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February 8, 2017

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242601

ENTERED
Office of Proceedings
February 8, 2017
Part of
Public Record

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: Docket No. FD 36096, The State of South Dakota Acting by and
Through Its Department of Transportation – Petition
for Declaratory Order

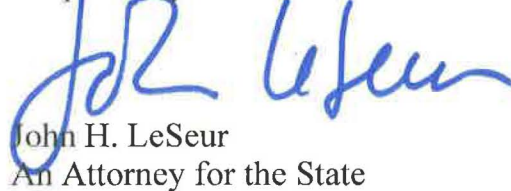
Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find (i) an executed original (which contains a marked color page) and ten copies of the State of South Dakota Acting by and Through Its Department of Transportation's ("State") Petition for Declaratory Order; (ii) a check for the filing fee of \$1,400; (iii) an executed original and ten copies of the State's Request for Filing Fee Waiver; and (iv) three CDs with PDF copies of the two filings.

Kindly date stamp the extra copy of this cover letter and the enclosed pleadings and return them to the bearer of this letter. Thank you for your attention to this matter.

FEE RECEIVED
February 8, 2017
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,


John H. LeSeur
An Attorney for the State

cc: Certificate of Service List

FILED
February 8, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

THE STATE OF SOUTH DAKOTA ACTING BY
AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION – PETITION FOR
DECLARATORY ORDER

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Finance Docket No. 36096

PETITION FOR DECLARATORY ORDER

By: Karla L. Engle
Special Assistant Attorney General
South Dakota Department of
Transportation
700 E. Broadway Ave.
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Attorneys for the State of South Dakota
Acting by and Through Its Department
of Transportation

Dated: February 8, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

THE STATE OF SOUTH DAKOTA ACTING BY	)	
AND THROUGH ITS DEPARTMENT OF	)	
TRANSPORTATION – PETITION FOR	)	Finance Docket No. 36096
DECLARATORY ORDER	)	
	)	

PETITION FOR DECLARATORY ORDER

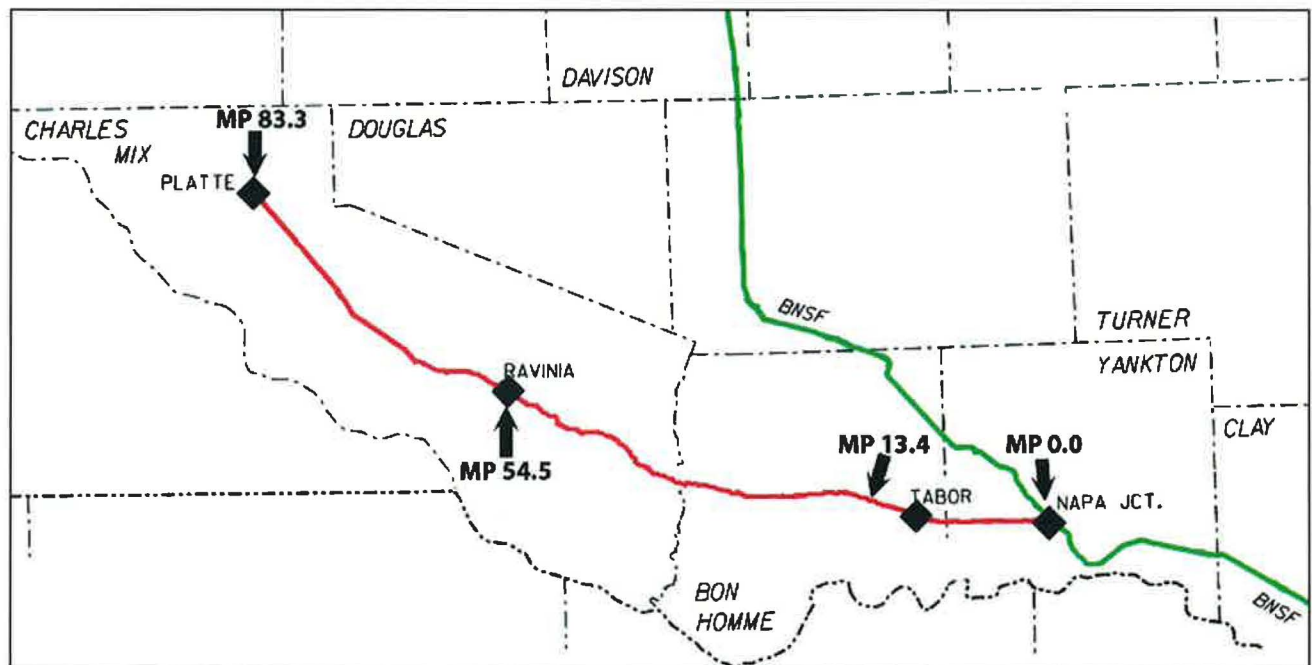
Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the State of South Dakota acting by and through its Department of Transportation (“State”) requests that the Surface Transportation Board (“STB” or “Board”) issue a declaratory order terminating the modified certificate rights held by the Napa-Platte Regional Railroad Authority (“NPRRA”) over a State-owned rail line extending from milepost (“MP”) 13.4+/- near Tabor, SD to MP 54.5 near Ravinia, SD (“Tabor-Ravinia Line”).¹

**I.
BACKGROUND**

1. The State owns the Tabor-Ravinia Line. It is the middle segment of a State-owned rail line located between MP 0.0, referred to as Napa Junction, in SD, and

¹ The Board’s staff informally advised counsel for the State that a petition for a declaratory order was the proper form of pleading to present the State’s request to the Board.

MP 83.3 near Platte, SD (Napa-Platte Line”):²



2. The entire Napa-Platte Line was authorized for abandonment in 1980, but, prior to being abandoned, was acquired by the State.³

3. In 2007, NPRRA, a political subdivision of the State, acquired modified certificate rights over the Tabor-Ravinia Line.⁴ At that time, NPRRA was leasing the Tabor-Ravinia Line from the State.⁵

² The segment between Ravinia, SD (MP 54.5) and Platte, SD (MP 83.3) (“Ravinia-Platte Line”) was rail-banked by the State in 2007. *See S.D. Ry. – Notice of Interim Trail Use & Termination of Modified Rail Certificate*, FD 31874, slip op. at 2 (STB served July 17, 2007) (“2007 Trail Use Decision”) (accepting the State’s request for notice of interim trail use for the Ravinia-Platte Line); Letter from State counsel to Acting STB Secretary, FD 31874 (Jan. 11, 2008) (advising the Board that an agreement for interim trail use for the Ravinia-Platte Line became effective as of December 27, 2007).

³ *See Napa-Platte Reg’l R.R. Auth. – Modified Rail Certificate*, FD 35026, slip op. at 1-2 (STB served June 14, 2007) (“2007 Modified Certificate Decision”).

4. NPRRA's last lease of the Tabor-Ravinia Line expired on September 20, 2015.⁶ As a result, NPRRA no longer has any lease rights to use the Tabor-Ravinia Line segment.

5. The State has requested that NPRRA file a notice with the Board under 49 C.F.R. § 1150.24 to terminate its modified certificate rights. To date, NPRRA has refused to do so.

6. NPRRA is a non-operating common carrier⁷ and, from 2007 to date, neither NPRRA, nor any other carrier, has provided any common carrier service over the Tabor-Ravinia Line.

7. For several years, NPRRA, with the State's consent, subleased the Tabor-Ravinia Line to the Dakota Southern Railway Company ("DSRC"), an operating Class III carrier. DSRC has used the Tabor-Ravinia Line for car storage. DSRC's last sublease with NPRRA expired on September 20, 2015.⁸

⁴ *Id.*, slip op. at 2.

⁵ *Id.*

⁶ See Agreement Between the State of South Dakota and Napa-Platte Regional Railroad Authority, No. 910940, Amendment Number 1 at § 1 (copy in Attachment 1).

⁷ See *2007 Modified Certificate Decision*, slip op. at 2.

⁸ See Agreement between Napa-Platte Regional Railroad Authority and Dakota Southern Railway Co., No. 910936, Amendment Number 1 at § 1 (copy in Attachment 2).

