification to the comprehensive railroad liability insurance limits for excursion operations shall be established by Commission, Operator and WisDOT under the process set forth in Section 6.2(f)(i)(C) of this section, but in no event shall the coverage limit be less than \$10,000,000 per occurrence, or other form approved by WisDOT, or the coverage limit then in effect for freight operations, whichever is greater.

ARTICLE 7.0 - TERMINATION OR SUSPENSION.

Section 7.1 - Declaration of Default.

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

(b) Notice of Default. A declaration of default shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 12.2 below. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice of default or the date required insurance coverage ceased or the date of filing for bankruptcy protection, whichever occurs first.

Section 7.2 - Termination for Default.

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

Section 7.3 - Ability to Cure Default.

(a) Removal of Operator Default. Operator shall have ten (10) calendar days from written notification by Commission of default by Operator or from the date required insurance coverage ceased or from the date Operator filed for bankruptcy, whichever occurs first, to remove the cause of the default. Such correction shall be completed and available for Commission review within the ten (10) day period. Upon written petition by Operator, Commission may extend the period for removal of a default condition. Such extension shall only be given in writing and may not be unreasonably withheld. If the remedial action is satisfactory, Commission shall provide appropriate written notice to Operator.

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

Section 7.4 - Contractual Obligations Upon Termination.

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

Section 7.5 - Termination Approvals.

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

Section 7.6 - Bankruptcy of Operator.

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

Section 7.7 - Return of Property Upon Bankruptcy Default.

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

Section 7.8 - Vacating the Rail Property.

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

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

Operator hereby agrees in the event of termination that it will mitigate the expenses of termination to the greatest extent possible. If there is any unused material in the hands of Operator at the time of termination belonging to Commission or in which Commission has an interest arising out of a rehabilitation program where funds of Commission or WisDOT have been expended to pay for materials or materials otherwise have been paid for by Commission or partially paid for by Commission from its funds or from funds secured from WisDOT, Operator shall set such material property aside on property belonging to Commission. In addition to all other obligations in the

event of termination, Operator is obligated to remove all cars from the Rail Line of Commission within 10 days following its receipt of a notice to vacate and to deliver all cars to or from shippers on the Rail Line which are in transit to or from any source.

Section 7.10 - Service Failure.

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

- (a) The unavailability of freight rail service for 30 consecutive days to any station on such Principal Line Segment, or
- (b) The availability of an average of less than one train per week for a consecutive 12 week period to any station on such Principal Line Segment, or
- (c) The failure to move any revenue freight car loads for 12 consecutive months over such Principal Line Segment.

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

Section 7.11 - Immediate Suspension of Rail Operations.

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

Section 7.12 - Force Majeure.

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

Section 7.13 - New Improved Property.

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

ARTICLE 8.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS.

Section 8.1 - Operator.

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

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

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

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

Section 8.2 - Commission.

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

(a) Commission was created pursuant to Section 66.30, Wis. Stats., for the purpose of establishing, acquiring, maintaining, and operating a local transportation system.—As a Section 66.30, Wis. Stats. Commission, it has full power and authority to enter into an agreement such as this Operating Agreement and to carry out the functions which it has obligated itself to undertake in this Operating Agreement. This Operating Agreement has been authorized and approved by the Board of Commissioners of 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 Agreement and the Grant Agreement, in effect on the date of this Agreement, and the same have not been further amended, terminated or revoked. It is the intention of Commission not to provide for or to agree to any act or procedure or extend any right not permitted to Commission in any of the agreements with WisDOT. To the best knowledge of Commission after due inquiry, nothing in this Agreement conflicts with or is prohibited by the Land Use Agreement or Grant Agreement between Commission and WisDOT as of the date of the execution of this Agreement. Notwithstanding the previous sentence, to the extent that either or both the Land Use Agreement and the Grant Agreement conflict with any provision of this Agreement, Commission shall on or before December 31, 1997, attempt to conform such other agreement or agreements with the provisions of this Agreement, and Operator hereby consents to any amendments required to achieve conformance.