8. Starting on September 21, 2015, the State has leased the Tabor-Ravinia Line to DSRC.⁹ The currently effective lease has a term that runs through November 30, 2026, unless extended, or terminated earlier pursuant to its terms.¹⁰

9. At the State's request, DSRC filed a notice with the Board on December 29, 2016 for a modified certificate of public convenience and necessity to provide common carrier service over the Tabor-Ravinia Line.¹¹ On January 25, 2017, the Board issued the modified certificate to the DSRC.¹²

10. The State also owns the rail line located between MP 0.0, referred to as Napa Junction, in SD, and MP 13.4 +/-, near Tabor, SD ("Napa-Tabor Line"). In 2007, NPRRA obtained class exemption operating rights over the Napa-Tabor Line.¹³ NPRRA's last lease of the Napa-Tabor Line expired on September 20, 2015. *See* Attachment 1. As a result, NPRRA no longer has any lease rights to use the Napa-Tabor Line.

⁹ *See* Agreements Between the State of South Dakota and Dakota Southern Railway Co., Nos. 910992 (§ 19), 911004, 911022 and State of South Dakota Department of Transportation Lease Agreement, No. 911065 (copies in Attachment 3).

¹⁰ State of South Dakota Department of Transportation Lease Agreement, No. 911065, §§ 3, 22.

¹¹ *See Dakota S. Ry. – Notice of Modified Certificate of Pub. Convenience & Necessity*, FD 36086 (filed Dec. 29, 2016).

¹² *See Dakota S. Ry.—Modified Certificate of Pub. Convenience and Necessity – Yankton, Bon Homme, & Charles Mix Counties, S.D.*, FD 36086 (STB served Jan. 25, 2017).

¹³ *See Napa-Platte Reg'l R.R. Auth. – Lease & Oper. Exempt. – Dakota Short Line Corp.*, FD 35025 (STB served May 31, 2007) ("2007 Class Exemption Notice").

11. From 2007 to date, NPRRA has provided no common carrier service over the Napa-Tabor Line, nor has any other rail carrier. The State has requested that NPRRA obtain STB approval to discontinue its class exemption rights over the Napa-Tabor Line, but, to date, NPRRA has refused to do so. The State intends to file an adverse discontinuance application to terminate NPRRA's class exemption rights over the Napa-Tabor Line.

12. The State is now leasing the Napa-Tabor Line to DSRC. *See* Attachment 3. At the State's request, DSRC filed a notice with the Board on December 29, 2016 for a modified certificate of public convenience and necessity to provide common carrier service over the Napa-Tabor Line.¹⁴ On January 25, 2017, the Board issued the modified certificate DSRC had requested.¹⁵

ARGUMENT

The Board may issue a declaratory order to terminate a controversy or remove uncertainty. *See* 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. NPRRA's refusal to file a modified certificate termination notice has created a controversy which can, and should be, resolved by a Board order declaring that NPRRA's modified certificate rights are terminated. Granting this declaratory relief is consistent with a fundamental purpose of the Board's modified certificate rules – to allow quick termination of modified

¹⁴ *See Dakota S. Ry. – Notice of Modified Certificate of Pub. Convenience & Necessity*, FD 36086 (Dec. 29, 2016).

¹⁵ *See Dakota S. Ry.—Modified Certificate of Pub. Convenience & Necessity – Yankton, Bon Homme, & Charles Mix Counties, S.D.*, FD 36086 (STB served Jan. 25, 2017).

certificates. Furthermore, such an order is consistent with Board precedent; will protect the State's right to control operations over a line that it owns; and will have no adverse effects on rail shippers.

A. The Board's Modified Certificate Rules

The Board's modified certificate rules are set forth at 49 C.F.R. Part 1150, Subpart C. Pursuant to these rules, if a state acquires a rail line that has been "approved for abandonment,"¹⁶ the state's acquisition of the line "is exempted from the Board's jurisdiction."¹⁷ Once a state acquires such a line, it can operate the line itself or it can elect to enter into a contract with an operator to provide service over the line.¹⁸ If this latter option is pursued, the state and the operator may decide that the service will be provided under a modified certificate.¹⁹ A modified certificate is a special form of service authorization that is exempted from the otherwise applicable public convenience and necessity standards governing the initiation of common carrier rail service.²⁰

A carrier seeking to provide or arrange service under a modified certificate does so by filing a notice at the Board containing information specified in the Board's rules.²¹ Service can commence immediately after this notice is filed.²² The Board

¹⁶ 49 C.F.R. § 1150.22.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 49 C.F.R. § 1150.21.

²⁰ 49 C.F.R. § 1150.22.

²¹ 49 C.F.R. §§ 1150.22, 1150.23

reviews the notice, and if it finds the notice complies with the Board's rules, it will issue a modified certificate notice.²³ A carrier operating under a modified certificate is subject to the common carrier obligation, but that obligation can be limited by preconditions agreed upon by the state and the operator, so long as the preconditions are included in the operator's modified certificate notice, and shippers on the line are notified of the preconditions.²⁴

The Board's rules also exempt modified certificate operators from the statutory public convenience and necessity standards governing the termination of rail service.²⁵ Under these rules, codified at 49 C.F.R. § 1150.24, a state can set the duration of the operator's service in its contract with the operator and the operator is required to provide 60 days' notice before it terminates service under its modified certificate:

§ 1150.24 Termination of service

The duration of the service [under a modified certificate] may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be:

(a) Filed with the State and the Board, and

(b) Mailed to all persons that have used the line within the 6 months preceding the date of the notice.²⁶

²² 49 C.F.R. § 1150.23(a).

²³ *Id.*

²⁴ 49 C.F.R. § 1150.22.

²⁵ 49 C.F.R. § 1150.24.

²⁶ 49 C.F.R. § 1150.24

The Board's modified certificate rules were promulgated to incent states to purchase little-used rail lines by establishing fast-track, notice-based procedures for states to obtain and engage contractors of their choice to operate these lines:

A modified certificate is a type of license crafted by the Board's predecessor, the ICC, in a decision entitled Common Carrier Status of States, State Agencies, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). In that decision, the ICC used its exemption authority at 49 U.S.C. 10505 (now 49 U.S.C. 10502) to authorize states and state agencies to acquire, for the purpose of preserving the opportunity for rail service, rail lines that had been approved for abandonment or had been fully abandoned. *The ICC believed that states would be more likely to acquire such lines if the acquisition, and any future termination of service, could be accomplished without the need to comply with traditional regulatory requirements. As part of this process, the ICC established "modified certificates," under which operators over such state-owned lines could obtain and relinquish operating authority merely by providing notice to the agency pursuant to 49 CFR 1150.21-23.*

Black Hills Transp. Inc. d/b/a Deadwood, Black Hills & W. R.R. – Modified Rail

Certificate, FD 34924, slip op. at 3 (STB served Jan. 27, 2010) ("*Black Hills*") (emphasis added).²⁷

²⁷ *Accord Beaufort R.R. – Modified Rail Certificate*, FD 34943, slip op. at 2 (STB served Mar. 19, 2008) ("*Beaufort*") (stating that the Board's modified certificate rules are intended "to encourage states to acquire" abandoned or authorized-to-be-abandoned rail lines, and, to achieve this objective, offer various regulatory incentives to states including establishing procedures "which [permit] operators over these state-owned lines [to] obtain and relinquish [modified certificate operating authority] merely by providing notice to the agency").

B. The State’s Request Reasonably Addresses an Unintended Loop-Hole in The Board’s Modified Certificate Rules

The Board’s modified certificate rules envision an orderly service termination process: the contract between a state and the line operator may set the duration of the operator’s service, and, as the termination date approaches, the operator files and serves the 60-day service termination notice.

The State has reviewed STB and Interstate Commerce Commission (“ICC”) decisions since 1980 and found that, to date, the ICC/Board has had to plug only one loophole in its rules governing the termination of modified certificates. That loophole arose in two cases where the operating agreement that granted operating rights to a modified certificate operator had expired; the operator had ceased operating on the involved line; and the operator was no longer a recognized corporate entity in the state where the rail line was located.²⁸ In these cases, the Board permitted the line owner to file the 60-day termination notice on behalf of the operator.²⁹ The Board’s decisions in these two cases, in effect, declared the requirement that the operator itself file the 60-day notice was inoperative on the facts presented.

The State’s Petition addresses a slightly different fact pattern: its operating agreement with the modified certificate holder (NPRRA) has expired; NPRRA has never provided any common carrier service over Tabor-Ravinia Line under its modified

²⁸ See *2007 Trail Use Decision*, slip op. at 2; *Chesapeake R.R. – Certificate of Interim Trail Use & Termination of Modified Certificate*, FD 32609, slip op. at 1 n.2 (STB served Jan. 9, 2006) (“*Chesapeake*”).