(d) Commission represents and warrants to and covenants with Operator that WisDOT will, during the term of this Agreement, comply with all of the provisions of the Land Use Agreement and the Grant Agreement and will abide by the provisions of this Agreement which refer to or contemplate action by WisDOT, and Commission shall take actions to attempt to ensure WisDOT's performance as aforesaid.

ARTICLE 9.0 - REPORTS AND ACCOUNTS.

Section 9.1 - Reports.

(a) Operator shall submit the following information to Commission and WisDOT within 45 days after the end of each quarter year beginning with the quarter ending December 31, 1994 for its operations.

(i) An unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Trial Balance;

(ii) A summary of originating and terminating traffic by commodity, by principal line segment, and by month;

(iii) A statement of major traffic gains or losses and a summary of operating and maintenance activity by principal line segment; and

(iv) A report of income that is excluded from Gross Operating Revenues generated from activities other than rail transportation of freight, including but not limited to rail car storage fees, building rent, excursion trains, car repair revenues, and the like. The report shall describe the amounts received, the duration of the period for which the income is received and the payer.

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

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

(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; and

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

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

Section 9.2 - Accounts.

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

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

ARTICLE 10.0 - 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 11.0 - OTHER COMMITMENTS.

Section 11.1 - Handicapped.

Operator agrees that no otherwise qualified handicapped individual in the United States, as defined in Section 706(7)(a) of Title 29 USC and in subchapter II of Chapter 111, Wis. Stats., shall, solely by reason of handicap, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 11.2 - Environmental Protection.

(a) Operator agrees that facilities or equipment shall not be acquired, constructed or improved as a part of its operations unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and Federal standards, statutes, and regulations.

(b) Operator agrees to conduct its operations in compliance with all requirements of Section 114 of the Clean Air Act, 42 USC 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under those acts.

(c) Operator hereby certifies that no facilities which will be utilized or improved as a part of its operations are listed on the Environmental Protection Agency (EPA) list of violating facilities ("the EPA list").

(d) Operator stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as a part of its operations is under consideration to be listed on the EPA list.

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

Section 11.3 - Prohibited Interest in the Proceeds of Operations.

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

(b) 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 11.4 - Nondiscrimination.

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

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

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

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

ARTICLE 12.0 - GENERAL PROVISIONS.

Section 12.1 - Choice of Law.

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of

any of the counties which are a part of Commission. When applicable, this Agreement or portions thereof may be enforced through mandamus.

Section 12.2 - Notice.

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

Director, Bureau of Railroads and Harbors
Wisconsin Department of Transportation
P.O. Box 7914
Madison, Wisconsin 53707

Chairman
Wisconsin River Rail Transit Commission
426 Karrmann Library
1 University Plaza
Platteville, Wisconsin 53818

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

Section 12.3 - Status of Operator.

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

Section 12.4 - Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto. Operator's rights hereunder shall not be assignable whether by way of assignment, sublease or otherwise, directly or indirectly, without Commission's prior written consent and without WisDOT's prior written approval. 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 12.5 - Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or

provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 12.6 - Amendments, Consents, and Approvals.

No term or provision of this Agreement, or any of its attachments to which Commission is a party, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement and with WisDOT's approval. Consents and approvals required under this instrument and interpretations of this instrument may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 12.7 - Captions.

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

Section 12.8 - Compliance by Operator with Agreement.

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

Section 12.9 - Additions or Extension 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 7.13.

Section 12.10 - Additions, Remodeling or Replacement of Buildings.

In the event additions, remodeling, replacements or new construction for buildings or other structures except for trackage are desired by Operator, Operator may construct the same at its cost except that any improvement of existing buildings or structures requires the prior written approval of WisDOT and Commission. Permits for and disposition of such additions, remodeling, or replacements of buildings shall be in compliance with Section 7.13.