²⁹ *Id.*

certificate, nor, since NPRRA obtained its modified certificate in 2007, has any operating carrier provided any common carrier service over the Tabor-Ravinia Line; and NPRRA has refused to file the 60-day termination notice. The State's review of the case law since 1980 has unearthed only one instance where a line operator holding a modified certificate refused to provide a 60-day termination notice in conjunction with the expiration of its contract to use the rail line.³⁰ In that case, the line owner petitioned the Board to vacate the modified certificate, but the issue was mooted before the Board decided the petition when the operator decided to voluntarily file the termination notice.³¹

To address this new and clearly unintended loophole in the Board's rules – a modified certificate operator refusing to file a 60-day termination notice – the Board should declare, on the facts presented here, that NPRRA's modified certificate rights are terminated.³² Granting the relief requested by the State is clearly consistent with the purpose of the Board's modified certificate rules – to permit termination of modified certificate operations on notice.³³ It is also consistent with the Board's rulings

³⁰ See *Waccamaw Coast Line R.R. – Modified Rail Certificate*, FD 34064, slip op. at 1-2 (STB served Feb. 3, 2014).

³¹ *Id.*

³² Alternatively, the Board could permit the State to file the 60-day notice on behalf of NPRRA, but such an approach is unnecessary here. The Board's rules require that the 60-day notice be served on the Board, the involved state, and any shippers who have used the line in the last six months preceding the notice date. See 49 C.F.R. § 1150.24. This Petition provides adequate notice to the Board; there obviously is no need to notify the State; and no shippers have used the Tabor-Ravinia Line in the last six months preceding the date this Petition was filed.

³³ See *Black Hills*, slip op. at 3; *Beaufort*, slip op. at 2.

terminating modified certificates in the two cases where the operator failed to provide the 60-day notice.³⁴

Granting the State's request will not impact any shipper. NPRRA never used its modified certificate rights to provide common carrier rail service for any shipper on the Tabor-Ravinia Line; no operating carrier has provided common carrier service over the Tabor-Ravinia Line since NPRRA obtained its modified certificate rights in 2007; and any future rail service over the Tabor-Ravinia Line can be provided by DSRC, or other carriers selected by the State, under appropriate STB-authorized service rights. As discussed above, DSRC has recently obtained modified certificate rights to provide common carrier service over the Tabor-Ravinia Line.

The State recognizes that if NPRRA continues to refuse to voluntarily seek STB authority to discontinue its class exemption operating rights over the Napa-Tabor Line, the State must first obtain an adverse discontinuance order to perfect an involuntarily discontinuance of those rights, even though NPRRA's contract rights to use the Napa-Tabor Line have expired.³⁵ NPRRA obtained its service rights over the Napa-Tabor Line pursuant to the Board's class exemption procedures set forth at 49 C.F.R. § 1150.31³⁶ and those procedures, unlike the Board's modified certificate procedures, do

³⁴ See *2007 Trail Use Decision*, slip op at 2; *Chesapeake*, slip op. at 1 n.2.

³⁵ See *Cheatham Cnty. Rail Auth. "Appl. and Pet." For Adverse Discontinuance*, AB 379X, 1992 WL 322925, at *2 (ICC served Nov. 4, 1992) ("*Cheatham Cnty.*").

³⁶ See *2007 Class Exemption Notice*, slip op. at 1.

not authorize discontinuance of service on notice.³⁷ Instead, under governing Board precedent, if the operator holds class exemption operating rights, a state line owner must pursue adverse discontinuance of those rights via an adverse discontinuance application.³⁸

The Board's procedures governing adverse discontinuance of class exemption rights do not – and should not – apply in a case involving termination of a modified certificate.³⁹ Unlike the class exemption rules, the modified certificate rules do permit service termination on notice. Moreover, the Board should not permit an intransigent operator's refusal to file a modified certificate termination notice to turn the quick terminate-on-notice procedures set forth in the Board's modified certificate rules into something far more involved, and far more expensive, for the state line owner – an adverse discontinuance proceeding.

³⁷ *Cheatham Cnty.* at *2.

³⁸ *Id.* at *1-2.

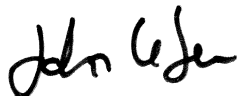
³⁹ *Id.*

CONCLUSION

For the reasons set forth above, the State respectfully requests that the Board issue a declaratory order terminating NPRRA's modified certificate operating rights over the Tabor-Ravinia Line.

Respectfully submitted,

By: Karla L. Engle
Special Assistant Attorney General
South Dakota Department of
Transportation
700 E. Broadway Ave.
Pierre, SD 57501-2586
(605) 773-3262

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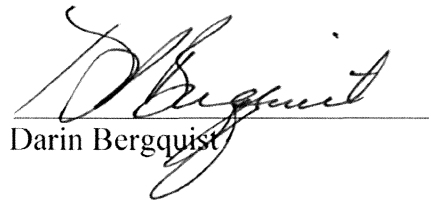
Dated: February 8, 2017

Attorneys for the State of South Dakota
Acting by and Through Its Department
of Transportation

VERIFICATION

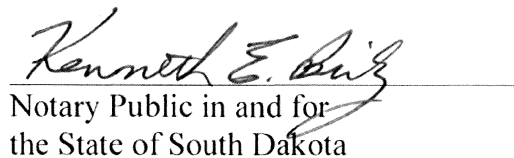
STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

I, Darin Bergquist, Secretary, State of South Dakota Department of Transportation, verify that I have read the foregoing Petition's Background Section, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief.


Darin Bergquist

Sworn to and subscribed
before me this 7th day
of February, 2017.

Witness my hand and official seal.


Notary Public in and for
the State of South Dakota

My commission expires 8/26/2021

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2017, I served a copy of the foregoing Petition on :

Kenneth W. Cotton, Esq.
Wipf & Cotton, L.L.C.
P.O. Box 370
Wagner, SD 57380-0370

Mr. Cotton was the attorney of record for Napa-Platte Regional Railroad Authority in *Napa-Platte Reg'l Rail Auth. – Modified Rail Certificate*, Docket No. FD 35026.

I also hereby certify that on this 8th day of February, 2017, I served a copy of the foregoing Petition on all Commissioners of the Napa-Platte Regional Railroad Authority, as follows:

Roger Berndt
30125 406th Ave.
Avon, SD 57315

John Hauck
41172 Haucks Ln.
Tyndall, SD 57066

Gary Beeson
39846 299th St.
Wagner, SD 57380

Dick Rysavy
421 Wilson Ave.
Dante, SD 57329

Jason Kokes
42628 307th St.
Tabor, SD 57063

Garry Moore
635 Augusta Cir.
Yankton, SD 57078

Allen Sinclair
1200 W. 21st St.
Yankton, SD 57078

Gerald Harrington
29641 393rd Ave.
Wagner, SD 57380

John Harper
4307 E. Hwy. 50
Yankton, SD 57078

Finally, I hereby certify that on this 8th day of February 2017, I have served
a copy of the foregoing Petition on:

Charles H. Montange
426 NW 162nd Street
Seattle, Washington 98177

Mr. Montange is the counsel of record for Dakota Southern Railway Company in
Dakota S. Ry. – Notice of Modified Certificate of Public Convenience and Necessity –
Yankton, Bon Homme and Charles Mix Counties, S.D., Docket No. FD 36086.


Daniel M. Jaffe

ATTACHMENT 1

LEASE
910940 1

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
NAPA-PLATTE REGIONAL RAILROAD AUTHORITY

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and the Napa-Platte Regional Railroad Authority, referred to in this Lease Agreement as "Authority." This Lease Agreement is effective on June 21, 2014.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Authority wants to lease from the State the Rail Facilities.

AUTHORITY AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Authority to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Authority accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Authority acknowledges that Authority or Authority's Operator(s) has inspected the Rail Facilities, including all improvements and structures thereon. Authority further acknowledges that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Authority to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. The rights granted Authority in this Lease Agreement relate solely to the provision of rail freight service on the Rail Facilities and Authority may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If the Authority, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Authority and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Authority or Authority's Operator(s) will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.
7. Liability of Authority. The Authority will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of the Authority, its representatives, officers, employees or agents, including Authority's operator.