Section 12.11 - Failure of Commission to Obtain and Retain Right of Possession and Limitations on Commission and Operator.

(a) The title of that portion of the Land located in Wisconsin hereby leased and licensed to Operator is held by WisDOT for the State of Wisconsin. The Improved Property is conditionally owned by 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 12.8 above. The right of Commission to the continued use of the Land and Improved Property is subject to termination in the event of default or certain happenings with a final termination at the end of the term of the Land Use Agreement and Grant Agreement between WisDOT and Commission. It is a condition of this Agreement, that in the event Commission loses its right to possession or use of any of the Land or Improved Property because of conditions imposed by WisDOT or because of future failures or inability of Commission to meet all the requirements for holding and retaining the Land and Improved Property, then this Agreement terminates and ceases, and no liability attaches to Commission for such termination, provided that Commission has fulfilled its obligation herein to offer Operator an opportunity to cure any such default.

(b) References are made in this Agreement to rights of WisDOT to sell and lease portions of the Land acquired by the State and permitted to Commission. It is the position of Commission that all the Land (acquired from the Milwaukee Road - Trustee and CMC) was used by the Milwaukee Road for transportation purposes and should be retained for present or future transportation purposes. However, WisDOT retains the right, subject to the provisions of Section 2.3 of this Agreement, to retake and sell portions determined by it not to be needed for transportation purposes on the assumption that future use and experience may indicate there are portions of the Land which might be declared excess for present or future transportation uses or are not needed for preservation of railroad service and therefore should be sold. As to leasing, it is the assumption of Commission that property presently provided to Commission does have or in the future would have a transportation use. Included in this assumption are the notions that portions of the Land immediately accessible to the Rail Line contribute to the transportation use when the lessee is a user or potential user of rail service and the Land should remain available for future rail transportation uses. It is a contention of WisDOT that there are certain portions of the Land which can be leased for limited co-use purposes to adjacent owners without jeopardizing the use by Operator or future required full use by Operator. WisDOT has retained the right to make co-use leases in such situations, but it has been the position of Commission as stated to WisDOT that this type of lease should be limited in use and in time. Except as restricted under Section 2.3(1)(i), present buildings are part of the property conditionally owned 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 2.3(e). Commission retains the exclusive right to decide conclusively whether these buildings are needed by Operator.

Section 12.12 - Rehabilitation.

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

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

Section 12.13 - 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 12.14 - Approval by WisDOT.

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

Section 12.15 - 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 12.16 - 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.

IN WITNESS WHEREOF, the Wisconsin River Rail Transit Commission, by its Board of Commissioners, has caused this Agreement to be signed by Richard Scullion, its Chairman, and William Agnew, its Secretary, this 8th day of August, 1997.

WITNESS:

L Frank Huntington

L Frank Huntington

WISCONSIN RIVER RAIL TRANSIT COMMISSION

Richard Scullion
Richard Scullion, Chairman

William Agnew
William Agnew, Secretary

IN WITNESS WHEREOF, the Wisconsin & Southern Railroad Company, by its Board of Directors, has caused this Agreement to be signed by William E. Gardner, its President, this 28th day of August, 1997.

WITNESS:

William E. Gardner

WISCONSIN & SOUTHERN RAILROAD COMPANY

William E. Gardner
William E. Gardner, President

Attachment 1

Land Use Agreement

Land Use Agreement

Land Use Agreement by and between Wisconsin River Rail Transit Commission and Wisconsin Department of Transportation dated March 20, 1987.

and no amendment as of August 8, 1997.

Attachment 2

Grant Agreement

Grant Agreement

GRANT AGREEMENT for Improved Railroad Property Acquisition Grant Agreement by and between Wisconsin River rail Transit Commission and Wisconsin Department of Transportation dated March 20, 1987.

AMENDMENT ONE dated April 9, 1987.

AMENDMENT TWO dated May 6, 1988.

AMENDMENT THREE dated September 19, 1988.

AMENDMENT FOUR dated September 20, 1988.

AMENDMENT FIVE dated January 10, 1991.

and no others as of August 8, 1997.

Appendix A

Maintenance Standards

RAILROAD TRACK AND STRUCTURES MAINTENANCE STANDARDS
ON STATE GRANT-ASSISTED RAIL LINES

The following standards shall be used to determine Commission compliance with its obligation to maintain Project Property.

(The citations listed under the minimum standards column refer to Code of Federal Regulation sections and subsections generally known as Federal Railroad Administration Safety Standards. Citations labeled AREA refer to the American Railroad Engineers Association Manual for Railway Engineering.)

<u>MAINTENANCE ITEM</u>	<u>MINIMUM STANDARD</u>
1.0 <u>Track Components</u>	
1.1 Cross Ties	Federal Railroad Administration (FRA) Class II 213.109.
1.2 Switch Ties	No consecutive defective ties FRA 213.109(c)(1)-(4).
1.3 Rail	FRA 213.113-213.115 plus no torched cut rail or torched bolt holes, and no rails shorter than 12 feet.
1.4 Joint Bars	FRA Class II 213.121.
1.5 Tie Plates	At such time as ties are renewed or rail is replaced, effective tie plates shall be installed.
1.6 Track Spikes	Minimum of 2 spikes per tie plate on ties renewed or ties under rail replaced.
1.7 Track Bolts	FRA Class II 213.121(d) plus proper size bolts.
1.8 Ballast	FRA 213.103.
1.9 Rail Anchors	No missing anchors, according to the anchoring pattern established by the rehabilitation, on ties renewed or rail replaced.

<u>MAINTENANCE ITEM</u>	<u>MINIMUM STANDARD</u>
2.0 <u>Track Geometry</u>	
2.1 Track Gage	FRA Class II 213.53.
2.2 Track Alignment	FRA Class III 213.55.
2.3 Track Surface	FRA Class III 213.63.
3.0 <u>Turnout Components</u>	
3.1 Switches	FRA 213.135.
3.2 Frogs	FRA 213.137, 213.139, 213.141, and 213.143 for Class II.
4.0 <u>Grade Crossings</u>	
4.1 Track Surface Within 100' of Edge of the Crossing Surface	FRA Class IV 213.63.
4.2 Roadway Surfaces	No necessary surface components missing or in a condition potentially damaging to vehicular or pedestrian traffic. No outstanding Office of Commissioner of Railroads' (OCR) complaints.
4.3 Crossing Warning	In place, functioning and inspected per Wisconsin Devices Administrative Code Transportation Commission (TC) 3.10.
4.4 Brushing	Wis. State Statutes 195.29(6) or other OCR order.
4.5 Rail in Crossing	No joints installed within 8' of the edge of the crossing's road surface.
5.0 <u>Drainage Structures</u>	
5.1 Bridge Structures	FRA 213.33 and AREA Chapter 7, Parts 2 and 3, plus no apparent bridge component failure as determined by a bridge inspector meeting or exceeding the qualifications for a WisDOT Bridge Maintenance and Inspection Technician.
5.2 Culvert Structures	No drift remaining that can be injurious to bridge components. FRA 213.33 and AREA Chapter 1, Part 4, plus no holes that allow loss of ballast.

<u>MAINTENANCE ITEM</u>	<u>MINIMUM STANDARD</u>
6.0 <u>Miscellaneous</u>	
6.1 Track Zone Vegetation	FRA 213.37 and documentation of herbicide application once every 24 months.
6.2 Brush	Wis. Admin. Code TC 3.15(2) & (5); Wis. ss 195.28(6); FRA 213.37 and no brush over 24" in height within 15 feet of the centerline of track.
6.3 Fence Maintenance	No outstanding order from OCR.
6.4 Sidings	FRA Class I.
7.0 <u>Track Inspections</u>	
7.1 Track Inspection Frequency	FRA 213.233.
7.2 Turnout and Track Crossings	FRA 213.235.
7.3 Inspection Records	FRA 213.241.
8.0 <u>Buildings</u>	
Buildings and other structures shall be maintained as required by local and state building codes without regard to the status of rehabilitation of the rail line.	
9.0 <u>Bridges</u>	
Bridges shall be maintained in compliance with AREA Chapter 7, Part 3.	