8. Laws to be Observed. The Authority and its operator will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. The Authority and its operator will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree, whether by the Authority or its operator.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Office of Air, Rail, and Transit, the Authority, and the Authority's operator, or any other railroad conducting operations on the facilities pursuant to a sublease agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Authority or Authority's Operator will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law, which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence, and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Authority or Authority's Operator will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Authority or Authority's Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Authority or Authority's Operator will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Authority or Authority's Operator operates along the Rail Facilities and Authority or Authority's Operator will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Authority or Authority's Operator's failure to provide such evidence, within 7 days of any request therefore, will entitle State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Authority or Authority's Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Authority or Authority's Operator or any lessee or other operator to the State as set forth herein.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to the Authority by or within the scope of this Lease Agreement, there will be no liability upon any member of the Authority, or its authorized representatives, either

personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.

12. Assignment. Authority will not assign its rights or delegate its duties under this Lease Agreement or any part thereof, without prior written consent of the State. An approved assignment, including assignments occurring by operator contracts, will not relieve the Authority of the Authority's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Authority, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and the Authority, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of the Authority or its Operator(s) and Authority agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Authority agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.

15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State hereby grants to the Authority the right to make such Additions to the Rail Facilities as Authority may require to permit rail freight service, at Authority's sole expense. The term "Addition(s)" as used herein will mean capital improvements which are in addition to the Rail Facilities. Authority will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. The Authority will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Authority will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Thirty-two and a half percent (32.5%) of any car storage fees billed. The Authority's operator may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning June 21, 2014, and ending June 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days written notice of termination by certified mail to the Authority.
21. Termination by the Authority For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, the Authority will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by the Authority giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For the Authority:

Chairperson
Napa-Platte Regional Railroad Authority
29641 393rd Ave.
Wagner, SD 57380

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevented by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

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

Napa-Platte Regional Railroad Authority

By: *Harold D. Hamilton*

Its: *Chairman*

Date: *8-19-2014*

State of South Dakota
Department of Transportation

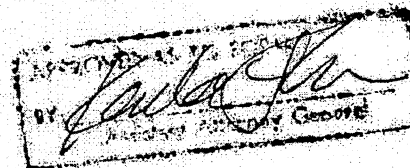
By: *Wesley I*

Its: Secretary

Date: *8/27/14*

(Corporate Seal):

ACKNOWLEDGMENTS FOLLOW

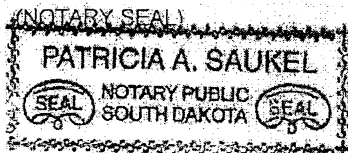


My Commission Expires: 8/1/2015

STATE ACKNOWLEDGMENT

Patricia A Hauke

My Commission Expires: 10-17-17



APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 28+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

~~DO NOT~~ LEASE

Amendment Number 1 to Agreement Number 910940

BACKGROUND:

1. On June 21, 2014, the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "State," and Napa-Platte Regional Railroad Authority, referred to in this Amendment as the "Authority," entered into a lease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party and assigned agreement number 910940 by the STATE.
2. The State and the Authority wish to amend the AGREEMENT to extend the term of the AGREEMENT.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Effective June 17, 2015, paragraph 19 of the AGREEMENT, entitled "Term," is revised to read as follows:
 19. Term. This Lease Agreement will continue in full force and effect beginning June 21, 2014, and ending September 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
2. Except as modified by this Amendment, all other terms and conditions of the original AGREEMENT will remain in full force and effect.

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

Napa-Platte Regional Railroad Authority

By: Gerald HamiltonName: GERALD HAMILTON

Its: Chairperson

Date: EFFECTIVE DATE 6/17/15
SIGNED 6/23/15

(CORPORATE SEAL)

State of South Dakota
Department of TransportationBy: Darin P. Bergquist

Name: Darin P. Bergquist

Its: Secretary

Date: 6/17/15

Approved as to Form:

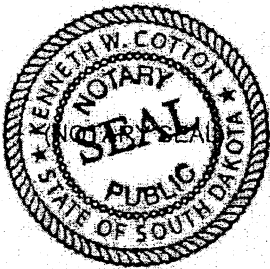
[Signature]
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF CHARLES MIX) SS

On this the 23rd day of JUNE, 2015, before me, FRANK W. COTTON, a Notary Public within and for said County and State, personally appeared GERALD HARRINGTON, Chairperson of the Napa-Platte Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Frank W. Cotton
NOTARY PUBLIC

My Commission Expires: 9-1-2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

On this the 17th day of JUNE, 2015, before me, Bonnie R. Olson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Bonnie R. Olson

NOTARY PUBLIC

My Commission Expires: JUN 17, 2015

ATTACHMENT 2

SUBLEASE

910936

AGREEMENT BETWEEN
NAPA-PLATTE REGIONAL RAILROAD AUTHORITY
AND
DAKOTA SOUTHERN RAILWAY COMPANY

THIS SUBLEASE AGREEMENT (Agreement) is made and entered into by and between the Napa to Platte Regional Railroad Authority, referred to in this Agreement as "Authority," and the Dakota Southern Railway Company, referred to in this Agreement as "Operator." This Agreement is effective on June 21, 2014.

BACKGROUND:

1. The South Dakota Department of Transportation is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Agreement.
2. Operator wants to sublease from the Authority the Rail Facilities.

AUTHORITY AND OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. Authority will permit Operator to use the Rail Facilities described in Appendix 1 attached to this Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.

2. Representations and Warranties. Authority or Authority's Operator(s) accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, Authority or Authority's Operator(s) acknowledges that Authority or Authority's Operator(s) has inspected the Rail Facilities, including all improvements and structures thereon. Authority or Authority's Operator(s) further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. Authority permits Operator to use any and all of Authority's rights and licenses in and to the Rail Facilities as may be necessary for the purpose of providing rail freight service. The rights granted to Operator herein relate solely to the provision of rail service on the Rail Facilities and Operator may not use the Rail Facilities for any other purpose without the prior written authorization of the Authority and State of South Dakota.

This Agreement is subject to the prior consent of the South Dakota State Railroad Board, or its designee. This Agreement is expressly made subject to all of the terms, conditions, and limitations contained in the Agreement, which became effective June 21, 2014, between Authority and the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation (the "State").

Authority will have no obligation to perform any maintenance on the Rail Facilities other than as provided in paragraph 16 of this Agreement. Operator will be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations as further provided by paragraph 6 of this Agreement.

4. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, or the agreement between the State of South Dakota and Authority, Authority will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight and/or passenger service.
5. Common Carrier Obligations. Operator will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Agreement upon the effective date of this Agreement.
6. Liability of Operator. Operator will indemnify, hold harmless, and protect Authority, its individual members, their representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage or deaths received or sustained by any person, persons, or property, including State or Authority owned property, on account of any negligent

act, omission, neglect or misconduct of the Operator, its representatives, officers, employees or agents. Operator will maintain liability insurance in the amount set forth in paragraph 9 of this Agreement.

7. Laws to be Observed. Operator will keep fully informed of all federal and state laws, all local laws, ordinances and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified herein. Operator will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State, Authority and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
8. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described herein, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the Program Manager of the South Dakota Office of Air, Rail, and Transit, Authority, and Operator, or any other railroad conducting operations on the facilities pursuant to this Agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
9. Insurance. Operator will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State and Authority will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State and Authority as an additional insured, will apply as primary insurance of State and Authority, and will not be deemed to be excess to any insurance issued in the name of State and Authority. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Authority or Authority(s) Operator will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Authority or Authority(s) Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating the State will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company; its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Agreement.

Authority or Authority(s) Operator will provide the State with evidence of the liability insurance coverage required by this Agreement before Operator operates along the Rail Facilities and Operator(s) will supply the State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Authority or Authority(s) Operator's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Agreement without notice and without opportunity to cure such default. Authority or Authority(s) Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Authority or Authority(s) Operator or any lessee or other operator to the State as set forth herein.

10. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to Operator by or within the scope of this Agreement, there will be no liability upon any member of Authority, or its authorized representatives, either personally or as officials of Authority, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
11. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, that when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
12. State and Napa to Platte Inspection. The State or its duly authorized representatives, and Authority, and upon reasonable notice to Authority or its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement and the Agreement executed previously between Authority and the State.

Further, it is agreed by the State, or its duly authorized representatives, and Authority, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Authority or its Operator(s) and Authority agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Authority agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
13. Responsibility for Rehabilitation. The State and Authority will have no responsibility for rehabilitating the Rail Facilities.
14. Additions to Rail Facilities. Authority hereby grants to the operator the right to make such Additions to the Rail Facilities as Operator may require to permit rail freight and/or passenger service, at Operator's sole expense. The term "Addition(s)" as used herein will mean capital improvements which are in addition to the Rail Facilities. Operator will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
15. Maintenance. The State and Authority will have no obligation to perform any maintenance of the Rail Facilities. Operator will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control and other necessary repairs and work.
16. Payment. Operator will make payments based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Agreement, as follows:

Sixty-five percent (65%) of any car storage fees billed. Operator may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.
17. Term. This Agreement will continue in full force and effect beginning June 21, 2014, and ending June 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Agreement. Upon termination of

this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement.

18. Termination by the State at the State's Sole Discretion. The State may terminate this Agreement at any time and for any reason or no reason by giving thirty (30) days written notice of termination by certified mail to Authority and Operator.
19. Termination by Authority or Operator for Fault. If either Authority or Operator substantially fail to perform its obligations under this Agreement, and continue in such default for a period of ten (10) days, the party not in default will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the party in default and to the State, and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement. Activities to be considered fault include, but are not limited to: fraud, theft of state property, non-payment of lease, misappropriation of funds, and lapse of insurance. Substandard performance means failure to cause movement of loaded railcars within 30 days of loading by industry. Termination of this Agreement by Authority or Operator may be appealed to the South Dakota State Railroad Board, but only if the State elects not to exercise its independent right to terminate this Agreement pursuant to Paragraph 18, above. If either party is not satisfied with the Board's decision on the appeal, an appeal to Circuit Court can be made, but there is no right to appeal the State's decision to terminate this Agreement pursuant to Paragraph 18, above.
20. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the Authority:

Chairperson

Napa-Platte Regional Railroad Authority
29641 393rd Ave.
Wagner, SD 57380

For the Operator:

President

Dakota Southern Railway Company
P.O. Box 612
Richmond, MO 64085

21. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses or phrases of this Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
22. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
23. Force Majeure. This Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this agreement or any subsequent sublease agreement. If restoration is not made, then this agreement will be void without penalty to either party.

SIGNATURES FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested to by their duly authorized officers.

Dakota Southern Railway Company

By: Anthony Beegs

Its: CEO

Date: July 24, 2014

(Corporate Seal)

Napa-Platte Regional Railroad Authority

By: David J. Harty

Its: Chairman

Date: July 15, 2014

(Corporate Seal)

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF CHARLES MIX)

On this the 15 day of July, 20 14, before me, Kenneth W. Cotton, a Notary Public within and for said County and State, personally appeared Gerald D. Harrington, who acknowledged himself/herself to be the Chairman of Napa-Platte Regional Railroad Authority, a corporation; and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
 NOTARY PUBLIC

My Commission Expires: 8/1/2015

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF Rau)

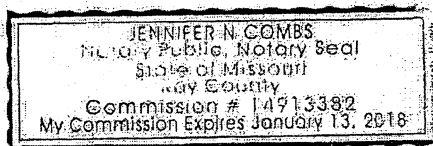
On this the 24th day of July, 20 14, before me, Jennifer N. Combs, a Notary Public within and for said County and State, personally appeared Avery Beggs, who acknowledged himself/herself to be the CFO of Dakota Southern Railway Company, a corporation; and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

Jennifer N. Combs
 NOTARY PUBLIC

My Commission Expires: 1-13-2018

(NOTARY SEAL)



APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2+0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

Amendment Number 1 to Sublease Agreement between
Napa-Platte Regional Railroad Authority
and Dakota Southern Railway Company

BACKGROUND:

1. On June 21, 2014, Napa-Platte Regional Railroad Authority, referred to in this Amendment as the "Authority," and Dakota Southern Railway Company, referred to in this Amendment as the "Operator," entered into a sublease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each party.
2. The Authority and the Operator wish to amend the AGREEMENT to extend the term of the AGREEMENT.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Effective June 17, 2015, paragraph 17 of the AGREEMENT, entitled "Term," is revised to read as follows:
 17. Term: This Agreement will continue in full force and effect beginning June 21, 2014, and ending September 20, 2015, inclusive, unless terminated earlier pursuant to the terms of this Agreement. Upon termination, of this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Agreement.
2. Except as modified by this Amendment, all other terms and conditions of the original AGREEMENT will remain in full force and effect.

This Amendment is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the Authority and the Operator to enter into the same.

Napa-Platte Regional Railroad Authority

By: [Signature]

Name: Charles Mackinnon

Its: Chairperson

Date: EFFECTIVE DATE 6/17/15
SIGNED 6/23/15

(CORPORATE SEAL)

Dakota Southern Railway Company

By: [Signature]

Name: Lester Thompson Jr

Its: General Manager Dakota Southern

Date: June 17, 2015

(CORPORATE SEAL)

Consent to enter into this Sublease Agreement given this 17th day of June, 2015.

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Approved as to Form: [Signature]

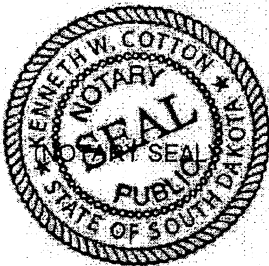
Special Assistant Attorney General

AUTHORITY ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF CHARLES MIX) SS

On this the 23RD day of JUNE, 2015, before me, KENNETH W. COTTON, a Notary Public within and for said County and State, personally appeared GERRIE HARRINGTON, Chairperson of the Napa-Platte Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Kenneth W. Cotton
NOTARY PUBLIC

My Commission Expires: 8-1-2015

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

On this the 17th day of June, 2015, before me, Bonnie R Olson, a Notary Public within and for said County and State, personally appeared Lester Thompson Jr General Manager (Title), of Dakota Southern Railway Company, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)

Bonnie R Olson
NOTARY PUBLIC

My Commission Expires: June 17, 2015

ATTACHMENT 3

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY

910992

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on September 21, 2015.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insured, prior to any motorcar event; and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Dakota Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way

limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
12. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.

15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Fifty percent (50%) of any car storage fees billed.

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning September 21, 2015, and ending November 19, 2015, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern.
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

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

Dakota Southern Railway Company

By: [Signature]

Its: CFO

Date: 9-21-15

(Corporate Seal)

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Date: 10/18/15

Approved as to Form:

[Signature]
Special Assistant Attorney General

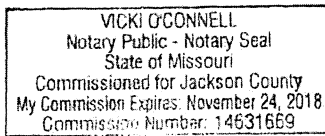
ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

Missouri
STATE OF SOUTH DAKOTA)
COUNTY OF Platte) SS

On this the 21st day of September, 2015, before me, Vicki O'Connell, a Notary Public within and for said County and State, personally appeared Avery Beggs, who acknowledged himself/herself to be the _____, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



(NOTARY SEAL)

Vicki O'Connell

NOTARY PUBLIC

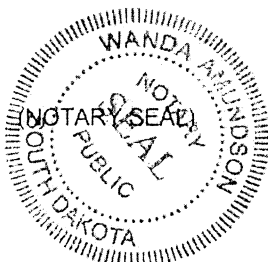
My Commission Expires: November 24, 2018

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

On this the 14th day of October, 2015, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson

NOTARY PUBLIC

My Commission Expires: Wanda Amundson
~~My Commission Expires~~
June 7, 2016

APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY

911004

THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on November 20, 2015.

BACKGROUND

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.

3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern as additional insured, prior to any motorcar event; and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.

4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.

5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.

6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence, and \$10 million in the aggregate, and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure default. Dakota

Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

- 11 Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
- 12 Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
- 13 Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought, provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
- 14 State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
- 15 Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
- 16 Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
- 17 Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
- 18 Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows

Fifty percent (50%) of any car storage fees billed.