Appendix B
Rental

Operator hereby covenants, agrees and binds itself to pay to Commission a rental payment of \$10.00 per loaded car moved over any portion of the Rail Line. Rental payments shall commence with WisDOT's approval as set forth in Sections 2.1, 3.2, and 12.14 of this Agreement.

Commission and Operator recognize and agree to abide by the action of the Commission taken June 6, 1997, to reduce Operator's rental obligation for 1996 and 1997 to \$25,000 each year, and for 1998, 1999, and 2000 to \$50,000 per year, with \$25,000 to be used by Commission to purchase materials for special projects agreed upon by the Commission and Operator. Such agreement shall be in effect until December 31, 2000 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. Per car rental payments shall be adjusted by the same percentage as the rail cost recovery increases authorized by the STB or other method agreed upon by the parties.

Rental payments for 1996 and 1997 are past due and payable.

Rental payments for periods beginning January 1, 1998 shall be made on a quarterly basis and shall be due and payable the first business day of each calendar quarter commencing January 1, 1998.

Amendment One
To
Operating Agreement
Agreement No. 0490-40-48(d)

This Amendment ^{one}~~Two~~ to Agreement No. 0490-40-48(d) dated September 1, 1997, is made and entered into this 6th day of December, 2002, by and between the Wisconsin River Transit Commission, d/b/a Wisconsin River Rail Transit Commission, a municipal corporation established in accordance with Sec. 66.30 Wis. Stats., ("Commission") and Wisconsin & Southern Railroad Company, 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.

WITNESSTH

WHEREAS, Section 12.6 of Agreement allows for amendment, and

WHEREAS, by agreement dated September 26, 1995 WisDOT and WSOR entered into a Grant Agreement whereby WisDOT paid WSOR \$600,000 for the option to acquire the Madison to Middleton rail line, and

WHEREAS, as part of that agreement, WisDOT required WSOR to enter into an Operating Agreement requiring WSOR to operate said line in like manner to other lines operated under agreement between the WRRTC and WSOR, and

WHEREAS by agreement dated September 22, 1995 WRRTC and WSOR entered into an Operating Agreement for the Madison to Middleton rail line, and

WHEREAS, WisDOT has now exercised its option to acquire said rail line and has taken title to the property, and

WHEREAS, WisDOT and WRRTC have amended Grant Agreement No. 0490-40-48(d) by and between the WisDOT and Commission to include the Madison to Middleton rail line, as one of the line segments covered under that agreement.

NOW THEREFORE, the parties hereto agree as follows:

1. Section 1(q)(9) is deleted in its entirety and replaced by the following:
 - (9) Milepost 138.58 in Madison to Milepost 146.72 in Middleton, and between Milepost 168.0 and 167.53 in Madison.
2. Operating Agreement No. 0491-50-39 (c) by and between Commission and WSOR is hereby terminated and superceded by Operating Agreement No. 0490-40-48(d) by and between the Commission and

WSOR dated September 1, 1997, which includes the Madison to Middleton rail line by reference under Section 1(q)(9).

3. Section 1(q)(14) is hereby created to read as follows:

(14) Milepost 132.11 in Watertown to Milepost 164.61 in Madison

All other sections of Agreement No. 0490-40-48(d) shall remain as written.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed by their duly authorized officers on the date and year written above.

Wisconsin River Rail Transit Commission

Wisconsin & Southern Railroad Company

Gerald Shroble
Gerald Shroble, Chairman

William Gardner
William Gardner, President

W.A. by Karl L. Nilson
William Agnew, Secretary
KARL Nilson, officer

Kenneth Junt
Witness