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier in which case payment will be due on the date this Agreement terminates

19. Term. This Lease Agreement will continue in full force and effect beginning November 20, 2015, and ending January 18, 2016, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern,
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of

performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

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

Dakota Southern Railway Company

By [Signature]

Its [Signature]

Date: Jan 3, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By [Signature]

Its Secretary

Date: 1/20/16

Approved as to Form

[Signature]
Special Assistant Attorney General

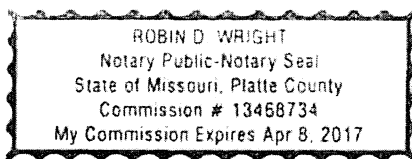
ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF PLATTE) SS

On this the 8th day of January, 2016, before me, Robin D Wright, a Notary Public within and for said County and State, personally appeared Robert D. Wright who acknowledged himself/herself to be the President of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer

In witness whereof I hereunto set my hand and official seal



(NOTARY SEAL)

Robin D Wright

NOTARY PUBLIC

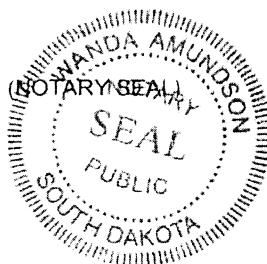
My Commission Expires: 4/8/2017

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES) SS

On this the 31st day of January, 2016, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal



Wanda Amundson

NOTARY PUBLIC

My Commission Expires June 7, 2016

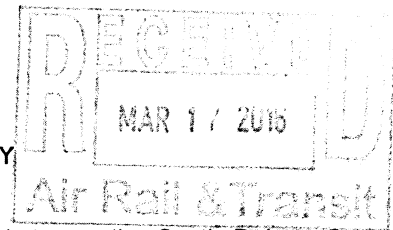
APPENDIX 1

West of Napa Junction to Ravinia

Commencing 2 miles west of intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 2.0, and additionally known as Railroad Engineer's Survey Station Number 26+50, and extending in a Westerly direction a distance of approximately 52.5 miles in and through the Counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17

911022

AGREEMENT BETWEEN
THE STATE OF SOUTH DAKOTA
AND
DAKOTA SOUTHERN RAILWAY COMPANY



THIS AGREEMENT (Lease Agreement) is made and entered into by and between the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, Office of Air, Rail, and Transit, referred to in this Lease Agreement as the "State," and Dakota Southern Railway Company, referred to in this Lease Agreement as "Dakota Southern." This Lease Agreement is effective on January 19, 2016.

BACKGROUND:

1. The State is owner of the Rail Facilities more fully described in Appendix 1 attached to and made a part of this Lease Agreement.
2. Dakota Southern wants to lease from the State the Rail Facilities.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Appendix 1 attached to this Lease Agreement.

It is understood and agreed the Rail Facilities are leased in "as is" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Lease Agreement.

2. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Lease Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures thereon. Dakota Southern further acknowledge that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements thereon.
3. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in the Rail Facilities as may be necessary for the purpose of providing rail freight service. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Lease Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insured, prior to any motorcar event; and, further, the Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification and hold harmless agreement to be executed by the person or entity in charge of the motorcar event, with copies of said indemnification and hold harmless agreement to be provided to the State of South Dakota prior to any motorcar travel on the trackage leased herein. The rights granted Dakota Southern in this Lease Agreement relate solely to the provision of rail service on the Rail Facilities and Dakota Southern may not use the Rail Facilities for any other purpose without the prior written authorization of the State.
4. Provision of Operations. If Dakota Southern, in order to provide rail freight service, contracts with an operator to provide rail freight service over Rail Facilities, no such contract will be entered into without the prior consent of the State. Any sublease between Dakota Southern and an operator to provide rail service over Rail Facilities will expressly made subject to all of the terms, conditions, and limitations contained in this Lease Agreement.
5. Administration of Rail Facilities. Notwithstanding any provision of this Lease Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service.
6. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities for the term of this Lease Agreement upon the effective date of this Lease Agreement.

7. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
8. Laws to be Observed. Dakota Southern will keep fully informed of all federal and state laws, all local laws, ordinances, and regulations, injunctions and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Lease Agreement, including without limitation any laws, ordinances, regulations, orders, or decrees, identified in this Lease Agreement. Dakota Southern will at all times observe and comply with all such laws, ordinances, regulations, and all final orders and decrees, and will protect, hold harmless and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.
9. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Lease Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board will issue a written decision, which will be binding on all parties to this Lease Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.
10. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Lease Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Lease Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, to immediately terminate this Lease Agreement without notice and without opportunity to cure such default. Dakota

Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of Dakota Southern or any lessee or other operator to the State as set forth in this Lease Agreement.

11. Personal Liability of Public Officials. In carrying out any of the provisions of this Lease Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Lease Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
12. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Lease Agreement or any part of this Lease Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
13. Amendment. No term or provision of this Lease Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.
14. State and Napa to Platte Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement.

Further, it is agreed by the State, or its duly authorized representatives, and Dakota Southern, and its duly authorized representatives, reserve the right at all times to perform any and all necessary inspections over and across the said rail trackage in order to inspect the said Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Lease Agreement. The Rail Facility trackage will be inspected annually at the sole expense of Dakota Southern and Dakota Southern agrees to abide by said inspections and to exert reasonable efforts to address any and all concerns raised in these various rail inspections. Dakota Southern agrees that whatever deficiencies are noted during each rail inspection will be corrected within a reasonable amount of time, not to exceed thirty days, depending upon the seriousness of the deficiency.
15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.
16. Additions to Rail Facilities. The State grants to Dakota Southern the right to make such Additions to the Rail Facilities as Dakota Southern may require to permit rail freight service, at Dakota Southern's sole expense. The term "Addition(s)" as used in this Lease Agreement will mean capital improvements which are in addition to the Rail Facilities. Dakota Southern will own and have the right to remove any of said Addition made. Those Additions which cannot be removed without causing the Rail Facilities to be less serviceable than before said Addition was made, will become the property of the State and a part of the Rail Facilities. However, under no circumstances will any additions or improvements placed into the actual track structure during the term of this Lease Agreement be removed at the termination of this lease and any of said additions or improvements placed into the track structure will remain under all circumstances the property of the State of South Dakota.
17. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in the condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs and work.
18. Payment. Dakota Southern will make payments to the State based on any car storage that originates or terminates at any point along the Napa Junction to Ravinia rail line, as described in Appendix 1 attach to this Lease Agreement, as follows:

Fifty percent (50%) of any car storage fees billed.

Dakota Southern may collect and keep all switching fees charged for the Rail Facilities.

Revenues from storage will be due at the time of expiration of this Lease Agreement, unless this Agreement is terminated earlier, in which case payment will be due on the date this Agreement terminates.

19. Term. This Lease Agreement will continue in full force and effect beginning January 19, 2016, and ending July 18, 2016, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.
20. Termination by the State at the State's Sole Discretion. The State may terminate this Lease Agreement for any reason or no reason by giving thirty (30) days' written notice of termination by certified mail to Dakota Southern,
21. Termination by the Dakota Southern For Fault. If the State substantially fails to perform its obligations under this Lease Agreement, and continues in such default for a period of ten (10) days, Dakota Southern will have the right at its option, after first giving forty-five (45) days written notice thereof by certified mail to the State, and notwithstanding any waiver by Dakota Southern giving notice of any prior breach thereof, to terminate this Lease Agreement.
22. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:

Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:

President
Dakota Southern Railway Company
PO Box 612
Richmond, Missouri 64085

23. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Lease Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
24. Entire Agreement. This Lease Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
25. Force Majeure. This Lease Agreement and any sublease is subject to force majeure, and is contingent on accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other events beyond the control of parties. If the performance under this Lease Agreement or operability of the Rail Facilities is prevent by any cause described above, the State is under no obligation to restore the operability of the Rail Facilities to enable resumption of

performance under this Lease Agreement or any subsequent sublease agreement. If restoration is not made, then this Lease Agreement will be void without penalty to either party.

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

Dakota Southern Railway Company

By: Michael Williams

Its: President

Date: Feb 15, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By: D. B. Buggent

Its: Secretary

Date: 3/24/16

Approved as to Form:

William J. Skrin
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF ~~SOUTH DAKOTA~~ ^{KANSAS})
) SS
 COUNTY OF Johnson)

On this the 25th day of February, 2016, before me, ~~Michael Williams~~ Erica Carper a Notary Public within and for said County and State, personally appeared Michael Williams, who acknowledged himself/herself to be the President, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

(NOTARY SEAL)



ERICA CARPER
 NOTARY PUBLIC
 STATE OF KANSAS
 E.P. 5/11/19

Erica Carper

NOTARY PUBLIC

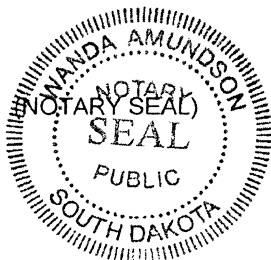
My Commission Expires: 5/11/19

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF HUGHES)

On this the 25th day of March, 2016, before me, Wanda Amundson, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



Wanda Amundson

NOTARY PUBLIC

My Commission Expires: June 7, 2016

APPENDIX 1

Napa Junction to Ravinia

Commencing at the intersection of the North Sioux City to Mitchell line located in the W1/2 of the SW1/4 of Section 22, Township 94 North, Range 56 West of the 5th P.M., also known as Milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 00+00, and extending in a westerly direction a distance of approximately 54.5 miles in and through the counties of Yankton, Bon Homme, and Charles Mix and terminating at the, westerly line of the NW1/4 of the NE1/4 of Section 17, Township 96 North, Range 64 West of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17.

AMENDMENT NUMBER 1
AGREEMENT NUMBER 911022
LEASE AGREEMENT

BACKGROUND:

1. On March 24, 2016, the South Dakota State Railroad Board, acting by and through the South Dakota Department of Transportation, referred to in this Amendment as the "State," and Dakota Southern Railway Company, referred to in this Amendment as "Dakota Southern"; entered into a lease agreement, which agreement, referred to in this Amendment as the "AGREEMENT," was signed by a representative of each of the parties and assigned agreement number 911022 by the State.
2. The State and Dakota Southern wish to amend the AGREEMENT to extend the term of the AGREEMENT.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Paragraph 19 of the AGREEMENT is revised to read as follows:

19. Term. This Lease Agreement will continue in full force and effect beginning January 19, 2016, and ending January 18, 2017, inclusive, unless terminated earlier pursuant to the terms of this Lease Agreement. Upon termination of this Lease Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear, as existed on the effective date of this Lease Agreement.

2. Except as specifically modified by this Amendment, all terms and conditions of the AGREEMENT will remain in full force and effect.
3. The South Dakota State Railroad Board (the "Board"), with the consent of the Governor, has authorized the Secretary of the Department of Transportation to execute this Amendment on behalf of the State. A copy of the fully executed resolution of the Board is attached to this Agreement as **Exhibit A**.

This Amendment is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and Dakota Southern to enter into the same.

Dakota Southern Railway Company

By: Michael Williams

Its: President

Date: July 13, 2016

(Corporate Seal)

State of South Dakota
Department of TransportationBy: [Signature]

Its: Secretary

Date: July 15, 2016

Approved as to Form:

[Signature]
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF ^{MISSOURI} SOUTH DAKOTA)
) : SS
 COUNTY OF Platte)

On this the 13th day of JULY, 2016, before me, Erica L Carper, a Notary Public within and for said County and State, personally appeared Michael W. Williams, who acknowledged himself to be the President, of Dakota Southern Railway Company, a corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

In witness whereof I hereunto set my hand and official seal.



Erica L Carper

NOTARY PUBLIC

My Commission Expires: 03/08/2020

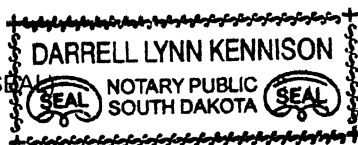
(NOTARY SEAL)

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) : SS
 COUNTY OF HUGHES)

On this the 15th day of JULY, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



(NOTARY SEAL)

Darrell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020

911 065

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

This Lease Agreement ("Agreement") is made and entered into by and between the South Dakota Department of Transportation, referred to in this Agreement as the "State," and Dakota Southern Railway Company, referred to in this Agreement as "Dakota Southern."

BACKGROUND:

- A. The State is owner of railroad property, including mainline tracks, sidings, and extra-width property and facilities commencing at the intersection of the North Sioux City to Mitchell line located in the West Half of the Southwest Quarter (W½ SW¼) of Section Twenty-two (22), Township Ninety-four North (94N), Range Fifty-six West (56W) of the 5th P.M., also known as Milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 00+00, and extending in a westerly direction a distance of approximately 54.5 miles in and through the counties of Yankton, Bon Homme, and Charles Mix and terminating at the westerly line of the Northwest Quarter of the Northeast Quarter (NW¼ NE¼) of Section Seventeen (17), Township Ninety-six North (96N), Range Sixty-four West (64W) of the 5th P.M., Charles Mix County, also known as Milepost 54.5, and additionally known as Railroad Engineer's Survey Station 1707+17, referred to in this Agreement as the "Rail Facilities."
- B. Dakota Southern wants to lease the Rail Facilities from the State.
- C. The parties now wish to enter into this Agreement for the lease of the Rail Facilities by Dakota Southern from the State on the terms and conditions as stated in this Agreement.
- D. The State has received the approval of the South Dakota State Railroad Board (the "Railroad Board") and the written consent of the Governor to enter into this Agreement for railroad purposes, as evidenced by the resolution attached to this Agreement as **Exhibit A**.

DAKOTA SOUTHERN AND THE STATE MUTUALLY AGREE AS FOLLOWS:

- 1. Purpose. The State leases the Rail Facilities to Dakota Southern, subject to the terms and conditions set forth in this Agreement. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with Dakota Southern's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, Dakota Southern will not unreasonable withhold its consent to exclude property not necessary for railroad purposes.
- 2. Facility Description. The State will permit Dakota Southern to use the Rail Facilities described in Background paragraph A above.
- 3. Effective Date. This Agreement is effective December 1, 2016. This Agreement supersedes Agreement Number 911022 that was executed by Dakota Southern on February 25, 2016, and by the State on March 24, 2016, and subsequently amended by the parties by an agreement executed by Dakota Southern on July 13, 2016, and by the State on July 15, 2016.
- 4. Condition of the Rail Facilities. Dakota Southern understands and agrees the Rail Facilities are leased in "AS IS" condition. The State will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purpose of this Agreement.
- 5. Representations and Warranties. Dakota Southern accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, Dakota Southern acknowledges that Dakota Southern has inspected the Rail Facilities, including all improvements and structures. Dakota Southern further acknowledges that no representations have been made by the State concerning the state or condition of the Rail Facilities or age of the improvements to the Rail Facilities.

6. Operating Rights. The State permits Dakota Southern to use any and all of the State's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service and, if it can be accommodated without adversely affecting freight service, rail car storage. In the event individual or organizational motorcar clubs will be allowed to utilize the trackage under lease in this Agreement or sublease, as the case may be, then, and in that event, it will be the responsibility of the Dakota Southern to obtain a certificate of insurance showing the State of South Dakota, and Dakota Southern, as additional insureds, prior to any motorcar event; and, further, Dakota Southern will obtain from the individual recreational motorcar enthusiastic or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and Dakota Southern from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted Dakota Southern under this Agreement relate solely to the provision of rail service on the Rail Facilities. Dakota Southern will not use the Rail Facilities for any other purpose without the State's prior written authorization.
7. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State will retain sole responsibility for the management of State-owned Rail Facilities and equipment not required for rail freight service. The State may grant leases, easements, licenses and all other similar property rights on the Rail Facilities for non-rail purposes, including but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipeline, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases and easements, and licenses do not unreasonably interfere with Dakota Southern's rail operations. The State will be entitled to all revenues derived from such grants of property rights.
8. Government Approval. Upon execution of this Agreement, Dakota Southern will immediately prepare, file and obtain a modified certificate of public convenience and necessity from the Surface Transportation Board ("STB") to provide common carrier service on the Rail Facilities. The modified certificate will not contain any reservations on the provision of service. Dakota Southern will permit the State to review any proposed STB filings. Dakota Southern will be solely responsible for any costs incurred in obtaining the modified certificate.
9. Common Carrier Obligations. Dakota Southern will assume all common carrier obligations related to the operation of the Rail Facilities upon the effective date of this Agreement. No later than December 31, 2016, Dakota Southern will provide service to shippers requesting service on the Rail Facilities. Dakota Southern will, at Dakota Southern's sole expense, be responsible for making any repairs or improvements necessary to provide such service.
10. Liability. Dakota Southern will indemnify, hold harmless, and protect the State, its subdivisions and representatives, their officers, employees, successors, and assigns, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property, including State-owned property, on account of any negligent act, omission, neglect or misconduct of Dakota Southern, its representatives, officers, employees, or agents.
11. Laws to be Observed. Dakota Southern will keep fully informed of all federal, state, and local laws, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. Dakota Southern will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. Dakota Southern will protect, hold harmless, and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, rule, ordinance, regulation, injunction, or final order or decree.
12. Complaint Resolution Procedure. In the event the South Dakota State Railroad Board or South Dakota Department of Transportation, Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the facilities described in this Agreement, the South Dakota State Railroad Board (Board) may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the program manager of the South Dakota Department of Transportation, Office of Air, Rail, and Transit, and Dakota Southern. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Board. After considering all information presented, the Board

will issue a written decision, which will be binding on all parties to this Agreement as if incorporated as a provision herein. The decision of the Board will be final and no party will be entitled to any right of appeal from the Board's decision.

13. Insurance. Dakota Southern will maintain a Commercial General form of insurance covering liability in connection with any of its activities or operations on or near the Rail Facilities, including but not limited to Public Liability, Personal Injury, and Property Damage, Federal Employers' Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable State law; which insurance must contain a specific waiver of the insurance company's subrogation rights against the State, Bill of Lading, and Foreign Rolling Stock Liability, and Contractual Liability, with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than \$5 million per occurrence; and \$10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State will be named as an additional insured on such liability insurance policy. Any coverage afforded to the State as an additional insured, will apply as primary insurance of the State, and will not be deemed to be excess to any insurance issued in the name of the State. Such liability insurance must be purchased from an insurance company licensed to do business in South Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

Dakota Southern will furnish to the State, an Accord Certificate of Insurance satisfactory to the State, certifying the issuance to Dakota Southern of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State, will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. Cancellation or expiration of any such insurance policies will not preclude the State from recovery there under for any liability arising under this Agreement.

Dakota Southern will provide the State with evidence of the liability insurance coverage required by this Agreement before Dakota Southern operates along the Rail Facilities and Dakota Southern will supply State with copies of its insurance policies and any amendments, as soon as they are available and with evidence of continued insurance coverage on January 1 of each year. Dakota Southern's failure to provide such evidence, within 7 days of any request therefore, will entitle the State, and to immediately terminate this Agreement without notice and without opportunity to cure such default. Dakota Southern acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit Dakota Southern's liability to the State as set forth in this Agreement.

14. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to Dakota Southern by or within the scope of this Agreement, there will be no liability upon any member of the State, or its authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of a political subdivision of the State of South Dakota.
15. Assignment. Dakota Southern will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the State's prior written consent. An approved assignment, including assignments occurring by operator contracts, will not relieve Dakota Southern of Dakota Southern's primary responsibility to the State.
16. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided however, that when an emergency situation arises, changes in this contract may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by written memorandum.
17. State Inspection. The State or its duly authorized representative, upon reasonable notice to Dakota Southern, reserves the right at all times to perform any and all necessary inspections over and across the Rail Facilities for the purpose of verifying compliance with the terms and conditions of this Agreement. Dakota Southern will promptly address any deficiencies identified by the State as a result of these inspections.
18. Responsibility for Rehabilitation. The State will have no obligation to rehabilitate the Rail Facilities.

19. Additions to Rail Facilities. As partial consideration for this Agreement, Dakota Southern will at a minimum make the following improvements to the Rail Facilities during each year of this Agreement:

- a. Installation of 3,000 crossties;
- b. Rehabilitation of three railroad crossings with heavy rail (115# or greater) and new ties; and
- c. Improvement of two miles of ditch drainage.

The State grants to Dakota Southern the right to make such further improvements and additions to the Rail Facilities as Dakota Southern may require to permit rail freight service. All improvements and additions to the Rail Facilities will be at Dakota Southern's sole expense, unless agreed to in writing by the State.

20. Maintenance. The State will have no obligation to perform any maintenance of the Rail Facilities. Dakota Southern will be responsible for the normal and regular work required to keep the Rail Facilities in an excepted track condition sufficient to provide service to shippers on the Rail Facilities. Such maintenance will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, tightening bolts, driving spikes, brush cutting and weed control, and other necessary repairs, and work. If the Rail Facilities are rehabilitated, then Dakota Southern will maintain the rail Facilities to their rehabilitated condition.
21. Rent Payments. As partial rent for the Rail Facilities, Dakota Southern will pay the State fifty percent (50%) of any fees billed for car storage originating or terminating at any point along the Rail Facilities (excluding switching fees). Dakota Southern will establish storage fees according to market conditions to ensure the rates are reasonable. The State's share of car storage fees will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year. Dakota Southern will not be required to remit any portion of the switching fees charged or collected for the Rail Facilities.

As additional rent for the use of the Rail Facilities, Dakota Southern will make an annual payment to the State equal to one and one-half percent (1.5%) of the gross revenues for any rail freight originating, terminating, or carried along any point on the Rail Facilities. Gross revenues will be calculated as of November 30 of each year and Dakota Southern will remit payment to the State by May 1 of the following year.

22. Term. This Agreement will continue in full force and effect for a period of ten (10) years from and after the effective date of this Agreement, unless terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, the Rail Facilities will be returned to the State in the same general condition, less normal wear and tear that cannot be obviated by routine maintenance, as existed on the effective date of this Agreement, except that all improvements and additions to the Rail Facilities will become the sole property of the State.
23. Termination by the State For Fault. If Dakota Southern fails to perform its obligations under this Agreement, and continues in such default for a period of sixty (60) days after written notice of such default from the State, then State may terminate this Agreement. Default includes, but is not limited to, nonpayment of rent, lapse of insurance, inadequate maintenance or repair of the Rail Facilities, and failure to provide safe and efficient common carrier rail service. Fraud, theft of State property, or any other criminal act, other than Class 2 Misdemeanors, would be a material breach of the Agreement, and is grounds for immediate termination of the Agreement by State. No advanced notice is required and there is no opportunity to cure the breach.
24. Termination of Modified Certificate. Upon termination or expiration of this Agreement, Dakota Southern agrees to promptly terminate its modified certificate before the STB and relinquish any other rights it may have to provide common carrier service over the Rail Facilities, subject to the requirements set out in 49 CFR 1150.24. If Dakota Southern fails to promptly terminate these rights, then the State is authorized and empowered to submit the requisite filings to the STB and take all other necessary steps to terminate any rights Dakota Southern may have to provide common carrier service over the Rail Facilities. Dakota Southern will reimburse the State for all expenses incurred to effectuate the termination of these rights.

25. Audit. Dakota Southern will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, Dakota Southern will allow the State, through any authorized representative, to examine and copy all records, accounts, invoices, and supporting documents.
26. The terms of this Agreement alone will control the relationship between the State and Dakota Southern.
27. Notice. Except as expressly provided otherwise, all notices or other communications hereunder will be in writing and will be deemed duly given, if delivered in person or by certified or registered mail, return receipt requested, first class postage prepaid, to the person specified herein as entitled to receive such notice, or to their duly authorized representative unless notice of a change of address is given pursuant to the terms of this provision.

For the State:
Program Manager
Office of Air, Rail, and Transit
SD Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586

For Dakota Southern:
President
Dakota Southern Railway Company
10100 N. Ambassador Drive, Suite 105
Kansas City, Missouri 64153

28. Severability. In the event any section, paragraph, sentence, clause or phrase contained herein will be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication will in no manner affect the other sections, paragraphs, sentences, clauses, or phrases of this Agreement, which will remain in full force and effect as if the section, paragraph, sentence, clause, or phrase declared, determined or adjudged, invalid, illegal, unconstitutional, or otherwise unenforceable was not originally a part thereof.
29. Entire Agreement. This Agreement and the Appendix attached hereto represent the entire agreement between the parties, and all previous communications, understandings, or agreement between the parties are hereby abrogated and withdrawn except as provided herein.
30. Force Majeure. This Agreement and any sublease is subject to force majeure, and is contingent on acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, and other events beyond the control of parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any of these causes, neither Dakota Southern nor the State is under any obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement. If restoration is not made, then this Agreement will be void without penalty to either party.

SIGNATURE PAGE FOLLOWS

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

Dakota Southern Railway Company

By: [Signature]

Its: President

Date: Nov 30, 2016

(Corporate Seal)

State of South Dakota
Department of Transportation

By: [Signature]

Its: Secretary

Date: 11/30/16

Approved as to Form:

[Signature]
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF Hughes)

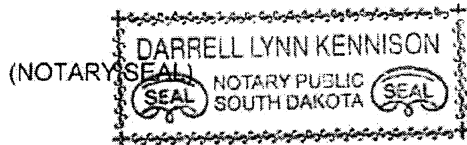
On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Mike Williams, who acknowledged himself/herself to be the President, of Dakota Southern Railway Company, a corporation, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

Laurel Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020



STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On this the 30th day of November, 2016, before me, Darrell Lynn Kennison, a Notary Public within and for said County and State, personally appeared Darin P. Bergquist, Secretary, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Lenell Lynn Kennison

NOTARY PUBLIC

My Commission Expires: 01/24/2020

